

## CITY OF NITRO COUNCIL MEETING MINUTES

AUGUST 01, 1995

Mayor Karnes declared a quorum and called the Council Meeting to order at 7:30 p.m. Other members present were City Recorder/Treasurer Herbert Sibley, Councilmen at Large Steven West, Dean Miller and Jim Hutchinson, Councilmen George Atkins, Frank Grover, Jr., Robert Young and Councilwoman Betty Boggess. Also present City Attorney Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF JULY 18, 1995 COUNCIL MEETING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED AND WAS CARRIED.

AGENDA ITEM NO. 2 - PUBLIC HEARING 7/25/95: COUNCILMAN JIM HUTCHINSON MOVED TO MAKE THE JULY 25, 1995 PUBLIC HEARING MINUTES A PART OF AUGUST 01, 1995 COUNCIL MEETING MINUTES. THE MOTION WAS SECONDED AND WAS CARRIED. (copy attached)

AGENDA ITEM NO. 3 - PUBLIC HEARING 7/26/95: COUNCILMAN GEORGE ATKINS MOVED TO MAKE THE JULY 26, 1995 PUBLIC HEARING MINUTES A PART OF THE AUGUST 01, 1995 COUNCIL MEETING MINUTES. THE MOTION WAS SECONDED AND WAS CARRIED. (copy attached)

AGENDA ITEM NO. 4 - BUSINESS & PROFESSIONAL ASSN: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller discussed the restoration of the old Nitro bungalow. Mayor Karnes appointed Councilman Miller to chair committee and present recommendations to Council.

AGENDA ITEM NO. 5 - DRAINAGE ON SECOND AVENUE: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller discussed the drainage problem at 24th Street and 2ND Avenue. It was decided further study needed to resolve this matter with action to be taken soon.

AGENDA ITEM NO. 6 - BUDGET LINE ITEM: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller made statement regarding his position on line item, pay raise, in current budget. Agreement on spreading costs to departments affected by pay raise.

AGENDA ITEM NO. 7 - RESOLUTION 95-05 SMALL CITIES BLOCK GRANT: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE RESOLUTION 95-05. THE MOTION WAS SECONDED AND CARRIED. (copy attached)

2  
AGENDA ITEM NO. 8 - WAR MEMORIAL COMM REPORT: No report. Councilman Atkins will have recommendations at the next council meeting.

AGENDA ITEM NO. 9 - RIC CERTIFICATION: Mayor Karnes stated the Regional Intergovernmental Council asked municipalities to approve their funding formula and mail them certification of this action. The City's contribution is \$1451.80. This is determined by the population of the City. COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE THIS CONTRIBUTION. THE MOTION WAS SECONDED AND WAS CARRIED (copy attached)

AGENDA ITEM NO. 10 - MAYOR'S REPORT: Mayor Karnes said "Wasteshed H", Wasteshed C" and the City have jointly applied for \$100,000 grant to implement recycling.

Mayor Karnes stated the City Attorney is preparing a trash ordinance.

Also, he said a 31st Street Bridge Committee is being appointed.

There being no further business, the meeting was adjourned.

DON KARNES, MAYOR

*Don Karnes*

HERBERT SIBLEY, RECORDER

*Herbert Sibley*

## CITY OF NITRO

## PUBLIC HEARING

JULY 25, 1995

The properly advertised Public Hearing was called to order by Mayor Karnes in Council Chamber at 3:00 p.m. Present were City Recorder/Treas. Herb Sibley, Councilman at Large Steve West, Councilwoman Betty Jo Boggess, Councilman George Atkins, Jim Withrow, Attorney, Connie Stephens, General Manager, Wayne Hypes and Jack Ramsey from Dunn Engineers.

Mayor Karnes yielded the floor to the Sanitary Board Attorney Jim Withrow, who explained the purpose of the Public Hearing. THERE BEING NO OBJECTION MAYOR KARNES READ TITLE ONLY OF 95-04. AND COUNCILMAN AT LARGE STEVE WEST MOVED RESOLUTION BE PASSED. THE MOTION WAS SECONDED BY GEORGE ATKINS, VOTE TAKEN AND IT PASSED.

RESOLUTION 95-04 ATTACHED.

There being no further comments, the meeting adjourned.

DON KARNES, MAYOR



HERB SIBLEY, RECORDER



4  
*Resolution  
Authorizing the Submission  
of a  
Small Cities Block Grant Application  
for the  
City or Nitro*

*WHEREAS,*

*the Town Council, of the City or Nitro  
is aware of its need to provide  
for storm sewer on Gum Street,  
slip-repair on 31st Street and ADA improvements;*

*WHEREAS,*

*said Council has identified the  
Small Cities Community Development  
Block Grant as a funding source;*

*WHEREAS,*

*it is necessary for the Council to act  
expeditiously to prepare an application  
for said funds.*

*NOW, THEREFOR, BE IT RESOLVED, that the  
Mayor, the Honorable Don Karne,  
is hereby authorized by the Council to sign all documents  
pertaining to the preparation of said application,  
and to submit same to the WV Development Office.*

*This Resolution becomes effective on this date as passed  
during Council the 1 day of AUGUST, 1995.*

*Don Karne*  
\_\_\_\_\_  
Mayor

*Andy D. Sibley*  
\_\_\_\_\_  
Recorder



CITY OF NITRO  
PUBLIC HEARING

JULY 26, 1995

The properly advertised Public Hearing was called to order by Mayor Karnes in Council Chambers at 3:00 p.m. The purpose of the meeting was to obtain views and comments concerning the Small Cities Block Grant for improvements to the City. Present were City Recorder/Treasurer Herb Sibley, Carol Gibson and Pansy Armstead.

Since there was no input, the meeting was adjourned.

DON KARNES, MAYOR



HERB SIBLEY, RECORDER



## CERTIFICATION

I, Don Karnes, duly elected Mayor, of the City of Nitro, do hereby certify that the FY 1996 Budget and Funding Formula adopted by the BCKP Regional Intergovernmental Council was submitted to the City Council Council of the City of Nitro, and that said Budget and Funding Formula were approved by the City Council of Nitro and that the City of Nitro's financial contribution to the BCKP Regional Intergovernmental Council as set forth in said funding formula was approved and included in the City of Nitro FY 1996 Budget.

Don Karnes  
Mayor

\_\_\_\_\_  
Date

Shirley G. Sibley  
Recorder

2/22/95  
Date

## REGIONAL INTERGOVERNMENTAL COUNCIL

## LOCAL CONTRIBUTION SCHEDULE

<u>Member</u>	<u>Total Contribution</u>
Boone County	\$ 7,329.52
Clay County	2,347.84
Kanawha County	24,179.35
Putnam County	10,591.86
Bancroft	50.06
Belle	572.81
Buffalo	141.13
Cedar Grove	197.92
Charleston	23,982.82
Chesapeake	259.47
Clay	183.64
Clendenin	282.58
Danville	136.52
Dunbar	1,828.49
East Bank	144.61
Eleanor	259.62
Glasgow	718.40
Handley	66.80
Hurricane	1,046.60
Madison	580.18
Marmet	385.54
Nitro	1,451.80
Poca	208.75
Pratt	95.89
St. Albans	2,404.52
So. Charleston	5,333.35
Sylvester	26.62
Whitesville	103.20
Winfield	278.11
 TOTALS	 <hr/> \$ 85,188.00

Approved by Full Council -- February 22, 1995

Don Kernes  
Secretary

8

CITY OF NITRO COUNCIL MEETING MINUTES

AUGUST 15, 1995

Mayor Karnes declared a quorum and called the council meeting to order at 7:30 p.m. Other members present were, City Recorder/Treasurer Herbert Sibley, Councilman at Large Steven West, Councilman at Large Dean Miller, Councilman George Atkins, Councilman Bob Young, Councilman Frank Grover, Jr., Councilwoman Betty Boggess. Also present City Attorney Phillip Gaujot. Absent was Councilman at Large Jim Hutchinson.

AGENDA ITEM NO. 1 - APPROVAL OF AUGUST 01, 1995 COUNCIL MEETING MINUTES. COUNCILMAN BOB YOUNG MOVED TO APPROVE THE AUGUST 01, 1995 COUNCIL MEETING MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 2 - PLANNING COMMISSION MINUTES: COUNCILMAN BOB YOUNG MOVED TO MAKE THE PLANNING COMMISSION MINUTES A PART OF THE AUGUST 15, 1995 MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED WITH COUNCILMAN AT LARGE DEAN MILLER ABSTAINING.  
(Copy Attached)

AGENDA ITEM NO. 3 - FLOOD REPORT: Mayor Karnes yielded the floor to each person signed in to speak requesting them to identify themselves to Council. Willard Crites, Clyde Crites, Steve Thomas, Mary Haber, Brenda Tyler, Gary McGuire, Dennis Jeffrey, Jay Jeffries, Ike Mallory, Charles Robinson, Jim Carrier and Bill Boso voiced their complaints and concerns regarding the drains. Also, Sharon Knight asked what measures have been taken to correct problem on 2nd Ave.

Fred Sampson and Carolyn Strathers questioned if the City had coverage for loss properties, and who was responsible.

Sherri Willey, business owner, voiced her concern over the reaction of the Police Department.

Mayor Karnes stated he would do everything possible to help in resolving the problem and would apply for aid from State and Federal Agencies.

Mayor Karnes yielded the floor to City Attorney, Phillip Gaujot. Counselor Gaujot commented after listening to everyone, he felt they had a need to lash out at someone. Sometimes it is easy to lash out at a government official because they are there. As City Attorney, I can assure you the Mayor and City Council want to help. A plan has to be made. You must take a look at the source of the problem and then you have to put some type of mechanism in action to correct it. Before there were any homes or businesses in this area, apparently the water flowed freely, there must have been a stream or something and that stream directed all the rain water over to the river. Over the years this area of town has developed, you have residential homes and businesses. When that area was first developed the forefathers had a drainage system apparently, they had a plan back then for drainage. Now we are faced with more planning and when you speak of taking measures for correcting these problems you are talking about money. This city must operate on a budget, there is only so much money available. Not to downplay your problem but there are other problems in the City, we have the slip, a bridge about to fall down and there are streets in other parts of the city that are ready to fall in, but there are priorities too, and there is priority where you put your money. Counselor Gaujot stated the first thing to be done is to get the drainage in working order. You need to get the maximum drainage with what you have now. Also we need to get the State involved. Counselor Gaujot recommended that each property owner file claim with their own insurance company. If you are turned down, you go after them, because the excuse they are giving you does not sound like a very sound legal excuse. In fact you might want to think about hiring an attorney that will work on contingency basis. The second thing is the City has liability insurance. Whether the City insurance will pay we do not know. The City needs to contact State and Federal Agencies. A list should be made of everyone affected by the flood including all damages, also including a comment section as to their opinion of what can be done to correct the problem. What you are talking about here is a major undertaking, much more than the City has in the budget. Engineering alone would be a high dollar expense. The only way this can be paid for is by tax money, unless people contribute some other way. This can only be done by taxes, bonds or some type of state assistance fund where the money is already there. As far as legal remedies, go to your own insurance company, make a claim with the City's insurance and talk to a lawyer. A question and answer session followed.

10

AGENDA ITEM NO. 4 - FINANCE REPORT: Mayor Karnes yielded the floor to City Recorder/Treasurer Herb Sibley. Mr. Sibley stated he had a finance meeting last Tuesday night and will have another one the second Tuesday next month and I have put a report in each of your boxes. If there are any questions we will answer them next month.

AGENDA ITEM NO. 5 - CRIMINAL JUSTICE/HIGHWAY SAFETY DIV. RESOLUTION: Mayor Karnes stated Resolution , is a resolution authorizing Mayor Don Karnes, City of Nitro to act on its behalf to enter into a contractual agreement with the Criminal Justice and Highway Safety Division to receive and administer grant funds pursuant to provisions of the Drug Control and System Improvement Grant Program. COUNCILMAN AT LARGE DEAN MILLER MOVED TO APPROVE RESOLUTION . THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED.  
(Copy attached)

AGENDA ITEM NO. 6 - BUSINESS AND PROFESSIONAL REPORT: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller stated there was no report this week.

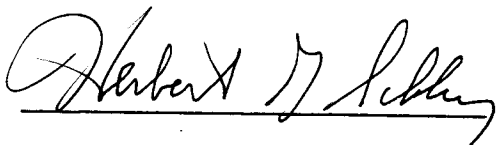
AGENDA ITEM NO. 7 - 21ST STREET & FREDERICK ST: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller said this matter has already been addressed.

AGENDA ITEM NO. 8 - WAR MEMORIAL REPORT: Mayor Karnes yielded the floor to Councilman George Atkins. Councilman Atkins stated a meeting was scheduled for tomorrow night (Aug 16th) at 7:00 p.m. and will visit the site and have recommendations for the next council meeting.

AGENDA ITEM NO. 9 - MAYOR'S REPORT: Mayor Karnes reported the annual WV Municipal League Conference was held last week and He was elected Treasurer of the Municipal League. This position pays nothing, but gives us contacts thru-out the State and hopefully will benefit us as a City.

There being no further business, the meeting was adjourned.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, REC/TREAS.

## PLANNING COMMISSION MINUTES, CITY OF NITRO

July 17, 1995

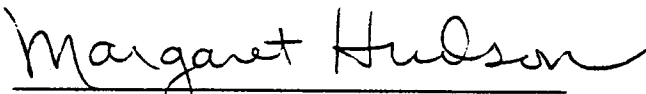
The Planning Commission of the City of Nitro met Thursday, July 17, 1995, 7:00 p.m. at City Hall. Members present were: Dr. Guy Cassell, Charles Hudson and Margaret Hudson. The meeting was called to order by Margaret Hudson, Chairperson.

A Public Meeting in regard to requests from Reba Combs of 1005 10th Street (to put a fence on 2nd Avenue right-of-way at 10th Street and 2nd Avenue), Rusty and Cyndi Akers of 114 Kanawha Avenue South (to abandon a 10' alley and a 30 foot street in Block O, East Crawford Addition), and Betty Bateman of 108 Kanawha Avenue South (to abandon section of River Drive that parallels 125 feet of her property). These requests were advertised in both Charleston newspapers on July 1 and July 8. All of the requestors were present and spoke to their particular request. Several other interested citizens also attended. Much discussion was held and many questions were raised. Since a quorum was not present and since many questions remained, the Commission members did not take any action but scheduled another study/walk-see meeting for 7:00 p.m., Thursday, August 10. Members are to meet in the 100 block of Kanawha Avenue South.

The members next considered a letter dated March 2, 1995 from the Chairperson of the Zoning Board of Appeals and was told by Bob Sergent that this situation had "taken care of itself."

Concerns dealing with undesirable traffic on Ivy Street were discussed and the members present suggested that the Police Department consider installing signs such as "Not Open to Through Traffic" and even barriers as a step in solving this situation. (This discussion raised questions such as when is a street open [or closed]? Who decides this? How? Is the city's liability, responsibility, etc. the same for both "open" and "closed" streets?)

Since there was no additional business, the meeting was adjourned.

  
Margaret Hudson, Chairperson

WAR MEMORIAL COMMITTEE MEETING MINUTES - BANK STREET

August 16, 1995

Committee members present were Councilman George Atkins, Councilman Frank Grover, City Recorder/Treasurer Herb Sibley, Recreation Director Jay Long and Tom Bohner, Draftsman.

Inspected site - made suggestions and received recommendations from Tom Bohner. Mr. Sibley to check with (1) state on use of property, (2) check with Jim Marrs concerning his ownership of adjacent property. (3) John Romano, Ric, concerning use of funds for development to pay all or in part of costs. (4) City of Mannington concerning lights (artistic) on renovation of gifted properties.

August 17, 1995

(1) Bob Sargent contacted Mike Johnson, Department of Highways right of way. No problem, Engineer drawing schematic from Dunn Engr drawing.

(2) Jim Marrs cooperative for any project which would help beautify the City. Requested help of City in getting additional parking on 1st Avenue side of his property.

August 18, 1995

(3) John Romano indicated no problem as long as project not individually owned or used for profit.

(4) Mrs. Michele Fluharty, Recorder Mannington, 986-2700 State Decorative.

Sternberg Latern, Inc.  
5801 N. Tripp Avneue  
Chicago, Ill 60646



## CITY OF NITRO COUNCIL MEETING MINUTES

SEPTEMBER 05, 1995

Mayor Karnes declared a quorum and called the council meeting to order at 7:30 p.m. Other members present were City Recorder/Treasurer Herbert Sibley, Councilman at Large Steve West, Councilman at Large Dean Miller, Councilman at Large Jim Hutchinson, Councilman Frank Grover, Jr. Councilman Bob Young, Councilman George Atkins and Councilwoman Betty Boggess. Also present City Attorney, Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF AUGUST 15, 1995 COUNCIL MEETING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE AUGUST 15 MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED.

AGENDA ITEM NO. 2 - PIT: Mayor Karnes yielded the floor to Deborah Atkins, owner of the Pit. Ms. Atkins commented until August 21, 1995 she ran the Pit located at 6-B Bank Street. Ms. Atkins stated she was appearing before City Council as instructed by Mr. Sibley, Recorder/Treasurer, to ask City Council to decide whether or not to renew her business license. Ms. Atkins said she did not intend to make any compromises nor do I intend to be the only business in Nitro which is micro-managed by the Mayor and City Council, I am not here to defend my actions nor perceived or imagined actions of those people who frequent the Pit. Although it has been brought to my attention that members of the Council have taken it upon themselves to spend a portion of last week walking door to door to solicit complaints from businesses which are not even open when the Pit is open. I will not express my opinion regarding this action. Mayor Karnes has been quoted in the local newspapers as making the following statements; she is either going to be a good neighbor and run a good business or she is going to be history. Everybody that has a business including the Church half a block up the street is complaining about the Pit. I feel the decision of the City Recorder to deny renewal of my license was based on such statements. Also Mayor Karnes was quoted in the Daily Mail stating " if those people would come down to the Pit and see what goes on, they would pull them (their kids) out in a heartbeat." In response to this, let me state should the Pit have their license restored, I invite Mayor Karnes, all members of Council as well as the Parents to come to the Pit and watch a show free of charge. Please let the minutes of this Council Meeting reflect that I have complied with the written directive of Mr. Sibley, Recorder/Treasurer and have brought the matter before council for consideration. I have nothing further to state and will wait for your decision.

Mayor Karnes stated in all fairness to everyone he recommended a public hearing regarding the Pit.

COUNCILMAN GEORGE ATKINS MOVED TO SCHEDULE A SPECIAL COUNCIL MEETING FOR SEPTEMBER 12TH, 1995 AT 7:30 P.M. REGARDING THE PIT. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

AGENDA ITEM NO. 3 - FREDERICK STREET: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller stated he would like to address the drainage system after finding a portion of the line had collapsed. Councilman Miller questioned why they are replacing a section with a 24 inch line, when existing line is 16 inch? He said we need engineering to tell us if the 16 inch line is adequate. Mayor Karnes said he could answer part of the question, the line that is in there now is on private property. I would assume it was installed by Twin City Church. Councilman Miller asked if a motion should be made to get the drainage system re-engineered and replace the whole thing. Mayor Karnes said re-engineering and replacing the whole thing would be a major expenditure. The City did not design or install the drainage system in that area of Nitro and feels like we need to get the state involved in the solution to our problem.

There is a meeting tentatively scheduled for September with representatives from Senator Rockefeller, Congressman Wise's and Governor Caperton's offices. Also a representative from the Dept of Highways and the Kanawha County Commission. Mayor Karnes said he plans to treat that meeting as an educational meeting to decide where to go now and what is our game plan. We are talking lots of money to complete this project. Its almost predetermined that it will require another line or a bigger line all the way to the river. A discussion followed.

AGENDA ITEM NO 4. - BUSINESS & PROF REPORT: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller stated the Association met this morning, September 05, 1995 and discussed the bungalow. Also he said Linda Wilson is serving as the new president. Councilman Miller yeilded the floor to Nathan Wills to address council. Mr. Wills furnished council with copy of a list of items that will put the house in showable condition. The amount being approximatley \$4,068. He said thay would like to raise that figure to \$5000. Also he said they plan several fund raisers. The plan is to start by September 1 and have the house set down on the foundation and closed up by November 1, 1995 if everything goes as planned. COUNCILMAN ATKINS MOVED TO LEAVE THE OLD NITRO BUNGALOW ON SAME LOCATION. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED.

Councilman Miller also said the Association has as a project, of adding to the Christmas Lights through out town.

We will be having fund raisers for this project. A haunted house is planned at the Community Center. The Business & Professional Associations has ordered lights and request the City to pay for two of them at a cost of \$250/ea. COUNCILMAN AT LARGE DEAN MILLER MOVED FOR THE CITY TO PURCHASE TWO CHRISTMAS LIGHTS, NOT TO EXCEED, \$250/PER LIGHT. THE MOTION WAS SECONDED BY RECORDER HERB SIBLEY AND WAS CARRIED.

AGENDA ITEM NO. 5 - BID OPENING (POLICE CRUISER) Mayor Karnes yielded the floor to Recorder/Treasurer Herb Sibley. Mr. Sibley stated the bid was properly advertised in both papers and received one bid. Cut-off was 4:00 p.m. September 5, 1995. The bid from Turnpike Chevrolet was \$19,999.42 opened by Councilman at Large Jim Hutchinson. COUNCILMAN AT LARGE DEAN MILLER MOVED THIS BID BE PLACED IN FINANCE COMMITTEE FOR CONSIDERATION. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 6 - FINANCE REPORT: Mayor Karnes yielded the floor to Recorder/Treasurer Herb Sibley. Mr. Sibley said at the end of two months we have gross receipts of \$451,639.00. Receipts over expenditures were \$64,014, this is with some bills outstanding. We have received notice from the landfill of an increase in rates from \$40.35 to \$43.70 as of October 1st. This new rate almost doubles last year cost, 1995/96 additional costs about \$7500.

Also, Mr. Sibley stated if the City ever has a lay-off it would cost the City approximately \$7500 per person/yr. He said it might be wise for the City to join with the Municipal League who has insurance coverage they guarantee at least 10 per cent cheaper than the State insurance. The Director stated our rate would probably be 1.5 per cent. That would be around \$7500.00/yr. Recorder/Treasurer Herb Sibley requested this matter be put in Finance Committee. A finance committee meeting is scheduled at 6:00, September 12, 1995.

AGENDA ITEM NO. 7 - DARE PROGRAM: Mayor Karnes yielded the floor to Recorder/Treasurer Herb Sibley. Mr. Sibley said he attended a meeting with Chief Blankenship and Herb Richardson a former Police Lt. explaining the DARE program. This program will be funded 90% and the City is required to spend \$100.00 for materials. RECORDER/TREASURER HERB SIBLEY MOVED TO FUND \$100.00 TO THE DARE PROGRAM. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR., AND WAS CARRIED.

AGENDA ITEM NO. 8 - WAR MEMORIAL: Mayor Karnes yielded the floor to Councilman George Atkins. Councilman Atkins stated they had a meeting Aug. 16th, and contacted Tom Bonhar, Draftsman who agreed to draw up the plans. Councilman Atkins yielded the floor to Rec/Treas Sibley. Mr. Sibley said there are several items that must be resolved, we have to get permission from the State. Bob Sargent called an

Engineer and he indicated we do have permission, however they are drawing a schematic of what we want to do. Mr. Marr, owner of Marr's Jewelry, bought the property adjacent to this property and there is a small portion that comes over into this property. Mr. Marr said he would cooperate with the City. We have sufficient funds for the project. Also Mr. Sibley contacted the Town of Mannington regarding the availability of a special type of lamps. A discussion followed.

AGENDA ITEM NO. 9 - GARBAGE CAN LINERS: Mayor Karnes stated it was time to run ads for the garbage can liners. COUNCILMAN AT LARGE STEVE WEST MOVED TO ADVERTISE FOR GARBAGE CAN LINERS. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR., AND WAS CARRIED.

AGENDA ITEM NO. 10 - MAYOR'S REPORT: No Report

There being no further business, the meeting was adjourned.

  
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DON KARNES, MAYOR

  
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RECORDER, HERBERT SIBLEY

## CITY OF NITRO COUNCIL MEETING MINUTES

SEPTEMBER 19, 1995

Mayor Karnes declared a quorum and called the council meeting to order at 7:30 p.m. Other members present were City Recorder/Treasurer Herbert Sibley, Councilman at Large Steven West, Councilman at Large Dean Miller, Councilman Robert Young, Councilman George Atkins, Councilwoman Betty Boggess. Also present City Attorney Phillip Gaujot. Absent were Councilman at Large Jim Hutchinson and Councilman Frank Grover, Jr .

AGENDA ITEM NO. 1 - APPROVAL OF SEPTEMBER 5, 1995 COUNCIL MEETING MINUTES: COUNCILMAN BOB YOUNG MOVED TO APPROVE THE SEPTEMBER 5, 1995 MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 2 - APPROVAL OF SPECIAL COUNCIL MEETING SEPTEMBER 12, 1995. CITY RECORDER HERBERT SIBLEY MOVED TO APPROVE THE SPECIAL COUNCIL MEETING MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG. CITY RECORDER HERBERT SIBLEY STATED COUNCILMAN AT LARGE JIM HUTCHINSON MIS-UNDERSTOOD THE MOTION AND WOULD LIKE FOR THE RECORD TO SHOW HE WAS AGAINST REISSUING THE BUSINESS LICENSE TO THE PIT. THE MOTION CARRIED WITH COUNCILMAN AT LARGE DEAN MILLER ABSTAINING. (COPY ATTACHED)

AGENDA ITEM NO. 3 - NDA GRANT: Mayor Karnes stated the City has an account for economic development and the money comes from Udag Grant. This money has to be spent according to the rules of the original agreement and that is economic development. Anything we do that does not fit the exact criteria of these rules then we must get approval from the Federal Government. Mayor Karnes said he would like to hire someone on a contract basis to work both for the Business and Professional Association and the Nitro Development Authority to develop an economic development plan for the City of Nitro. This person would answer to the Nitro Development Authority because they are the governmental group.

COUNCILMAN AT LARGE STEVE WEST MOVED CITY COUNCIL GRANT \$25,000 TO THE NITRO DEVELOPMENT AUTHORITY FOR THE PURPOSE OF EMPLOYING A PLANNING OFFICER ON A CONTRACT BASIS. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG. DISCUSSION FOLLOWED. MOTION WAS CARRIED.

AGENDA ITEM NO. 4 - POOL REPORT: Mayor Karnes yielded the floor to Recreation Director, Jay Long. Mr. Long furnished a copy of the report to council. COUNCILMAN AT LARGE DEAN MILLER MOVED TO MAKE THE POOL REPORT A PART OF THE

SEPTEMBER 19, COUNCIL MEETING MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED. (COPY ATTACHED)

AGENDA ITEM NO. 5 - FINANCE REPORT: Mayor Karnes yielded the floor to City Recorder/Treasurer Herb Sibley. Recorder/Treasurer Sibley said he had received a letter from Turnpike Chevrolet stating they would like to withdraw their bid on the police car because of the manufacturer regulations. They proposed we might consider selecting an Impala Super Sport. The price on the Impala is \$22,688.00. Recorder Sibley read letter received from the Manufacturer. Discussion followed regarding this car and leasing. Chief Blankenship will gather information on leasing.

Mr. Sibley said the phone system seems to be working now and AT&T wants to be paid. The statement received is \$13,205.00 the first quote was \$13,609.00, this is a \$400.00 reduction. Also they gave me a lease purchase of \$309.44 for sixty months or a total of \$18,566.00. They charge 12.5 percent interest, that would be \$5360.00 interest. COUNCILMAN BOB YOUNG MOVED TO GIVE THE RECORDER AUTHORITY TO NEGOTIATE A LEASE AGREEMENT IN PAYMENT OF NEW PHONE SYSTEM. THE MOTION WAS SECONDED AND WAS CARRIED.

Mr. Sibley said the next item of business for discussion is Lloyd's Electronic. We have a purchase order for the amount we have been billed, however the Chief said the package is still not quite complete. Recorder Sibley said until the job is complete he would not pay them.

Recorder Sibley stated the last order of business is unemployment insurance. The approximate cost of this insurance per year would be \$6000. If you don't feel inclined to go with the Municipal League I think it would be wise to setup a reserve fund in same amount of money it would cost us and keep this in a separate account, which is one of the untouchables. If we would have a layoff it would really hurt the City. We do not anticipate a layoff but this is one of the first things you do to reduce cost. A discussion followed regarding this matter, no recommendation given.

AGENDA ITEM NO. 6 - FREDERICK STREET: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller stated he received several calls regarding the no activity on the drainage system, however, he said he understood they started today. Mayor Karnes said the new contractor started today. Discussion followed.

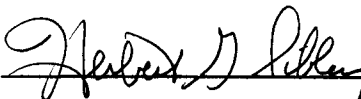
AGENDA ITEM NO. 7 - BUSINESS & PROFESSIONAL GRP: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman at Large Dean Miller stated work had begun on the old bungalow. Also, he said the association will be asking Council for a permit for a fund raiser, possibly door to

door, to purchase lights. The association would like to schedule with the City a cleanup in the downtown area. Ms. Leslie Crowley is scheduled to speak at our next meeting to advise the Association on obtaining grants. Everyone is invited, especially the Mayor if at all possible. The meeting will be Tuesday, October 3, 1995, 8:30 a.m. at Ginos.

AGENDA ITEM NO. 8 - MAYOR'S REPORT: Mayor Karnes stated there is a question of how the Artel Site is zoned. Mayor Karnes yielded the floor to the City Attorney Phillip Gaujot. Counselor Gaujot said the state law safeguards the existing uses, in other words, no matter what the zoning is, if the area has been used in a particular way, it can continue. When that area was annexed, it was not zoned in the order that ordered the annexation. Counselor Gaujot suggested this matter go to the Planning Commission for a public hearing and recommendations to Council. Mayor Karnes said the question came up when discussing the application for the Brownfields Grant. Included in the grant application is the ownership of the property, is it within the corporate limits and how is it zoned. Mayor Karnes supplied the grant writer with a copy of the annexation ordinance and a legal description of the property.

There being no further business, the meeting was adjourned.

  
DON KARNES, MAYOR


  
HERBERT SIBLEY, RECORDER


NOTICE OF SPECIAL MEETING OF THE COUNCIL  
OF THE CITY OF NITRO, NITRO, WEST VIRGINIA

PLEASE TAKE NOTICE that a special meeting of the City Council of the City of Nitro will be held on the 12th day of September, 1995 at 7:30 p.m., in the Kathy Mattea Auditorium, in the Nitro Community Center.

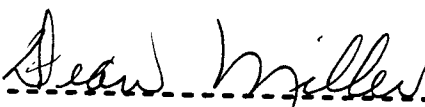
AGENDA:

1. PIT


  
Don Karnes, Mayor

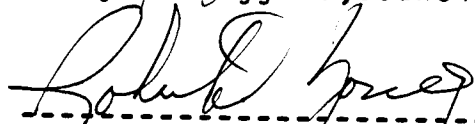
  
Steven West, Counc/at Large

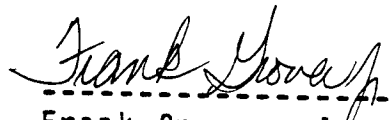
  
Jim Hutchinson, Counc/at Large

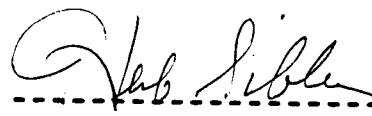
  
Dean Miller, Counc/at Large

  
Betty Jo Boggess, Councilwoman

  
George Atkins, Councilman

  
Robert Young, Councilman

  
Frank Grover, Jr. Councilman

  
Herb Sibley, Recorder/Trea.



## SPECIAL COUNCIL MEETING MINUTES

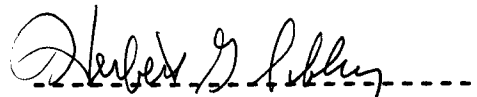
SEPTEMBER 12, 1995

Mayor Karnes declared a quorum and called the Special Meeting to order at 7:30 p.m. Other members present were, City Recorder/Treasurer Herbert Sibley, Councilman at Large Dean Miller, Councilman at Large Steve West, Councilman at Large Jim Hutchinson, Councilman Robert Young, Councilman Frank Grover, Jr., Councilman George Atkins and Councilwoman Betty Boggess. Also present City Attorney Phillip Gaujot.

AGENDA ITEM: RENEWAL OF CITY LICENSE: Mayor Karnes acted as moderator, yielding the floor to each person wishing to speak. Those speaking were, Deborah Adkins, Tillie Mynes, Lynn Cook, Kari Postlethwaite, Chuck Willy, Kay Postlethwaite, Harvey Peyton, Truda Null, Councilman Dean Miller, Phillip Gaujot, Counselor. COUNCILMAN ROBERT YOUNG MOVED TO REFUSE THE ISSUANCE OF BUSINESS LICENSE TO THE PIT, OWNER DEBORAH ADKINS. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST. After a short discussion, a vote was taken. Those voting in favor of the motion were, COUNCILMAN AT LARGE STEVE WEST, COUNCILMAN AT LARGE JIM HUTCHINSON, COUNCILMAN GEORGE ATKINS, COUNCILMAN ROBERT YOUNG AND COUNCILWOMAN BETTY BOGGESS. Those opposing, none. Two abstaining COUNCILMAN AT LARGE DEAN MILLER AND COUNCILMAN FRANK GROVER. THE MAJORITY OF THOSE VOTING, VOTED IN THE AFFIRMATIVE, THEREFORE MOTION CARRIED.

There being no further business, the meeting was adjourned.

  
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DON KARNES, MAYOR

  
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HERB SIBLEY, REC TREAS

## EXPENDITURES THRU SEPT 04, 1995

## POOL

Salaries	\$14,618.75
Paint, hot water tank, Etc.	1,500.00
Phillips Supply	579.39
Zee Medical	32.40
PB&S Chemical	2,248.28
Castos	300.00
Inspection Fee	60.00
	\$19,338.82

## CONCESSIONS

Salaries	\$ 2,710.25
Pepsi Cola	1,283.25
Sams	549.59
Ginos	6,017.50
Fas Chek	250.00
Freezer/Refrig	300.00

\$11,110.59

\$30,449.41

THRU SEPTEMBER 04, 1995

OPEN 86 DAYS REVENUE

POOL PASSES \$4,147.50

48 Families at \$70.00 \$3,360.00

3 Families at \$35.00 105.00

18 Individual at \$35.00 630.00

3 Individual at \$17.50 52.50

GATE \$15,001.09

PARTIES \$ 1,305.00

ATTENDANCE

*Total \$20,453.09*

Passes 5,777

Gate 8,258

Free 1,763

Total 15,798

Average 184

CONCESSION \$12,720.66

Credit Pepsi Cola 151.25

\$12,871.91

TOTAL \$33,325.50

30,449.41

\$ 2,876.09

## CITY OF NITRO COUNCIL MEETING MINUTES

OCTOBER 03, 1995

Mayor Karnes declared a quorum and called the council meeting to order at 7:30 p.m. Other members present were City Recorder/Treasurer Herbert Sibley, Councilman at Large Steven West, Councilman at Large Jim Hutchinson, Councilman George Atkins. Also present City Attorney Phillip Gaujot. Absent were Councilman Robert Young, Councilman Frank Grover, Jr., and Councilwoman Betty Boggs.

AGENDA ITEM NO. 1 - APPROVAL OF SEPT 19 1995 COUNCIL MEETING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 2 - REZONING REQUEST: Mayor Karnes yielded the floor to Chuck Boggs. Mr. Boggs said the first parcel is located on the corner of 19th St. and 2nd Avenue. Its the parking area across from the drive thru of Huntington Bank, the asphalt parking area. Mr. Boggs said what he is proposing is to construct garden style ranchers, same as the ones located on 21st Street, beside the Post Office. If Council approves it may be possible to get eight to ten units on that piece of ground. The request is to change the zoning from B-1/B-2 to R-2.

Mr. Boggs stated the same request for the parcel at 1118 Main Avenue, to construct the same type of facility. Mr. Boggs said he felt there was a basic need for this type of building since they are a one floor plan. A discussion followed. COUNCILMAN GEORGE ATKINS MOVED TO HAVE A PUBLIC HEARING REGARDING THE TWO PARCELS OF PROPERTY AT 19TH STREET, 1118 MAIN AVE. AND THE PARCEL AT 701 HILL SIDE DR. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED.

COUNCILMAN GEORGE ATKINS MOVED TO MAKE THE PLANNING COMMISSION MINUTES A PART OF THE OCTOBER 19, 1995 COUNCIL MEETING MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED. (COPY ATTACHED)

AGENDA ITEM NO. 3 - RESOLUTION 95-06: Mayor Karnes read RESOLUTION 95-06: BE IT RESOLVED THAT THE NITRO CITY COUNCIL HEREBY AUTHORIZES DON KARNES, MAYOR TO ACT ON ITS BEHALF TO ENTER INTO A CONTRACTUAL AGREEMENT WITH THE WEST VIRGINIA DEVELOPMENT OFFICE TO RECEIVE AND ADMINISTER GRANT FUNDS PURSUANT TO PROVISIONS OF THE WV. GOVERNOR'S HIGHWAY SAFETY GRANT PROGRAM.

COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE RESOLUTION 95-06. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED. (COPY ATTACHED)

AGENDA ITEM NO. 4 - PARADE PERMIT: Mayor Karnes stated Judy Fortner of Nitro High School has requested a permit for a parade October 13, 1995 at 6:00 p.m. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO GRANT REQUEST. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED.

AGENDA ITEM NO. 5 - BUSINESS & PROFESSIONAL REPORT: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller said he was absent for the meeting but it was his understanding they would not be having the haunted house this year. Also he said Lynn Crowley from St. Albans was the guest speaker regarding grant funding. Christmas promotion and house restoration was discussed.

AGENDA ITEM NO. 6 - BID OPENING: Mayor Karnes yielded the floor to Recorder/Treasurer Herb Sibley. Recorder Sibley stated there were six bids to be opened. Recorder passed out each numbered bid to Council to be opened. First bid opened by Councilman George Atkins from Armin Plastics, \$28,512.00. Second bid opened by Mayor Karnes from L. L. Clean Co. \$21,184.00. Third bid opened by Councilman at Large Steve West, from Unisource Co. \$21,818.00. Fourth bid opened by Councilman at Large Dean Miller, from Hutchinson Sanitary Supply, \$20,352.00. Fifth bid opened by Councilman at Large Jim Hutchinson, M & P Company, \$21,024.00. Sixth bid opened by Recorder Herb Sibley, Interboro Pkg. Co. with bids from \$5.25 to \$7.40/case. This quote was not complete in the description and was not accepted. After a short discussion COUNCILMAN GEORGE ATKINS MOVED TO ACCEPT THE BID FROM M & P COMPANY. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED.

AGENDA ITEM NO. 7 - SURPLUS PROPERTY SALE: Mayor Karnes stated the sale was held September 28, 1995 at 9:00 a.m. in front of City Hall, as per the advertisement in the paper. The first bid taken was on the property referred to as the water in-take building and there was more than one bid. The high bid was \$15,000. Oshel Craigo submitted high bid. A discussion followed regarding this property. COUNCILMAN GEORGE ATKINS MOVED TO ACCEPT THE BID OF \$15,000 INCLUDING A DISCLAIMER AS TO ANY ENVIRONMENTAL PROBLEMS THE PROPERTY MAY OR MAY NOT HAVE AND THE MONEY TO BE EARMARKED FOR THE 31ST STREET BRIDGE. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED. An ordinance will be prepared by City Attorney, Phillip Gaujot.

Also Mayor Karnes said the second bid taken was on a piece of property on Rt. 25 and Armour Creek. High bid of \$7,500 submitted by Oshel Craigo. CITY RECORDER HERBERT SIBLEY MOVED TO ACCEPT THE BID OF \$7,500 FOR THE ARMOUR CREEK PROPERTY AND EARMARK THE MONEY FOR THE 31ST STREET BRIDGE. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED. City Attorney Phillip Gaujot will prepare an ordinance.

AGENDA ITEM NO. 8 - FINANCE REPORT: Mayor Karnes yielded the floor to City Recorder/Treasurer Herb Sibley. Mr. Sibley announced a finance meeting Tuesday, October 10, 1995 at 6:30 p.m. We had income of \$263,251.00 and expenditures of \$184,964.00 for the month of September. There are payables in process which will require this excess of funds.

The second item is to give more thought to unemployment insurance with the WV Municipal League. Recorder Sibley explained the insurance plan to Council. We have until the end of November to make a decision.

The third item is regarding the police cruiser. Bert Wolfe Ford will furnish a Crown Victoria, on a lease basis with a full purchase price of \$18,984.00 at \$ 578.31 per month, per unit for 36 months. At the end of the lease you can purchase each vehicle for one dollar. The leasing cost is minimal. Turnpike Chevrolet submitted a bid for Impala Super Sport for \$ 23,390 cash, the three year lease on it is \$533.15 per year \$19,200. The other bid received from Royal Oldsmobile on a Cierra SL Wagon, 4 door at \$21,340.08, no lease price furnished.

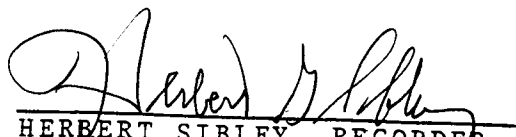
Councilman at Large Dean Miller questioned if the departments were obtaining purchase orders for supplies, a purchase order system has been developed.

AGENDA ITEM NO. 9 - SALVATION ARMY REQUEST: Mayor Karnes stated the Salvation Army has requested permission to place kettles in our city for donations. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO GRANT THE REQUEST. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 10 - TRICK OR TREAT: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TRICK OR TREAT NIGHT BE OCTOBER 31ST FROM SIX TO EIGHT. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED.

There being no further business, the meeting was adjourned.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER

## PLANNING COMMISSION MINUTES, CITY OF NITRO

September 28, 1995

The Planning Commission of the City of Nitro met Thursday, September 28, 1995, 7:00 p.m. at City Hall. Members present were: Jim Hutchinson, David Miller, Janet Martin, Chuck Boggs and Margaret Hudson. The meeting was called to order by Margaret Hudson, Chairperson.

A Public Meeting was held in regard to two requests from Boggs and Associates, Inc. and one from Lonnie and Jean Norvell. Notice about this meeting was published in both Charleston Newspapers on Thursday, September 14, and Thursday, September 21, 1995.

The first request from Boggs and Associates, Inc. asked for a change in zoning classification from B-1/B-2 to R-2 for lots 1912 through 1918 on the East side of 19th Street. A motion was made by Jim Hutchinson to grant this request. David Miller second the motion. Motion carried.

The second request from Boggs and Associates, Inc. asked for a change in zoning classification from B-1/B-2 to R-2 for the property located at 1118 Main Avenue. The parking situation in this area was discussed. Jim Hutchinson moved that the request be approved. David Miller second. Motion carried.

Next the Norvell request to convert a house located at 701 Hillside Drive, behind the Lon-Jean Apartments at 701 1st Avenue South, into two one-bedroom apartments was considered. Jim Hutchinson made a motion "to extend present zoning use of 701 1st Avenue South to include 701 Hillside Drive." David Miller second. Motion passed. Mr. Norvell and Mr. and Mrs. Bott were present and Mr. Norvell spoke concerning the request.

Other pending issues were considered following the Public Meeting. The first was a request from Rebecca Combs of 1005 10th Street to put a fence on a 2nd Avenue right-of-way at 10th Street and 2nd Avenue. A motion was made by Jim Hutchinson "to deny the request." Chuck Boggs second the motion. Motion passed.

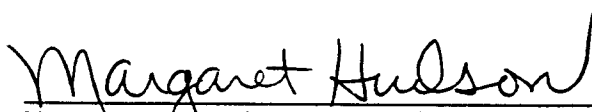
On Thursday, August 10, 1995, several members of the Planning Commission took a study/walk-see tour of the area concerning the next two requests. One from Rusty and Cyndi Akers of 114 Kanawha Avenue South to abandon a 10' alley and a 30' street in Block O, East Crawford Addition. And a second from Betty Bateman of 108 Kanawha Avenue South to abandon a section of River Drive that parallels 125 feet of her property. During this tour members met, walked with and

discussed the area with those concerned--residents and owners. While taking this tour Mr. and Mrs. Akers asked to change their request and the fact that there are two maps of the area was discussed. A motion was made stating that "the Planning Commission cannot proceed with these requests until all legal descriptions, ownership, right-of-ways, easements and any other legal concerns are satisfied by the county court." The motion was properly second. Motion carried.

Next, Notes and Comments from Mr. Pat Rawlings, city engineer, of Dunn Engineering were distributed for study.

Finally, Mr. Dan McDavid provided the Planning Commission with an update on the Cherry Ridge Subdivision.

The Planning Commission decided to meet again on Wednesday, November 1, 1995, 8:00 p.m. at City Hall. The meeting was adjourned.

  
Margaret Hudson, Chairperson



## RESOLUTION 95-06

The Nitro City Council met on October 3, 1995 with a quorum present and passed the following resolution:

Be it resolved that the Nitro City Council hereby authorizes Don Karnes, Mayor to act on its behalf to enter into a contractual agreement with the West Virginia Development Office to receive and administer grant funds pursuant to provisions of the West Virginia Governor's Highway Safety grant program.

Signed

A handwritten signature in cursive script, appearing to read "Don Karnes", is written over a horizontal dashed line.

Don Karnes, Mayor

## CITY OF NITRO COUNCIL MEETING MINUTES

OCTOBER 17, 1995

Mayor Karnes declared a quorum and called the Council Meeting to order at 7:30 p.m. Other members present were City Recorder/Treasurer Herbert Sibley, Councilman at Large Dean Miller, Councilman at Large Jim Hutchinson, Councilman Robert Young, Councilman George Atkins, Councilman Frank Grover, Jr. and Councilwoman Betty Boggess. Absent were Councilman at Large Steve West and City Attorney Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF OCTOBER 03, 1995 COUNCIL MEETING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE MINUTES AS DISTRIBUTED AFTER AMENDING THE MEMBERS PRESENT TO INCLUDE COUNCILMAN AT LARGE DEAN MILLER. THE MOTION WAS SECONDED AND WAS CARRIED.

AGENDA ITEM NO. 2 - DRAINAGE SYSTEM: Mayor Karnes yielded the floor to Brenda Tyler. Mrs. Tyler stated she was there to follow-up on what the situation is on the drains at Frederick Street. She said in the past sixty eight days nothing constructive has been done to correct the drain. Her question is when will the problem be corrected. Mayor Karnes said working in the area of the open ditch is a very touchy situation because it is private property. The right thing to do is to move the drainage off private property. Mrs. Tyler ask if the City had any plans to repair the ditch. Mayor Karnes said at this time that is an open question because it is private property. Mayor Karnes said they have plans to put a drain pipe down by the railroad tracks. Mrs. Tyler asked if something could be done to put pressure on the Twin City Church to put up a fence or something to protect the children in the area from having an accident or falling in that large hole on Twin City property. Mrs. Tyler stated she feels they do not have support of the City Officials, maybe other avenues need to be looked into. Councilman Frank Grover stated that council needs to have a plan to help these people. After much discussion, COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO HIRE AN ENGINEER TO DO THE ENGINEERING NOT TO EXCEED \$70,000. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS. COUNCILMAN AT LARGE DEAN MILLER MOVED TO AMEND THE MOTION TO BE COMPLETED WITHIN SIXTY DAYS. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED. A VOTE WAS TAKEN TO APPROVE THE MOTION THAT WAS AMENDED NOT TO EXCEED \$70,000 AND WITHIN SIXTY DAYS AND WAS CARRIED.

AGENDA ITEM NO. FINANCE REPORT: Mayor Karnes yielded the floor to City Recorder/Trea. Herbert Sibley. In the last finance meeting the repair of the Jaws of Life was discussed. It was recommended to have council approve the repairs of \$4995. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE REPAIR OF THE JAWS OF LIFE. THE MOTION WAS SECONDED BY

RECORDER HERB SIBLEY AND WAS CARRIED.

The next item of discussion is, one of our Police Officers has resigned with accumulated leave in the amount of \$5840.64. After a short discussion regarding accumulated leave, COUNCILMAN BOB YOUNG MOVED TO APPROVE ACCUMULATED LEAVE PAYMENT. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.

Recorder Sibley said the next item of discussion is unemployment insurance. He said last week he received notification from State Dept of Unemployment Ins. stating an employee in the Communication Dept. quit, was hired by City of St. Albans, than quit or was laid off and now the City of Nitro will have to pay 91.8 percent of the unemployment he draws. If we were under the Municipal League of Cities Plan it would be investigated by their Department and we would not have to spend time with the matter and if we did have to pay, it would be paid from the insurance plan. The cost of this plan is approximately \$6,200 to \$6,500/ year and substitutes for the state plan.

COUNCILMAN GEORGE ATKINS MOVED TO JOIN THE MUNICIPAL LEAGUE UNEMPLOYMENT PLAN. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG. After some discussion of the method of hiring new employees, A VOTE WAS TAKEN AND WAS CARRIED.

Recorder/Treasurer Sibley said the next item he wanted to discuss was leasing of police vehicles. The Ford Company offers a police equipped Crown Victoria, on a lease purchase basis for twenty four months of \$839.93 per month.

COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO BUY ON A LEASE PURCHASE CONTRACT ONE NEW CROWN VICTORIA. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR., AND WAS CARRIED.

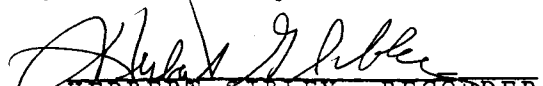
Mr. Sibley reported the Lloyds Electronic job is finished and they are paid.

Also he said we have signed a lease with AT&T, although we are still having a few difficulties with the system we are going to make the first payment this month.

AGENDA ITEM NO. 4 - BUSINESS & PROFESSIONAL ASSN: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller said the Christmas promotion is in progress and the twenty one days of Christmas may be done a little differently this year. Also he said work has begun on the old Nitro House.

There being no further business, the meeting was adjourned.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER

## CITY OF NITRO COUNCIL MEETING MINUTES

NOVEMBER 7, 1995

Mayor Karnes declared a quorum and called the Council Meeting to order at 7:30 p.m. Other members present: City Recorder/Treasurer Herbert Sibley, Councilman at Large Steve West, Councilman at Large Dean Miller, Councilman at Large James Hutchinson, Councilwoman Betty Boggess, Councilman George Atkins, and Councilman Frank Grover, Jr. Also Present was City Attorney Phillip Gaujot. Absent: Councilman Robert Young.

AGENDA ITEM NO 1 - APPROVAL OF OCTOBER 17, 1995 COUNCIL MEETING MINUTES: COUNCILMAN GEORGE ATKINS MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

AGENDA ITEM NO. 2 - OCTOBER 17, 1995 PUBLIC HEARING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO MAKE THE OCTOBER 17, 1995 PUBLIC HEARING MINUTES A PART OF THE NOVEMBER 07, 1995 COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED. (Copy attached).

AGENDA ITEM NO. 3 - FREDERICK STREET: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller noted several citizens from the flood area were in attendance and maybe some of them would like to speak. Councilman Miller voiced concern over the fence falling in around the hole at the Church lot. He said he would like to see that area more secured. Also he asked if the engineering had started. Mayor Karnes said he did not think the engineering had started. Also Mayor Karnes said the hole can not be covered back up. Councilman at Large Dean Miller asked that signs be put up and at least a six foot fence around the area. Mayor Karnes said the City will put a 6 ft high fence along with warning signs around the sunken area.

AGENDA ITEM NO. 4 - NITRO BUSINESS & PROFESSIONAL ASSN: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller reported on November 18th the Association will clean from 19th Street to 23rd Street and requested the City furnish trash bags and a truck for this project. Mayor Karnes stated that Councilman Miller should contact Public Works Director, Gene Williams to work out a schedule. The Christmas Parade will be December 01, 1995 at 6:30 p.m. This year the 21 days of Christmas will be giving gift certificates from the area merchants.

AGENDA ITEM NO. 5 - LIBRARY BOARD: COUNCILMAN FRANK GROVER MOVED TO NOMINATE CHUCK HUDSON TO FILL THE EXISTING UNEXPIRED TERM ON THE LIBRARY BOARD. THE MOTION WAS SECONDED

BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED.

AGENDA ITEM NO. 6 - FINANCE REPORT: Mayor Karnes yielded the floor to Recorder/Treasurer Herb Sibley. Mr. Sibley furnished Council with a financial statement and he announced a finance meeting is scheduled next Tuesday, November 14, at 6:30 p.m. for discussion.

Recorder Sibley explained to Council the leasing agreement for three new Ford Crown Victoria Cars. The lease is for two years with an option to purchase the vehicles for \$1 at the end of the period. These vehicles must be ordered by the end of November. If not ordered at this time they can not be bought until a year from January, 1996. The payment for two more cars per month would be \$1697.91 plus \$857.00 will be an expenditure of \$2555.00/mo. for six months which totals \$15,330 from January to June 30. The budgeted amount is \$20,000. RECORDER HERBERT SIBLEY MOVED TO BUY THREE POLICE CRUISERS THIS FISCAL YEAR INSTEAD OF ONE. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND AFTER SOME DISCUSSION WAS CARRIED.

AGENDA ITEM NO. 7 - ZONING ORDINANCES: - COUNCILMAN AT LARGE STEVE WEST MOVED THE MAYOR READ TITLE ONLY TO CHANGE ZONING CLASSIFICATION OF LOT 1118 MAIN AVENUE, AND APPROVE ON FIRST READING. MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER. VOTE TAKEN AND WAS CARRIED. (COPY ATTACHED)

COUNCILMAN AT LARGE DEAN MILLER MOVED MAYOR READ TITLE ONLY TO CHANGE THE ZONING CLASSIFICATIONS OF LOTS 1912 THROUGH 1918 SITUATE ON EAST SIDE OF 19TH ST., AND MOVED FOR THE APPROVAL OF FIRST READING. MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON. MOTION CARRIED. (COPY ATTACHED).

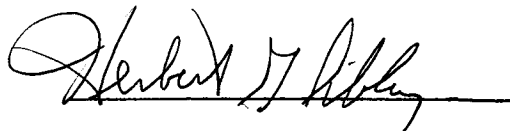
AGENDA ITEM NO. 8 - MAYOR'S REPORT: Mayor Karnes stated the Sanitary Board has made the move to City Hall and seem to be adjusting well.

Also Mayor Karnes announced Governor Caperton will be making a presentation to the City of So. Charleston, November 09, 1995 at 10:00 a.m. and all City Officials are invited to attend.

There being no further business, the meeting was adjourned.



DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER

## PUBLIC HEARING

OCTOBER 17, 1995

The properly advertised Public Hearing was called to order by Mayor Karnes at 7:15 p.m. in Council Chambers at Nitro City Hall October 17, 1995. Others attending were Councilmen Dean Miller, Jim Hutchinson, Frank Grover, Jr., Robert Young, George Atkins, Councilwoman Betty Boggess and City Recorder/Treasurer Herbert Sibley. Also in attendance were Brenda Tyler, Dana Price, Vernon Mills, Ronnie King, and Chuck Boggs.

The purpose of this hearing was to consider the variance requests of:

Boggs & Associates, Inc. to change zoning classification from B-1/B-2 to R-2 for lots 1912 thru 1918 on east side of 19th Street.

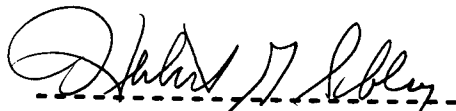
Boggs & Associates, Inc. to change zoning classification from B-1/R-2 to R-2 for property located at 1118 Main Avenue.

Lonnie & Jean Norvell - Request to convert house located at 701 Hillside Drive behind the Lon-Jean apartments at 701 1st Avenue, So. into two one-bedroom apartments and extend present zoning usage of 701 1st Avenue to include 701 Hillside Drive.

Since there was no public input the meeting was adjourned.



Don Karnes, Mayor



Herbert Sibley, Recorder

ORDINANCE NO. 95- 04

AN ORDINANCE TO CHANGE THE ZONING CLASSIFICATION OF LOT 1118  
MAIN AVENUE OF NITRO, WEST VIRGINIA, A MUNICIPAL CORPORATION.

WHEREAS, on July 25, 1995, Charles B. Boggs, Jr., of Boggs and Associates, Inc., petitioned the Nitro Planning Commission for a change of zoning classification from B-1 to R-2 for Lot 1119 Main Avenue, Nitro, West Virginia; and

WHEREAS, pursuant to said request the Planning Commission of the City of Nitro, conducted a public hearing on September 28, 1995, pursuant to notice properly published, at which hearing no objections were made and a motion was made and carried to recommend a zoning reclassification from B-1 to R-2; and

WHEREAS, pursuant to the above-referenced petition and recommendation of the Planning Commission of the City of Nitro, the City Council of the City of Nitro conducted a second public hearing on October 17, 1995, pursuant to notice properly published at which hearing no objections were made; and


WHEREAS, the City of Nitro finds that it would be in the best interest of the City of Nitro, its Citizens and other property owners to make certain changes in the zoning classifications as hereafter set forth.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Nitro that Lot 1118 Main Avenue, Nitro, West Virginia, as shown upon the official map of the City of Nitro, is to be rezoned from classification B-1 to R-2.

Passed on First Reading: November 7, 1995

Adopted on Second Reading: November 21, 1995

  
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DON KARNES, MAYOR

  
\_\_\_\_\_  
CITY RECORDER

ORDINANCE NO. 95- 05

AN ORDINANCE TO CHANGE THE ZONING CLASSIFICATIONS OF LOTS 1912  
THROUGH 1918 SITUATE ON THE EAST SIDE OF 19TH STREET  
OF NITRO, WEST VIRGINIA, A MUNICIPAL CORPORATION.

WHEREAS, on September 8, 1995, Charles B. Boggs, Jr., of Boggs and Associates, Inc., petitioned the Nitro Planning Commission for a change of zoning classification from B-2 to R-2 for Lots 1912 through 1918 situate on the East side of 19th street of Nitro, West Virginia; and

WHEREAS, pursuant to said request the Planning Commission of the City of Nitro, conducted a public hearing on September 28, 1995, pursuant to notice properly published, at which hearing no objections were made and a motion was made and carried to recommend a zoning reclassification from B-2 to R-2; and

WHEREAS, pursuant to the above-referenced petition and recommendation of the Planning Commission of the City of Nitro, the City Council of the City of Nitro conducted a second public hearing on October 17, 1995, pursuant to notice properly published at which hearing no objections were made; and

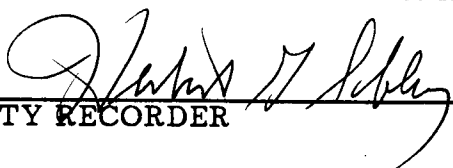
WHEREAS, the City of Nitro finds that it would be in the best interest of the City of Nitro, its Citizens and other property owners to make certain changes in the zoning classifications as hereafter set forth.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Nitro that Lots 1912 through 1918 situate on the East side of 19th Street, Nitro, West Virginia, as shown upon the official map of the City of Nitro, are all to be rezoned from classification B-2 to R-2.

Passed on First Reading: November 7, 1995

Adopted on Second Reading: November 21, 1995

  
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DON KARNES, MAYOR

  
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CITY RECORDER



## CITY OF NITRO COUNCIL MEETING MINUTES

NOVEMBER 21, 1995

Mayor Karnes declared a quorum and called the Council Meeting to order at 7:30 p.m. Other members present, City Recorder/Treasurer Herbert Sibley, Councilman at Large Steve West, Councilman at Large Dean Miller, Councilman at Large James Hutchinson, Councilman George Atkins, Councilman Frank Grover, Jr. and Councilman Robert Young. Also present City Attorney Phillip Gaujot. Absent Councilwoman Betty Boggess.

AGENDA ITEM NO. 1 - APPROVAL OF NOVEMBER 07, 1996 COUNCIL MEETING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED.

AGENDA ITEM NO. 2 - BIG BROS. BIG SISTER VOLUNTEER PRESENTATION: Mayor Karnes yielded the floor to Mary Williams spokeswoman for the organization. Ms. Williams furnished Council with informational literature and explained the purpose of the organization. Ms. Williams stated they need help and support from the Cities. Ms Williams said the organization received an "A" rating from the watchdog people and rated number 34 in the top 100 non profit organizations. A question and answer session followed.

AGENDA ITEM NO. 3 - FINANCE REPORT: Mayor Karnes yielded the floor to the City Recorder/Treasurer Herbert Sibley. Mr. Sibley reported at the last finance meeting several questions were raised regarding expenditures on vehicle maintenance.

Rec/Treasurer Sibley stated one of the revenue short falls is the Tri-State Park, only collecting about fifty per cent of the original amount. However, the B & O taxes and property tax is way ahead of what was anticipated. The licensing has become a good source of revenue, partly due to the Building Inspector keeping close eye on permits.

Recorder/Treasurer Sibley said he had been in contact with Mr. Hogan regarding purchasing of gas for the City. Mr. Hogan represents FSG, Fuel Service Group, Inc. Also, He announced the Finance meeting is scheduled Dec. 12th.

Councilman at Large Dean Miller asked about the procedures used in automotive purchases. A lengthy discussion followed. Several suggestions were offered during the discussion. Mayor Karnes stated he would ask all department heads to insure that proper procedures are being followed.

AGENDA ITEM NO. 4 - NITRO BUSINESS & PROFESSION ASSN: Mayor Karnes yielded the floor to Vernon Mills. Mr. Mills

stated the Christmas Parade is scheduled for December 01, 1995 at 6:30 p.m. Also he said the Christmas lights were being put up today. Mayor Karnes said he will provide the tree for the City.

AGENDA ITEM NO. 5 - SECOND READING ORD 95-04: Without objection Mayor Karnes read title only of Ord. 95-04 an ORDINANCE TO CHANGE THE ZONING CLASSIFICATION OF LOT 1118 MAIN AVENUE OF NITRO, WEST VIRGINIA, A MUNICIPAL CORPORATION. COUNCILMAN GEORGE ATKINS MOVED TO ADOPT ORDINANCE 95-04. THE MOTION WAS SECONDED. (Copy attached)

AGENDA ITEM NO. 6 - SECOND READING ORD 95-05: Mayor Karnes read title only of Ordinance 95-04. AN ORDINANCE TO CHANGE THE ZONING CLASSIFICATIONS OF LOTS 1912 THROUGH 1918 SITUATE ON THE EAST SIDE OF 19TH STREET OF NITRO, WEST VIRGINIA, A MUNICIPAL CORPORATION. COUNCILMAN FRANK GROVER MOVED TO ADOPT ORDINANCE 95-05. THE MOTION WAS SECONDED BY JIM HUTCHINSON AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 7 - PAR INDUSTRIES UPGRADE: Mayor Karnes recommended Council go into executive session regarding Agenda Item No 7. COUNCILMAN AT LARGE DEAN MILLER MOVED COUNCIL GO IN EXECUTIVE SESSION. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED. The Meeting reconvened after approximately 20 minutes.

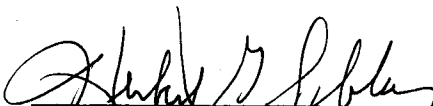
COUNCILMAN FRANK GROVER, JR. MOVED TO AUTHORIZE MAYOR KARNES TO SIGN A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NITRO AND PAR INDUSTRIAL, INC. THE MOTION WAS SECONDED BY COUNCILMAN JIM HUTCHINSON AND CARRIED WITH RECORDER/TREASURER HERBERT SIBLEY ABSTAINING.

AGENDA ITEM NO. 8 - MAYOR'S REPORT: Mayor Karnes said he has received a verbal approximate amount from the Engineering Firm of \$300,000 to \$400,000. This would take the water from Okey Avenue to the River down Walker Street. Alternatives are being considered.

Mayor Karnes said the date of the election will have to be changed from June 4, 1996 to June 11, 1996.

There being no further business the meeting was adjourned.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER

ORDINANCE NO. 95- 04AN ORDINANCE TO CHANGE THE ZONING CLASSIFICATION OF LOT 1118  
MAIN AVENUE OF NITRO, WEST VIRGINIA, A MUNICIPAL CORPORATION.

WHEREAS, on July 25, 1995, Charles B. Boggs, Jr., of Boggs and Associates, Inc., petitioned the Nitro Planning Commission for a change of zoning classification from B-1 to R-2 for Lot 1119 Main Avenue, Nitro, West Virginia; and

WHEREAS, pursuant to said request the Planning Commission of the City of Nitro, conducted a public hearing on September 28, 1995, pursuant to notice properly published, at which hearing no objections were made and a motion was made and carried to recommend a zoning reclassification from B-1 to R-2; and

WHEREAS, pursuant to the above-referenced petition and recommendation of the Planning Commission of the City of Nitro, the City Council of the City of Nitro conducted a second public hearing on October 17, 1995, pursuant to notice properly published at which hearing no objections were made; and

WHEREAS, the City of Nitro finds that it would be in the best interest of the City of Nitro, its Citizens and other property owners to make certain changes in the zoning classifications as hereafter set forth.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Nitro that Lot 1118 Main Avenue, Nitro, West Virginia, as shown upon the official map of the City of Nitro, is to be rezoned from classification B-1 to R-2.

Passed on First Reading: November 7, 1995

Adopted on Second Reading: November 21, 1995

  
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DON KARNES, MAYOR

  
\_\_\_\_\_  
CITY RECORDER

ORDINANCE NO. 95- 05

AN ORDINANCE TO CHANGE THE ZONING CLASSIFICATIONS OF LOTS 1912  
THROUGH 1918 SITUATE ON THE EAST SIDE OF 19TH STREET  
OF NITRO, WEST VIRGINIA, A MUNICIPAL CORPORATION.

WHEREAS, on September 8, 1995, Charles B. Boggs, Jr., of Boggs and Associates, Inc., petitioned the Nitro Planning Commission for a change of zoning classification from B-2 to R-2 for Lots 1912 through 1918 situate on the East side of 19th street of Nitro, West Virginia; and

WHEREAS, pursuant to said request the Planning Commission of the City of Nitro, conducted a public hearing on September 28, 1995, pursuant to notice properly published, at which hearing no objections were made and a motion was made and carried to recommend a zoning reclassification from B-2 to R-2; and

WHEREAS, pursuant to the above-referenced petition and recommendation of the Planning Commission of the City of Nitro, the City Council of the City of Nitro conducted a second public hearing on October 17, 1995, pursuant to notice properly published at which hearing no objections were made; and

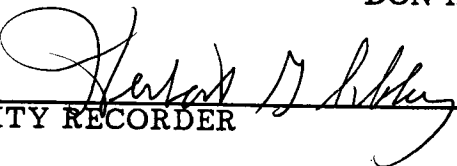
WHEREAS, the City of Nitro finds that it would be in the best interest of the City of Nitro, its Citizens and other property owners to make certain changes in the zoning classifications as hereafter set forth.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Nitro that Lots 1912 through 1918 situate on the East side of 19th Street, Nitro, West Virginia, as shown upon the official map of the City of Nitro, are all to be rezoned from classification B-2 to R-2.

Passed on First Reading: November 7, 1995

Adopted on Second Reading: November 21, 1995

  
DON KARNES, MAYOR

  
CITY RECORDER

## CITY OF NITRO COUNCIL MEETING MINUTES

DECEMBER 05, 1995

Mayor Karnes declared a quorum and called the meeting to order at 7:30 p.m. Other members present City Recorder/Treasurer Herbert Sibley, Councilman at Large Steve West, Councilman at Large Dean Miller, Councilman at Large James Hutchinson, Councilman George Atkins, Councilman Frank Grover., Councilman Robert Young and Councilwoman Betty Boggess. Also present City Attorney Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF NOVEMBER 21ST COUNCIL MEETING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 2 - DEAN MILLER: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller asked the date of deadline for the Police Officer Grant. Mayor Karnes stated the deadline is December 30, 1995. A discussion followed regarding candidates.

Also Councilman Miller asked how the fence around the ditch area of Twin City parking lot was progressing. Mayor Karnes stated the post were set yesterday.

AGENDA ITEM NO. 3. - ORDINANCE 95-04: Without objection Mayor Karnes read title only of Ord. 95-04 AN ORDINANCE TO CHANGE THE ZONING CLASSIFICATION OF LOT 1118 MAIN AVENUE OF NITRO, WEST VIRGINIA, A MUNICIPAL CORPORATION. COUNCILMAN GEORGE ATKINS MOVED TO ADOPT ORDINANCE 95-04. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED. (copy attached)

AGENDA ITEM NO. 4 - FINANCE REPORT: Mayor Karnes yielded the floor to Rec/Treasurer Herb Sibley. Rec/Treasurer Sibley stated the main issue to be discussed is health insurance. The last two years we have been on a reduced premium basis, as long as claims were less than 90 per cent of premiums, this could result in premiums being increased to 110 percent if claims increased drastically but this has not happened to date. Recorder/Treas Sibley stated he was not in agreement with the method the present carrier is using to arrive at the new percentage rate to increase premiums. The present carrier wants to raise the rates by 14 per cent. Rec/Treas Sibley further explained the insurance plan. Mr. Sibley said he is dealing with another insurance company, "Carelink". This will be discussed at the next Finance Meeting.

Recorder/Treasurer said he is negotiating with an individual from FTS, they may be able to get natural gas from

Ohio at a wholesale rate. He will research and let us know if he can get us a savings.

Recorder/Treasurer Sibley stated the financing for the Police Cruisers has gone through.

AGENDA ITEM NO. 5 - BUSINESS & PROFESSIONAL ASSN: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller reported the Association was pleased with the parade and wanted to thank the Police Department and the City for their cooperation. Also he said they plan to have the night parade again next year on December 5th. Councilman Grover stated the new lights really added to the decoration this year.

AGENDA ITEM NO. 6 - REFUSE ORDINANCE: Mayor Karnes said this ordinance has been studied and is now ready for first reading. Counselor Gaujot stated this Ordinance must be advertised in the paper and a public hearing held prior to final reading and passage. He suggested the first reading tonight. Mayor Karnes furnished Council with a copy of the Refuse Ordinance. Without objection Mayor Karnes read title only, AN ORDINANCE AMENDING PART SEVEN ARTICLE 741 MUNICIPAL SERVICE FEES. (copy attached).

COUNCILMAN ROBERT YOUNG MOVED TO APPROVE THE FIRST READING OF THE ORDINANCE. MOTION SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

AGENDA ITEM NO. 7 - ORDINANCE C & S COMPANY: Without objection Mayor Karnes read title only; AN ORDINANCE TO SELL .82 ACRE TRACT OWNED BY THE CITY OF NITRO SITUATE ON THE WATERS OF ARMOUR CREEK, IN POCA DISTRICT, PUTNAM COUNTY, WEST VIRGINIA, CONVEYED TO THE CITY OF NITRO BY DEED DATED JUNE 25, 1992, FROM THE ROCK BRANCH PUBLIC SERVICE DISTRICT, RECORDED IN THE OFFICE OF THE CLERK OF THE COUNTY COMMISSION OF PUTNAM COUNTY, WEST VIRGINIA, IN DEED BOOK NO. 341, AT PAGE 143. (copy attached).

COUNCILMAN ROBERT YOUNG MOVED TO ADOPT ORDINANCE C & S COMPANY ON FIRST READING. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 8 - ORDINANCE LIL ALLEN: Without objection Mayor Karnes read title only; AN ORDINANCE TO PURCHASE TWO TRACTS OF REAL ESTATE CONTAINING .46 ACRE AND .44 ACRE, RESPECTIVELY, SITUATE ON 21ST STREET, IN THE CITY OF NITRO KANAWHA COUNTY, WEST VIRGINIA, FROM LILLIAN M. ALLEN. (copy attached).

COUNCILMAN AT LARGE STEVE WEST MOVED TO ADOPT ORDINANCE LIL ALLEN ON FIRST READING. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED.

AGENDA ITEM NO. 9 - MAYOR'S REPORT: Mayor Karnes announced the "Annual Open House" at City Hall, December 21, beginning at 11:30 a.m.

Mayor Karnes stated he was able to obtain a \$5000 grant from Kanawha County Commission toward repairs of the "Jaws of Life".

Mayor Karnes mentioned in the past few years awards were given in each ward for the best Christmas decorations. The City will be doing it again this year.

There being no further business the meeting was adjourned.

DON KARNES, MAYOR



HERBERT SIBLEY, RECORDER



ORDINANCE NO. 95- 04

AN ORDINANCE TO CHANGE THE ZONING CLASSIFICATION OF LOT 1118  
MAIN AVENUE OF NITRO, WEST VIRGINIA, A MUNICIPAL CORPORATION.

WHEREAS, on July 25, 1995, Charles B. Boggs, Jr., of Boggs and Associates, Inc., petitioned the Nitro Planning Commission for a change of zoning classification from B-1 to R-2 for Lot 1119 Main Avenue, Nitro, West Virginia; and

WHEREAS, pursuant to said request the Planning Commission of the City of Nitro, conducted a public hearing on September 28, 1995, pursuant to notice properly published, at which hearing no objections were made and a motion was made and carried to recommend a zoning reclassification from B-1 to R-2; and

WHEREAS, pursuant to the above-referenced petition and recommendation of the Planning Commission of the City of Nitro, the City Council of the City of Nitro conducted a second public hearing on October 17, 1995, pursuant to notice properly published at which hearing no objections were made; and

WHEREAS, the City of Nitro finds that it would be in the best interest of the City of Nitro, its Citizens and other property owners to make certain changes in the zoning classifications as hereafter set forth.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Nitro that Lot 1118 Main Avenue, Nitro, West Virginia, as shown upon the official map of the City of Nitro, is to be rezoned from classification B-1 to R-2.

Passed on First Reading: November 7, 1995

Adopted on Second Reading: November 21, 1995

  
DON KARNES, MAYOR

  
CITY RECORDER



ORDINANCE AMENDING PART SEVEN ARTICLE 741  
MUNICIPAL SERVICE FEES

WHEREAS, the City of Nitro declares the necessity and convenience to levy and collect a charge against commercial establishments, firms or corporations for essential municipal services.

NOW THEREFORE, BE IT ORDAINED, that the City of Nitro hereby amends Part Seven Article 741 titled "Municipal Service Fees" as follows:

741.01 IMPOSITION; RATE.

(a) There is hereby levied and shall be collected a charge against residential users of municipal services situate within the City for essential municipal services, including police protection, fire protection, street lighting, street maintenance, street cleaning, street improvements, ambulance service, recreation and garbage and refuse collection, (excluding sewage and sewage disposal and other essential municipal services). The charge for such services shall be at the rate of twelve dollars (\$12.00) per month for each single-family unit residence, per unit, and for each multiple-family dwelling or apartment house, per each residential unit or apartment, whether or not occupied.

There is hereby levied and shall be collected a charge against commercial users of municipal services situate within the City for essential municipal services, including police protection, fire protection, street lighting, street maintenance, street cleaning, street improvements, ambulance service, recreation and garbage and refuse collection, (excluding sewage and sewage disposal and other essential municipal services). The minimum

charge for such services shall be at a rate of Fifteen Dollars (\$15.00) per month for each commercial business, per unit, and in buildings where there are more than one commercial business unit, firm or corporation, each unit or business unit, firm or corporation, shall be considered as a separate unit with respect to service rendered under the terms hereof, and with the duty of subscribing for service and paying for service to the respective commercial unit. Any business establishment requiring collection of garbage or refuse more frequently than once a week or having more than One Hundred (100) Pounds per week shall enter into a separate agreement with the City and the fees for said collection shall be negotiated with the City. The minimum monthly charge of \$15.00 is hereby levied and shall be collected against all business entities within the City whether said business entities use City services relative to garbage and refuse collection or contracts with others for the same service.

(b) The City Treasurer shall be charged with the duty of mailing a statement on a monthly basis to each residence and business to be charged with the municipal fee hereby imposed for the fee due for the preceding month, but failure to mail any statement for monthly charges shall not be grounds for avoiding payment. A statement shall be mailed by the Treasurer at least as frequently as once each month and any such statement may be consolidated by the Treasurer with statements for other municipal fees and services due from such person or business entity. If a monthly statement is mailed by the Treasurer, it may be mailed each

month on a date selected by the Treasurer but the Treasurer shall render the monthly billing to such person or business entity in a uniform manner so that each monthly bill is mailed at intervals of approximately thirty days.

(c) Subject to such reasonable regulations as may be promulgated by the City Treasurer and approved by City Council, the record owner of the property upon which a single-family residence or business is situate shall be presumed to be the user of municipal service rendered for the benefit of such property or business and the record owner shall be liable to the City for such charges; the tenants or occupants of the business units or of the multi-business complex or residential units of a multi-family dwelling or apartment house shall be presumed to be the users of such municipal services and shall be liable to the City for such charges. However, in the event that a business unit or business unit of a multi-business complex or a residential unit of a multi-family dwelling or apartment house is temporarily unoccupied, then and in that event, the record owner of the property upon which such multi-business unit or multi-family dwelling or apartment house is situate shall be presumed to be the user of the municipal services provided to each such unoccupied unit and shall be liable to the City for such charges. Subject to such reasonable regulations as may be promulgated by the City Treasurer as aforesaid, the record owner of the property upon which such multi-business unit, multi-family dwelling or apartment house is situate shall be charged with the responsibility of collecting in advance, the charge imposed by

this section from the tenants or occupants of such business units, dwelling units or apartments and properly remitting same to the City Treasurer and shall be liable to the City in the amount of such charges for failure to do so or for failure to maintain adequate records from which such liability may be ascertained.

(d) When the aggregate gross income of all persons residing in a single family residential unit maintained and occupied by a resident of the City during the preceding calendar year of the City shall be less than Twelve Thousand Five Hundred Dollars (\$12,500), the rate to such residential unit during such fiscal year shall be reduced to Eight Dollars and Fifty Cents (\$8.50) per month, provided, that the resident who occupies such domestic establishment makes an application for such rate to the City Treasurer and files therewith an affidavit pertaining to the relevant facts. The rate and charge shall become effective retroactively to the first day of the calendar quarter in which such application is made and affidavit filed.

In the event any person making application for reduced charges shall submit any false, erroneous or untrue information relative to the eligibility or qualifications of the applicant for such reduced charges as set forth herein, any such person supplying such false, erroneous or untrue information shall be subject to a penalty equal to one hundred fifty percent (150%) of the prevailing rate then in effect.

(e) The City Treasurer is hereby authorized to adopt such rules and regulations as may be necessary for him to determine, and

he shall determine, the classification of business, residences, multiple dwellings, business complexes, and other buildings and premises for the application of rates, fees and charges established by any schedule enacted by Council pursuant to this section; and any person or business feeling aggrieved by the application of any such rule or regulation of the City Treasurer to any rate, fee or charge sought to be collected from it or him by the City Treasurer shall have the burden of proof to show that the City Treasurer's rule or regulation is erroneous.

(f) Council shall have the right to revise from time to time the schedule of rates, fees and charges enacted herein to so adjust the rates, fees and charges that costs will be distributed as equitably as possible among all businesses and residents of the City on the basis of benefit received. At no time, however, shall rates be continued which are disclosed to be producing less revenue than is required to meet all obligations and costs involved in rendering services to the public.

(g) All accounts shall be considered delinquent if not paid by the last day of each following month for which the service is rendered. All delinquent accounts are subject to stoppage of service with notice. Any billing unpaid by the last day of the following month for which the services were rendered shall, in addition, be charged a delinquent fee amounting to ten percent (10%) of the unpaid billing. After the delinquent fee has been assessed, the City shall notify the customer by letter and inform the customer of the amount owed; the failure to pay the amount in

full within ten days will result in termination of service; and that amount will be collected through legal proceedings with the attorney fees of the City added thereto. The City shall have the power to waive any delinquency or interest charge, if in the City's discretion, such action is warranted.

741.02 REPORT BY CITY TREASURER TO COUNCIL.

The City Treasurer shall, within sixty days after the end of each fiscal year, report to Council a list of all persons and business establishments who are delinquent in the payment of the municipal service fee or any option thereof for the preceding fiscal year and Council shall by resolution direct the Treasurer and other municipal employees to take such action as Council deems advisable and necessary in regard to the payment of such delinquent fees.

Passed on First Reading

Tuesday, December 5, 1995

Adopted on Second Reading  
after a public hearing held  
immediately prior to regular  
meeting of Council, which  
public hearing notice was  
given by publication

Tuesday, December 19, 1995

Mayor

City Recorder

## CITY OF NITRO COUNCIL MEETING MINUTES

DECEMBER 19, 1995

Mayor Karnes declared a quorum and called the meeting to order at 7:30 p.m. Other members present City Rec/Treasurer Herb Sibley, Councilman at Large Steve West, Councilman at Large Dean Miller, Councilman at Large James Hutchinson, Councilman George Atkins, Councilman Frank Grover, Jr., and Councilwoman Betty Boggess. Also present City Attorney Phillip Gaujot. Absent Councilman Robert Young.

AGENDA ITEM NO. 1 - APPROVAL OF DECEMBER 05, 1995 COUNCIL MEETING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE MINUTES WITH CORRECTION ON AGENDA ITEM #6 TO READ MOTION CARRIED WITH COUNCILMAN AT LARGE STEVE WEST VOTING AGAINST. THE MOTION WAS SECONDED AS CORRECTED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.

AGENDA ITEM NO. 2 - SECOND READING REFUSE ORD:  
Councilman at Large Dean Miller stated trash is our greatest problem and there has been a commercial problem for the last four years. A lengthy discussion followed regarding the 40 lb limit. COUNCILMAN FRANK GROVER, JR. MOVED TO ADOPT THE SECOND READING OF THE REFUSE ORDINANCE. THE MOTION WAS SECONDED BY RECORDER HERBERT SIBLEY. COUNCILMAN AT LARGE DEAN MILLER MOVED TO AMEND THE 40 LB LIMIT TO 100 LB. THE MOTION WAS SECONDED BY RECORDER HERBERT SIBLEY AND WAS CARRIED. (Copy attached)

COUNCILMAN AT LARGE DEAN MILLER MOVED TO AMEND SECTION C TO READ PROMULGATED BY THE CITY TREASURER, APPROVED BY CITY COUNCIL. MOTION SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

COUNCILMAN AT LARGE DEAN MILLER MOVED TO AMEND SECTION G FROM STOPPAGE WITHOUT NOTICE TO STOPPAGE WITH NOTICE. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR., AND WAS CARRIED.

COUNCILMAN AT LARGE DEAN MILLER MOVED TO AMEND LAST PARAGRAPH OF SECTION G TO READ FROM THE CITY SHALL HAVE THE POWER TO CITY COUNCIL SHALL HAVE THE POWER. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR., A VOTE WAS TAKEN, FOUR IN FAVOR AND FOUR AGAINST, THE MOTION FAILED FOR LACK OF MAJORITY OF THOSE VOTING.

A VOTE WAS TAKEN ON ADOPTION OF THE SECOND READING OF THE REFUSE ORDINANCE AS AMENDED AND WAS CARRIED WITH COUNCILMAN AT LARGE DEAN MILLER OPPOSING AND COUNCILMAN GEORGE ATKINS ABSTAINING.

AGENDA ITEM NO. 3 - SECOND READING C & S ORD:  
COUNCILMAN AT LARGE STEVE WEST MOVED TO ADOPT C & S ORDINANCE

ON SECOND READING WITH MAYOR KARNES READING TITLE ONLY. AN ORDINANCE TO SELL .82 ACRE TRACT OWNED BY THE CITY OF NITRO SITUATE ON THE WATERS OF ARMOUR CREEK, IN POCA DISTRICT, PUTNAM COUNTY, WEST VIRGINIA, CONVEYED TO THE CITY OF NITRO BY DEED DATED JUNE 25, 1992, FROM THE ROCK BRANCH PUBLIC SERVICE DISTRICT, RECORDED IN THE OFFICE OF THE CLERK OF THE COUNTY, WEST VIRGINIA, IN DEED BOOK NO. 341, AT PAGE 143. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS AND WAS CARRIED. (Copy of attached)

COUNCILMAN AT LARGE STEVE WEST MOVED MAYOR KARNES READ TITLE ONLY OF SECOND PART OF ORDINANCE. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS AND WAS CARRIED. AN ORDINANCE TO SELL .43 ACRE TRACT OWNED BY THE CITY OF NITRO SITUATED IN THE CITY OF NITRO KANAWHA COUNTY, WEST VIRGINIA, CONVEYED TO THE CITY OF NITRO BY DEED DATED JUNE 30, 1974, FROM WEST VIRGINIA WATER COMPANY, RECORDED IN THE OFFICE OF THE CLERK OF THE COUNTY COMMISSION OF KANAWHA COUNTY, WEST VIRGINIA, IN DEED BOOK NO. 1736, AT PAGE 690. COUNCILMAN AT LARGE STEVE WEST MOVED TO ADOPT SECOND READING OF C & S ORDINANCE. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS AND WAS CARRIED.

AGENDA ITEM NO. 4 - SECOND READING LIL ALLEN ORD:  
COUNCILMAN AT LARGE MOVED MAYOR KARNES READ TITLE ONLY OF LIL ALLEN ORDINANCE. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS AND WAS CARRIED. AN ORDINANCE TO PURCHASE TWO TRACTS OF REAL ESTATE CONTAINING .46 ACRE AND .44 ACRE, RESPECTIVELY, SITUATE ON 21ST STREET, IN THE CITY OF NITRO KANAWHA COUNTY, WEST VIRGINIA, FROM LILLIAN M. ALLEN. COUNCILMAN AT LARGE DEAN MILLER MOVED TO ADOPT SECONDING OF LIL ALLEN ORDINANCE. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 5- RESOLUTION (LEASE OPTION AGREEMENT):  
COUNCILMAN AT LARGE DEAN MILLER MOVED MAYOR KARNES READ TITLE ONLY OF RESOLUTION. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS AND WAS CARRIED. A RESOLUTION AUTHORIZING LEASE WITH OPTION TO PURCHASE AGREEMENT. COUNCILMAN AT LARGE DEAN MILLER MOVED TO APPROVE RESOLUTION. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS AND WAS CARRIED. (Copy attached).

AGENDA ITEM NO. 6- FINANCE REPORT: Mayor Karnes yielded the floor to City Recorder/Treasurer Herb Sibley. Rec/Treas. Sibley stated the date of the Municipal Election will be changed from June 4, 1995 to June 11, 1995. RECORDER/TREASURER HERBERT SIBLEY MOVED THE CITY ATTORNEY PREPARE A DOCUMENT REGARDING THIS CHANGE. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

Rec/Treasurer Sibley stated he was still working with Blue Cross on the insurance premium. Blue Cross has asked for a 14 percent increase and they are working to get this



back to a 7 percent increase. Rec/Treasurer Sibley advised there will have to be some changes or the premium is going to be increased. Mayor Karnes stated this should be discussed in more detail in a committee meeting. A meeting is scheduled for December 28, 1995 at 1:00 p.m. with Councilman at Large Steve West as Chairman.

AGENDA ITEM NO. 7 - BUSINESS & PROFESSIONAL ASSN.: Mayor Karnes yielded the floor to Vernon Mills, He stated there was no new business. Also he commented a trophy will be given for the best Christmas decorations in each ward of the City.

AGENDA ITEM NO. 8 - MAYOR'S REPORT: Mayor Karnes announced " City Hall Open House" December 21st from 11:30 a.m. till around 3:00 p.m.

Mayor Karnes said there are two alternate plans for putting in additional drainage in the Frederick Street area, one will cost approximately three hundred thousand dollars and would be a band-aid approach to the problem. The other will be around four hundred thousand dollars and would make a substantial difference in the drainage system in both the Hillside, Okey Avenue area and the Frederick Street area.

Mayor Karnes commented the fence has been installed on the Church lot around the open ditch where the drain pipe has collapsed.

Mayor Karnes congratulated Walter and Vernie Showen on seventy two years of marriage. He is 96 and she is 93. Mayor Karnes said he felt a proclamation was in order and he would see that it was done.

There being no further business the meeting was adjourned.

  
-----  
DON KARNES, MAYOR

  
-----  
HERBERT SIBLEY, RECORDER

ORDINANCE AMENDING PART SEVEN ARTICLE 741  
MUNICIPAL SERVICE FEES

WHEREAS, the City of Nitro declares the necessity and convenience to levy and collect a charge against commercial establishments, firms or corporations for essential municipal services.

NOW THEREFORE, BE IT ORDAINED, that the City of Nitro hereby amends Part Seven Article 741 titled "Municipal Service Fees" as follows:

## 741.01 IMPOSITION; RATE.

(a) There is hereby levied and shall be collected a charge against residential users of municipal services situate within the City for essential municipal services, including police protection, fire protection, street lighting, street maintenance, street cleaning, street improvements, ambulance service, recreation and garbage and refuse collection, (excluding sewage and sewage disposal and other essential municipal services). The charge for such services shall be at the rate of twelve dollars (\$12.00) per month for each single-family unit residence, per unit, and for each multiple-family dwelling or apartment house, per each residential unit or apartment, whether or not occupied.

There is hereby levied and shall be collected a charge against commercial users of municipal services situate within the City for essential municipal services, including police protection, fire protection, street lighting, street maintenance, street cleaning, street improvements, ambulance service, recreation and garbage and refuse collection, (excluding sewage and sewage disposal and other essential municipal services). The minimum

charge for such services shall be at a rate of Fifteen Dollars (\$15.00) per month for each commercial business, per unit, and in buildings where there are more than one commercial business unit, firm or corporation, each unit or business unit, firm or corporation, shall be considered as a separate unit with respect to service rendered under the terms hereof, and with the duty of subscribing for service and paying for service to the respective commercial unit. Any business establishment requiring collection of garbage or refuse more frequently than once a week or having more than One Hundred (100) Pounds per week shall enter into a separate agreement with the City and the fees for said collection shall be negotiated with the City. The minimum monthly charge of \$15.00 is hereby levied and shall be collected against all business entities within the City whether said business entities use City services relative to garbage and refuse collection or contracts with others for the same service.

(b) The City Treasurer shall be charged with the duty of mailing a statement on a monthly basis to each residence and business to be charged with the municipal fee hereby imposed for the fee due for the preceding month, but failure to mail any statement for monthly charges shall not be grounds for avoiding payment. A statement shall be mailed by the Treasurer at least as frequently as once each month and any such statement may be consolidated by the Treasurer with statements for other municipal fees and services due from such person or business entity. If a monthly statement is mailed by the Treasurer, it may be mailed each

month on a date selected by the Treasurer but the Treasurer shall render the monthly billing to such person or business entity in a uniform manner so that each monthly bill is mailed at intervals of approximately thirty days.

(c) Subject to such reasonable regulations as may be promulgated by the City Treasurer and approved by City Council, the record owner of the property upon which a single-family residence or business is situate shall be presumed to be the user of municipal service rendered for the benefit of such property or business and the record owner shall be liable to the City for such charges; the tenants or occupants of the business units or of the multi-business complex or residential units of a multi-family dwelling or apartment house shall be presumed to be the users of such municipal services and shall be liable to the City for such charges. However, in the event that a business unit or business unit of a multi-business complex or a residential unit of a multi-family dwelling or apartment house is temporarily unoccupied, then and in that event, the record owner of the property upon which such multi-business unit or multi-family dwelling or apartment house is situate shall be presumed to be the user of the municipal services provided to each such unoccupied unit and shall be liable to the City for such charges. Subject to such reasonable regulations as may be promulgated by the City Treasurer as aforesaid, the record owner of the property upon which such multi-business unit, multi-family dwelling or apartment house is situate shall be charged with the responsibility of collecting in advance, the charge imposed by

this section from the tenants or occupants of such business units, dwelling units or apartments and properly remitting same to the City Treasurer and shall be liable to the City in the amount of such charges for failure to do so or for failure to maintain adequate records from which such liability may be ascertained.

(d) When the aggregate gross income of all persons residing in a single family residential unit maintained and occupied by a resident of the City during the preceding calendar year of the City shall be less than Twelve Thousand Five Hundred Dollars (\$12,500), the rate to such residential unit during such fiscal year shall be reduced to Eight Dollars and Fifty Cents (\$8.50) per month, provided, that the resident who occupies such domestic establishment makes an application for such rate to the City Treasurer and files therewith an affidavit pertaining to the relevant facts. The rate and charge shall become effective retroactively to the first day of the calendar quarter in which such application is made and affidavit filed.

In the event any person making application for reduced charges shall submit any false, erroneous or untrue information relative to the eligibility or qualifications of the applicant for such reduced charges as set forth herein, any such person supplying such false, erroneous or untrue information shall be subject to a penalty equal to one hundred fifty percent (150%) of the prevailing rate then in effect.

(e) The City Treasurer is hereby authorized to adopt such rules and regulations as may be necessary for him to determine, and

he shall determine, the classification of business, residences, multiple dwellings, business complexes, and other buildings and premises for the application of rates, fees and charges established by any schedule enacted by Council pursuant to this section; and any person or business feeling aggrieved by the application of any such rule or regulation of the City Treasurer to any rate, fee or charge sought to be collected from it or him by the City Treasurer shall have the burden of proof to show that the City Treasurer's rule or regulation is erroneous.

(f) Council shall have the right to revise from time to time the schedule of rates, fees and charges enacted herein to so adjust the rates, fees and charges that costs will be distributed as equitably as possible among all businesses and residents of the City on the basis of benefit received. At no time, however, shall rates be continued which are disclosed to be producing less revenue than is required to meet all obligations and costs involved in rendering services to the public.

(g) All accounts shall be considered delinquent if not paid by the last day of each following month for which the service is rendered. All delinquent accounts are subject to stoppage of service with notice. Any billing unpaid by the last day of the following month for which the services were rendered shall, in addition, be charged a delinquent fee amounting to ten percent (10%) of the unpaid billing. After the delinquent fee has been assessed, the City shall notify the customer by letter and inform the customer of the amount owed; the failure to pay the amount in

full within ten days will result in termination of service; and that amount will be collected through legal proceedings with the attorney fees of the City added thereto. The City shall have the power to waive any delinquency or interest charge, if in the City's discretion, such action is warranted.

741.02 REPORT BY CITY TREASURER TO COUNCIL.

The City Treasurer shall, within sixty days after the end of each fiscal year, report to Council a list of all persons and business establishments who are delinquent in the payment of the municipal service fee or any option thereof for the preceding fiscal year and Council shall by resolution direct the Treasurer and other municipal employees to take such action as Council deems advisable and necessary in regard to the payment of such delinquent fees.

Passed on First Reading

Tuesday, December 5, 1995

Adopted on Second Reading  
after a public hearing held  
immediately prior to regular  
meeting of Council, which  
public hearing notice was  
given by publication

Tuesday, December 19, 1995

Don Kamm  
Mayor

Herbert J. Libbey  
City Recorder

**AN ORDINANCE TO SELL .43 ACRE TRACT OWNED BY  
THE CITY OF NITRO SITUATE IN THE CITY OF NITRO,  
KANAWHA COUNTY, WEST VIRGINIA, CONVEYED TO THE  
CITY OF NITRO BY DEED DATED JUNE 30, 1974, FROM  
WEST VIRGINIA WATER COMPANY, RECORDED IN THE  
OFFICE OF THE CLERK OF THE COUNTY COMMISSION OF  
KANAWHA COUNTY, WEST VIRGINIA,  
IN DEED BOOK NO. 1736, AT PAGE 690.**

WHEREAS, by Deed dated June 30, 1974, West Virginia Water Company conveyed to the City of Nitro 1.8 acres, more or less, situate in the City of Nitro, Kanawha County, West Virginia, which deed was recorded in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Deed Book No. 1736, at page 690; and

WHEREAS, City Council for the City of Nitro considers it convenient and essential to sell .43 acre of said real estate at public auction to the highest bidder, with the right to reject any and all bids; and

WHEREAS, notice of public auction was published in the Charleston newspapers, publications distributed throughout the counties of Putnam and Kanawha in which the City of Nitro is situate, on September 16 and September 22, 1995, designating September 29, 1995, at 9:00 o'clock a.m., as the date of said auction; and

WHEREAS, on September 29, 1995, C & S Co. Partnership bid Fifteen Thousand Dollars (\$15,000.00) for said property which was the highest bid; and

WHEREAS, the City Council for the City of Nitro considers said bid to be reasonable.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Nitro that certain real estate consisting of .43 acre, more or less, situate in the City of Nitro, Kanawha County, West Virginia, and being part of that real estate more particularly bounded and described in that certain deed dated June 30, 1974, and recorded in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Deed Book No. 1736, at Page 690, and as shown described upon a map titled "PLAT OF SURVEY SHOWING 18,661+/- SQUARE FEET TRACT BEING A PART OF THE PROPERTY OF THE CITY OF NITRO RECORDED IN DEED BOOK 1736 PAGE 690 SITUATE IN CITY OF NITRO, KANAWHA COUNTY, WEST VIRGINIA, DATED JUNE 6, 1995," said map is referenced hereto and made a part of this Ordinance, be sold to C & S Co. Partnership for the sum of Fifteen Thousand Dollars (\$15,000.00) as fair and adequate consideration, which sum was offered at a public auction on September 29, 1995, at 9:00 o'clock a.m., in the City of Nitro and pursuant to proper publication as a Class II legal advertisement in compliance with the provisions of Chapter 59, Article 3, Section 1, et seq., of the West Virginia Code of 1931, as amended. The proceeds of said sale are to be utilized toward the cost of construction of a bridge on 31st Street in the City of Nitro.



Be it further ORDAINED that the Mayor of the City of Nitro shall execute a proper deed conveying said real estate to C & S Co. Partnership.

PASSED ON FIRST READING

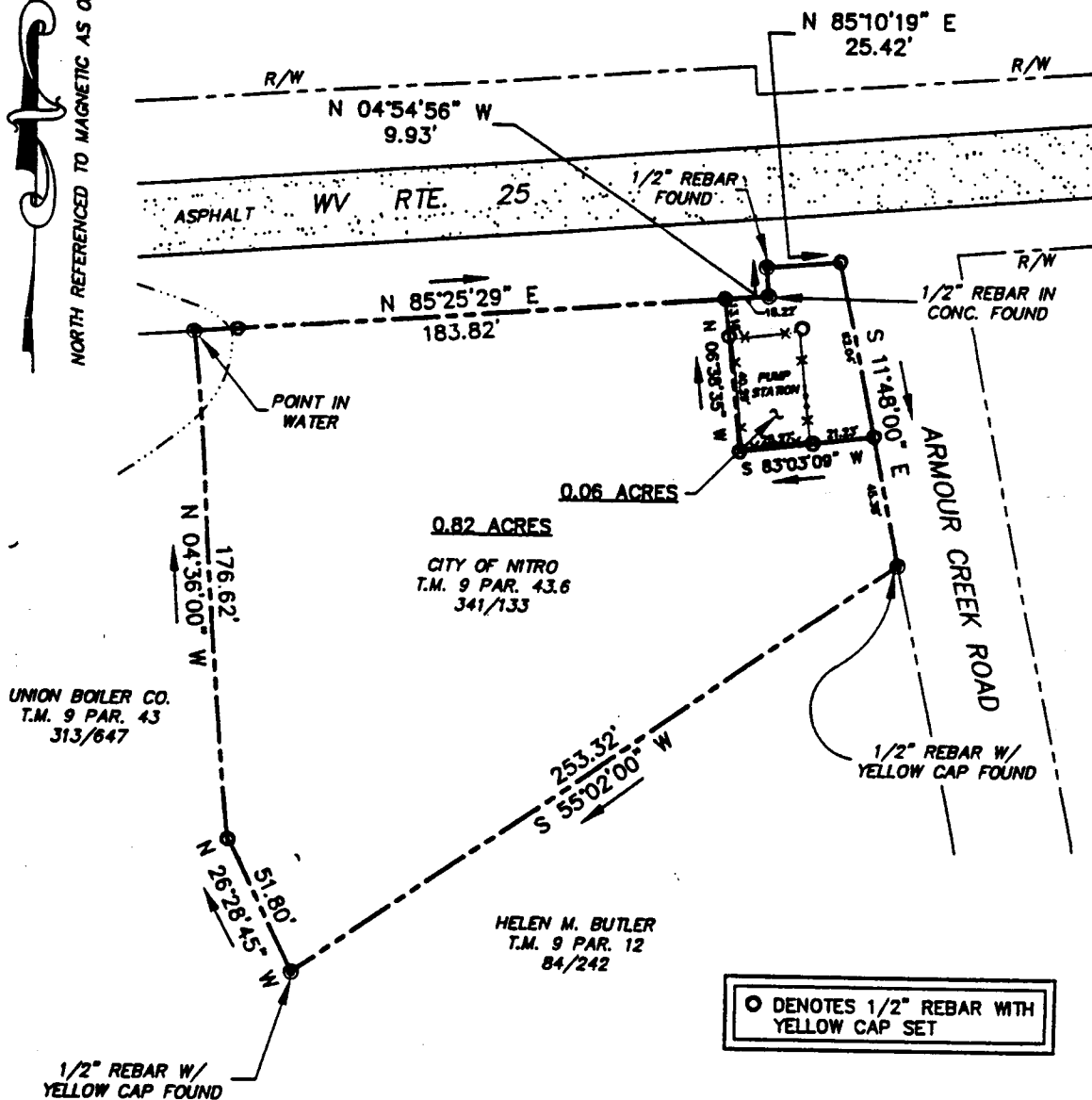
PASSED ON SECOND READING

December 5, 1995

Dec 19, 1995

Don Karnes  
Mayor

Heather D. Libby  
City Recorder



**SHOWING**

## THE DIVISION OF A

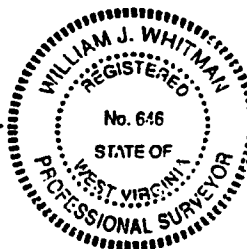
0.88 ACRE TRACT

**SITUATE ON THE WATERS OF**

## ARMOUR CREEK

POCA DISTRICT, PUTNAM COUNTY, WEST VIRGINIA

**DATE: JUNE 7, 1995 SCALE: 1" = 50 FEET**



*W. J. Whitman*  
 WILLIAM J. WHITMAN, R.P.S.  
 WV REG. NO. 646


NOTE:  
THIS DWELLING IS IN FLOOD ZONE A20 AS DETERMINED  
BY VISUAL INSPECTION OF PROPERTY IN RELATIONSHIP  
TO MAPS BY THE NATIONAL FLOOD INSURANCE PROGRAM  
FLOOD INSURANCE RATE MAP: 540184 0115 A  
EFFECTIVE DATE: JUNE 18 1987  
THIS IS NOT AN ACTUAL SPIRIT LEVEL FLOOD SURV  
SURVEY NO. 950F

Be it further ORDAINED that the Mayor of the City of Nitro shall execute a proper deed conveying said real estate to C & S Co. Partnership.

PASSED ON FIRST READING

PASSED ON SECOND READING

  
\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_  
Mayor

**AN ORDINANCE TO SELL .82 ACRE TRACT  
OWNED BY THE CITY OF NITRO SITUATE  
ON THE WATERS OF ARMOUR CREEK, IN  
POCA DISTRICT, PUTNAM COUNTY, WEST VIRGINIA,  
CONVEYED TO THE CITY OF NITRO BY DEED DATED  
JUNE 25, 1992, FROM THE ROCK BRANCH PUBLIC  
SERVICE DISTRICT, RECORDED IN THE OFFICE  
OF THE CLERK OF THE COUNTY COMMISSION  
OF PUTNAM COUNTY, WEST VIRGINIA, IN  
DEED BOOK NO. 341, AT PAGE 143.**

WHEREAS, by Deed dated June 25, 1992, the Rock Branch Public Service District conveyed to the City of Nitro .88 acre, more or less, situate in Poca District, Putnam County, West Virginia, on the waters of Armour Creek, which deed was recorded in the Office of the Clerk of the County Commission of Putnam County, West Virginia, in Deed Book No. 341, at page 143; and

WHEREAS, City Council for the City of Nitro considers it convenient and essential to sell .82 acre of said real estate at public auction to the highest bidder, with the right to reject any and all bids; and

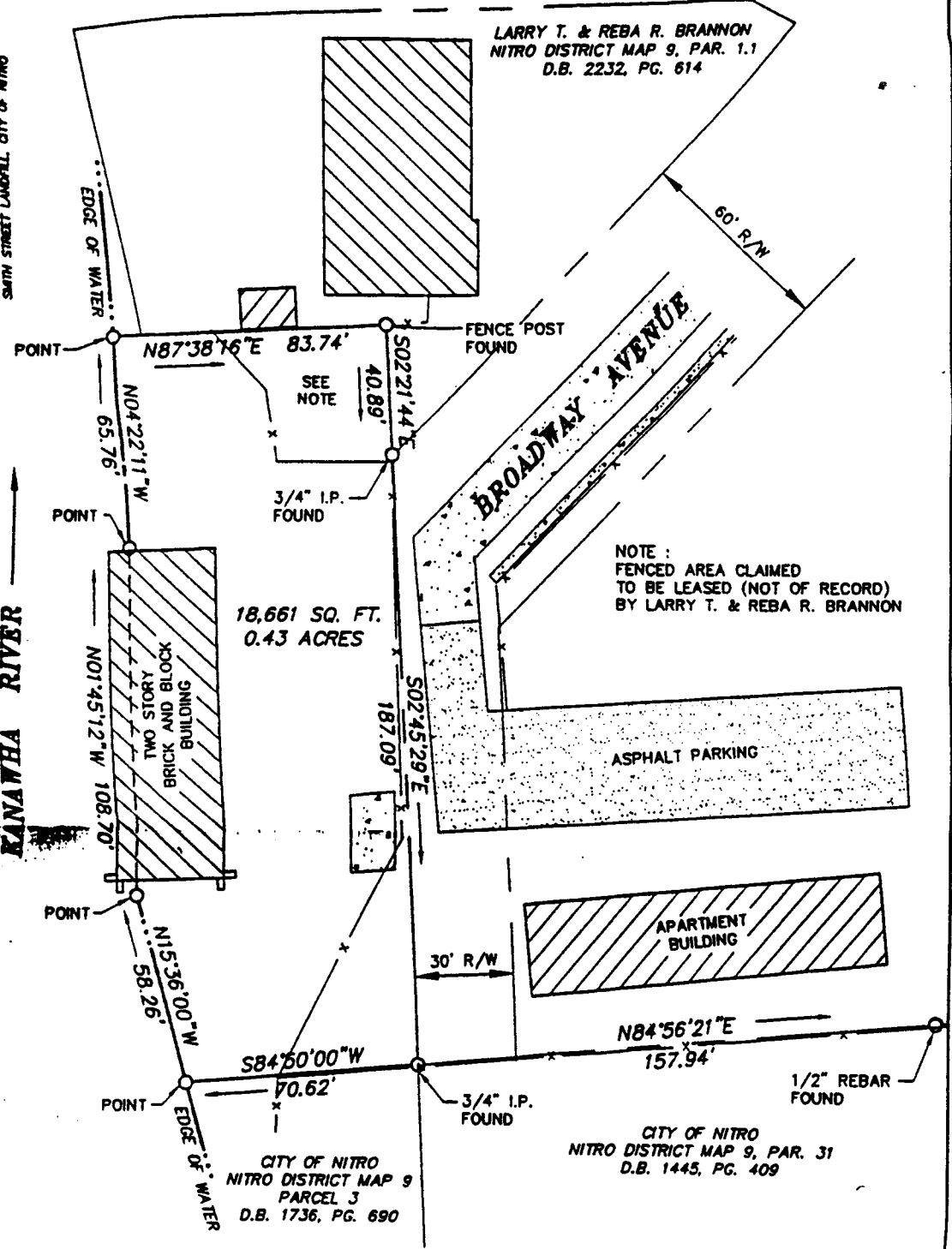
WHEREAS, notice of public auction was published in the Charleston newspapers, publications distributed throughout the counties of Putnam and Kanawha in which the City of Nitro is situate, on September 16 and September 22, 1995, designating September 29, 1995, at 9:00 o'clock a.m., as the date of said auction; and

WHEREAS, on September 29, 1995, C & S Co. Partnership bid Seven Thousand Five Hundred Dollars (\$7,500.00) for said property which was the highest bid; and

WHEREAS, the City Council for the City of Nitro considers said bid to be reasonable.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Nitro that certain real estate consisting of .82 acre, more or less, situate in Poca District, Putnam County, West Virginia, on the waters of Armour Creek, and being part of that real estate more particularly bounded and described in that certain deed dated June 25, 1992, and recorded in the Office of the Clerk of the County Commission of Putnam County, West Virginia, in Deed Book No. 341, at Page 143, and as shown described upon a map titled "PLAT OF SURVEY SHOWING THE DIVISION OF A 0.88 ACRE TRACT SITUATE ON THE WATERS OF ARMOUR CREEK, POCA DISTRICT, PUTNAM COUNTY, WEST VIRGINIA DATED JUNE 7, 1995," said map is referenced hereto and made a part of this Ordinance, be sold to C & S Co. Partnership for the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) as fair and adequate consideration, which sum was offered at a public auction on September 29, 1995, at 9:00 o'clock a.m., in the City of Nitro and pursuant to proper publication as a Class II legal advertisement in compliance with the provisions of Chapter 59, Article 3, Section 1, et seq., of the West Virginia Code of 1931, as amended. The proceeds of said sale are to be utilized toward the cost of construction of a bridge on 31st Street in the City of Nitro.

NORTH REFERENCED TO DUNN ENGINEERS, INC.  
 PROJECT NO. 8002, SHOWING FENCE INSTALLATION  
 SMITH STREET LANDFILL CITY OF NITRO



**PLAT OF SURVEY**  
**SHOWING**  
**18,661± SQUARE FEET TRACT**  
**BEING A PART OF THE PROPERTY OF THE**  
**CITY OF NITRO**

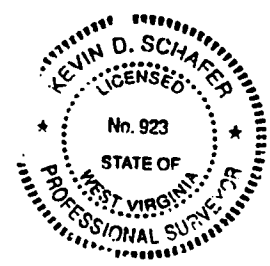
**RECORDED IN DEED BOOK 1736 PAGE 690**

**SITUATE IN**  
**CITY OF NITRO, KANAWHA COUNTY, WEST VIRGINIA**

**DATE: JUNE 6, 1996 SCALE: 1" = 40 FEET**

**DUNN ENGINEERS, INC.**  
 CHARLESTON, WEST VIRGINIA

*Kevin D. Schaffer*  
**KEVIN D. SCHAFER, R.P.S.**  
 WV REG. NO. 923



SURVEY NO. 950

AN ORDINANCE TO PURCHASE TWO TRACTS OF REAL ESTATE  
CONTAINING .46 ACRE AND .44 ACRE, RESPECTIVELY,  
SITUATE ON 21ST STREET, IN THE CITY OF NITRO,  
KANAWHA COUNTY, WEST VIRGINIA, FROM LILLIAN M. ALLEN

WHEREAS, Lillian M. Allen, widow, is the owner of two tracts of land situate on 21st Street, in the City of Nitro, Kanawha County, West Virginia, upon which tracts of land a serious slip is presently occurring and has continued to occur for a number of years, causing damage to 21st Street in the City of Nitro, Kanawha County, West Virginia; and

WHEREAS, Lillian M. Allen, widow, has offered to deed said tracts of land to the City of Nitro for the minimum sum of One Hundred Dollars (\$100.00) each; and

WHEREAS, the City Council for the City of Nitro considers it convenient and essential to purchase said tracts of land in an attempt to remedy the slip and damage to 21st Street.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Nitro that the City of Nitro purchase the following described tracts of land from Lillian M. Allen, widow, for the sum of One Hundred Dollars (\$100.00) each.

TRACT NO. 1:

BEGINNING at an iron pipe on the south line of 21st Street, co-ordinate location North forty-one plus sixty-five and sixty-four hundredths east fifty-eight plus six and thirty-five hundredths, thence in an easterly direction with said street line 70 feet to an iron pipe; thence 90° to the right 293.91 feet to an iron pipe on the North line of the old Blakes Creek Road; thence 95° 9' to the right of said road 70.25 feet to an iron pipe; thence leaving the road 64° 51' to the right 287.48 feet to the place of beginning, containing .46 acres; which said property is shown upon a map attached to and recorded with deed from Nitro Industrial Corporation to Russell Osborne and Helen Osborne dated August 26, 1946, recorded in Deed Book 766, Page 350, and designated thereon as Lot No. 2177; together with a certain driveway and easement acquired by the first parties [Russell Osborne and Helen Osborne, his wife] from Hazel C. Gilbert and husband by deed of July 15, 1947, and recorded in said Clerk's office in Deed Book 792, Page 105.

And being the same real estate conveyed to Ray V. Allen (now deceased) and Lillian M. Allen, his wife (now widow), by deed dated the 22nd day of March, 1954, of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Deed Book No. 1085, at Page 149.

TRACT NO. 2:

BEGINNING at an iron pipe on the south line of 21st Street, coordinate location north 41 plus 65.64 east 58 plus 76.35; thence with 21st Street in an easterly direction 65 feet to an iron pipe, corner to Lot No. 79; thence 90° to the right with one line of Lot No. 79, 302 feet to an iron pipe on the north line of the Old Blakes Creek County Road; thence with the same north 61° 6' west 65.25 feet to an iron pipe, corner to Lot No. 77; thence north 23° 45' east 293.91 feet, with one line of Lot No. 77 to the place of beginning, and containing .44 of an acre, more or less, and being all of Lot No. 2178, 21st Street, Area "R" of the Nitro Reservation.

And being the same real estate conveyed to Ray V. Allen (now deceased) and Lillian Allen, his wife (now widow), by deed dated the 13th day of July, 1957, of record in the aforesaid Clerk's Office in Deed Book No. 1225, at Page 277.

PASSED ON FIRST READING

PASSED ON SECOND READING

Dec 5, 1995  
December 19, 1995

Don Kearns  
 Mayor

Herbert J. Libby  
 City Recorder

**EXHIBIT E****RESOLUTION AUTHORIZING LEASE WITH OPTION TO PURCHASE AGREEMENT**

At a duly called meeting of the governing body of Lessee held on the 19<sup>th</sup> day of December, 1995, the following recitals and resolution were introduced and adopted.

WHEREAS, the governing body of Lessee has determined that it is necessary and desirable and in the best interests of the Lessee to enter into a Lease with Option to Purchase Agreement (the "Lease Agreement") with COMVEST LTD. INC., of Clarksburg, West Virginia, for the purpose of obtaining the Equipment described in the Lease Agreement presented to this meeting; and

WHEREAS, the governing body of Lessee has taken the necessary steps, including any legal bidding requirements, under applicable law to arrange for the acquisition of such Equipment.

BE IT RESOLVED by the governing body of Lessee, as follows:

Section 1. Authorization. The governing body of Lessee does hereby approve the Lease Agreement substantially in the form presented to this meeting, and does hereby designate the following individual (the "Designated Representative") to execute the Lease Agreement with such changes thereto as such person deems appropriate, and any related documents necessary to the consummation of the transactions contemplated by the Lease Agreement. The Designated Representative is hereby authorized to take any action, execute any document, or give any consent which may from time to time be required by the Lessee under the Lease Agreement. Any such action taken or document executed or consent given by the Designated Representative in his capacity as the representative of the Lessee shall be deemed to be an act by the Lessee and any such action, execution or consent shall be conclusive evidence that the same is authorized by this Resolution.

Designated Representative: \_\_\_\_\_

*Don Karnit*

Mayor

Section 2. Designation as Qualified Tax-Exempt Obligation. Pursuant to Section 265 (3)(B) of the Internal Revenue Code of 1986 (the Code), the Issuer hereby specifically designates the Lease and Equipment as a "qualified tax-exempt obligation" for purposes of Section 265 (b) (3) of the Code. The aggregate amount of tax-exempt obligations issued to date by the Issuer, in this calendar year, including the principal amount for the aforementioned Equipment Group A together with all other issues of such obligations reasonably expected in this calendar year, shall not exceed the maximum specified in said Section 265 (b) (3).

Section 3. Effective Date. This Resolution shall take effect immediately.

The undersigned certifies that the above resolution has not been repealed or amended and remains in full force and effect, and further certifies that the above and foregoing Lease Agreement is the same as presented at said meeting of the governing body of Lessee.

Seal: \_\_\_\_\_

*Shere Libby*  
Secretary/Clerk

I hereby certify that I am the *Mayor* (office) of said Municipality and that the foregoing is a correct copy of the resolution passed as therein set forth, and that the same is now in full force.

\_\_\_\_\_  
(To be signed by other than the Secretary)



## CITY OF NITRO COUNCIL MEETING MINUTES

JANUARY 02, 1996

Mayor Karnes declared a quorum and called the meeting to order at 7:30 p.m. Others present City Rec/Treas Herbert Sibley, Councilman at Large Steven West, Councilman at Large Dean Miller, Councilman at Large James Hutchinson, Councilman Robert Young and Councilman George Atkins. Absent were Councilwoman Betty Boggess and Councilman Frank Grover, Jr. Also present City Attorney Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF DECEMBER 19, 1995 COUNCIL MEETING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED.

AGENDA ITEM NO. 2 - PUBLIC HEARING: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO MAKE THE PUBLIC HEARING MINUTES A PART OF THE JANUARY 2, 1996 COUNCIL MEETING MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED. (Copy attached).

AGENDA ITEM NO. 3 - RESOLUTION (RE: RICHARD NEELY) Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman at Large Dean Miller introduced Resolution 96-01 to Council. COUNCILMAN AT LARGE STEVE WEST MOVED TO ADOPT RESOLUTION 96-01. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED. (Copy attached).

AGENDA ITEM NO. 4 - BUSINESS & PROF. ASSN: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller reported the main topic of discussion at the meeting today was Resolution 96-1. The Business Association requested Councilman Miller to introduce the resolution to Council.

AGENDA ITEM NO. 5 - FINANCE REPORT: Mayor Karnes yielded the floor to City Recorder/Treasurer Herbert Sibley. Mr. Sibley stated he had received a letter from FMC Corporation stating they have sold the paper regarding the fire truck. G. E. Capitol Public Financing now owns the paper. There are four payments due, the next one due August 28, 1996 in the amount of \$16,504.25, total amount due approximately \$66,000. The pay off as of December 28, 1996 is \$44,758.00 a savings of \$22,000 if we can find a way to pay it. COUNCILMAN AT LARGE STEVE WEST MOVED TO GIVE RECORDER/TREASURER SIBLEY AUTHORITY TO PURSUE METHOD OF FINANCING PAYOFF OF FIRE TRUCK AND BRING RECOMMENDATIONS TO COUNCIL. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

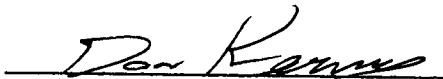
Recorder/Treasurer Sibley stated he has been working

with the Blue Cross/Blue Shield Representative with several different plans to arrive at a reasonable premium. They are working on adjusting the 14 per cent increase back to possibly 10 per cent and maybe even 7 percent. Mr. Sibley stated one of the plans he purposed, "Super Blue High" with an increase of premium. The second plan "Super Blue Plus" would reduce the premium, but this means there is coverage reduction. Our current plan has been extended for thirty days. After some discussion, Mayor Karnes recommended this matter be put in committee and appointed Recorder/Treasurer Herb Sibley Chairman, including Ralph Allison and everyone is invited to attend this meeting scheduled for Tuesday, January 9, 1996 at 7:00 p.m.

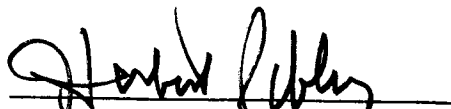
AGENDA ITEM NO. 6 - ELECTION ORDINANCE: Mayor Karnes read title of Ordinance 96-01 AN ORDINANCE TO CHANGE THE DATE OF CITY ELECTION. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO ADOPT ORDINANCE 96-01 WITH MAYOR KARNES READING TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG. (Copy attached)

AGENDA ITEM NO. 7 - MAYOR'S REPORT: Mayor Karnes commented there has been some discussion regarding one of the garbage trucks that is going to have to be taken off the road. At this time we are using a borrowed truck with option to purchase. Mayor Karnes said after discussing this with some of Council, he advertised for sealed bids in the local papers for a used packer truck.

There being no further business, the meeting was adjourned.



DON KARNES, MAYOR



HERBERT SIBLEY, RECORDER

## PUBLIC HEARING

DECEMBER 19, 1995

The properly advertised Public Hearing was called to order by Mayor Karnes in Council Chambers at 7:15 p.m. Also present were City Rec/Treasurer Herbert Sibley, City Attorney Phillip Gaujot, Councilman at Large Steve West, Councilman at Large Dean Miller, Councilman at Large Jim Hutchinson, Councilman George Atkins, Councilman Frank Grover, Jr., Councilwoman Betty Boggess and Vernon Mills.

Mayor Karnes explained the purpose of this meeting is regarding the necessity to levy and collect a charge against commercial establishments, firms or corporations of essential municipal services.

As there was no public input the meeting was adjourned.

  
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DON KARNES, MAYOR

  
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HERBERT SIBLEY, RECORDER

RESOLUTION NO. 96-01INTRODUCED IN COUNCIL JANUARY 2, 1996PASSED BY COUNCIL JANUARY 2, 1996INTRODUCED BY COUNCILMAN AT LARGE DEAN MILLER

WHEREAS, the City of Nitro harbours a respect and appreciation for the economic and social benefits the chemical industry and its employees contribute to this community and region; and,

WHEREAS, the City of Nitro respects the efforts and attention the chemical industry and its employees dedicate to safety and emergency measures; and

WHEREAS, a chemical leak apparently occurred at the FMC Plant in Nitro West Virginia on December 15, 1995 possibly causing certain persons minor physical irritation or other personal inconvenience; and,

WHEREAS, this community has historically always found FMC and its employees to be responsible and safety-conscious citizens; and,

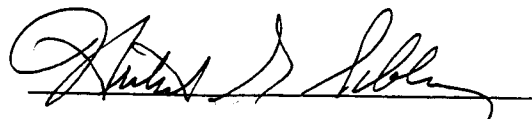
WHEREAS, the complexity of modern life on rare occasions lends itself to irritation and discomfort; and,

WHEREAS, a certain attorney, Richard Neely, approximately one week following this leak filed a class action lawsuit against FMC, uttered public profanity denigrating chemical industry employees, and commenced a media-advertising campaign to solicit potential plaintiffs for this lawsuit; and,

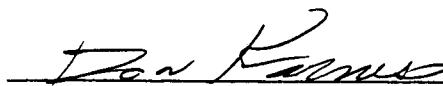
WHEREAS, the City of Nitro believes this attorney's conduct constitutes unnecessary trial publicity, prejudicial extrajudicial statements, an unnecessary burden and embarrassment to third persons, material misrepresentations, an inadequate advertising disclosure, an impediment to the administration of justice and merits sanctions by the appropriate authorities; and,

WHEREAS, this conduct damages the reputation and integrity of the chemical industry and its employees, threatens the economic viability of this region and fosters a disrespect for the legal system.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor of the City of Nitro forward this Resolution to the West Virginia Supreme Court of Appeals making this ethics complaint, the clerk of the court adjudicating the subject lawsuit and to the plant manager of the FMC Nitro plant.



HERBERT SIBLEY, RECORDER



DONALD KARNES, MAYOR

ORDINANCE NO. 96-01

ADOPTED BY COUNCIL \_\_\_\_\_

INTRODUCED IN COUNCIL \_\_\_\_\_ 1996

AN ORDINANCE TO CHANGE THE DATE OF CITY ELECTION

WHEREAS, the City election for the City of Nitro, West Virginia is presently scheduled for June 4, 1996; and

WHEREAS, the State and County Primary election is presently scheduled for May 14, 1996; and

WHEREAS, Chapter 8, Article 5, Section 5 of the West Virginia Code of 1931, as amended, provides in part that:

"A municipal election date established by Charter provision may fall within twenty-five (25) days of a County and State Primary Election only where separate registration books are provided and maintained for municipal elections."

WHEREAS, the City of Nitro's election date is established by charter provision, however, it does not maintain separate registration books for the municipal election.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NITRO THAT:

The municipal election heretofore established by charter to be held on June 4, 1996, shall be held instead on Tuesday, June 11, 1996, pursuant to Chapter 8, Article 5, Section 5 of the West Virginia Code of 1931, as amended.

First Reading \_\_\_\_\_

Seconded Reading \_\_\_\_\_

  
\_\_\_\_\_  
RECORDER

  
\_\_\_\_\_  
MAYOR

## CITY OF NITRO COUNCIL MEETING MINUTES

JANUARY 16, 1996

Mayor Karnes declared a quorum and called the meeting to order at 7:30 p.m. Others present: City Recorder/Treasurer Herbert Sibley, Councilman at Large Steven West, Councilman at Large Dean Miller, Councilman at Large James Hutchinson, Councilman George Atkins, and Councilman Frank Grover, Jr. Absent were Councilman Robert Young and Councilwoman Betty Boggess. Also present City Attorney Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF JANUARY 02, 1996 COUNCIL MEETING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 2 - BID OPENING: Mayor Karnes read the advertised bid and yielded the floor to Recorder/Treasurer Herb Sibley. Recorder Sibley stated two bids had been received. Councilman at Large Dean Miller opened the first bid from Thomas A Sturm, P O Box 13167 Charleston, WV. A 1986 GMC 23 yd packer, diesel \$7000. The second bid (two bids) from West Virginia Tractor Company was opened by Councilman at Large Steve West. Offering choice, a used Leach 20 yds, rear loader packer 1980, mounted on 1988 GMC single axle cabin chassie, automatic, diesel engine with standard equipment \$12000. Second is 18 yds, same brand name, 1982 mounted on 78 Ford diesel engine, single axle cab with standard transmission \$10000. After some discussion Mayor Karnes recommended this matter go to committee, appointing Councilmen Bob Young, Dean Miller, Frank Grover, Jim Hutchinson, Rec/Treas Herb Sibley, Public Works Director, Gene Williams and Smitty with Councilman George Atkins serving as chairman. Committee will bring recommendations to Council next scheduled meeting. COUNCILMAN AT LARGE DEAN MILLER MOVED THIS MATTER BE PUT IN COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.

AGENDA ITEM NO. 3 - SECOND READING ORDINANCE 96-01: COUNCILMAN AT LARGE DEAN MILLER MOVED TO READ TITLE ONLY OF 96-01 AN ORDINANCE TO CHANGE DATE OF CITY ELECTION. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO ADOPT ORDINANCE 96-01. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED. Copy attached.

AGENDA ITEM NO. 4 - FINANCE REPORT: Mayor Karnes yielded the floor to Recorder/Treasurer Herbert Sibley. Mr. Sibley furnished Council with a financial statement. A committee meeting to discuss this accumulated statement is scheduled 5:00 p.m. prior to next Council Meeting.

Recorder Sibley stated serious thought needs to be given to our health insurance. Mr. Sibley said this matter has been discussed many times and we should arrive at a decision soon.

Regarding the Fire Truck, we have an eleven year purchase plan and we are in the eighth year, the next payment of \$16,500 due in August and three more payments after this. The payoff is \$44,000. Rec/Treas Sibley said he has found financing with a savings of \$13,500. This would require a payment of \$500 more per/year than we are paying now for the next three years. COUNCILMAN FRANK GROVER, JR. MOVED TO APPROVE THREE YEAR PAYMENT PLAN. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

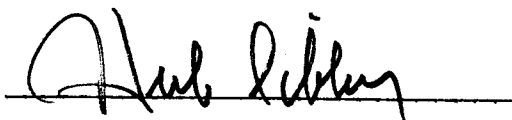
Mayor Karnes read a request for a \$5000 expenditure toward a 1984 GMC Van for the Fire Department. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED THE CITY ADVERTISE FOR BIDS FOR A VAN. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 5 - FIRE & POLICE PENSION EST BUDGET: COUNCILMAN AT LARGE DEAN MILLER MOVED TO MAKE FIRE & POLICE BUDGET MINUTES A PART OF COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED. Copy attached.

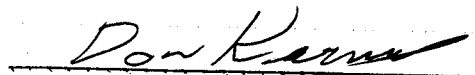
AGENDA ITEM NO. 6 - BUSINESS & PROFESSIONAL ASSN. REPORT: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman at Large Dean Miller yielded to Vernon Mills reported the Association is planning several fund raisers, a dance and maybe a dance competition. Also the Assn. is getting involved in Resolution 96-01 (Re. Richard Neely, frivolous suit.)

AGENDA ITEM NO. 7 - MAYOR'S REPORT: Mayor Karnes announced the Mid Winter Municipal Conference this coming weekend with the City of Charleston hosting, all council welcome to attend. John D. Rockefeller will be speaking 12:30 p. m. Sunday 21st. From 3:00 p.m until 5:00 p.m. Gubernatorial Candidates will hold a question and answer session. On Monday 22nd municipal training session tax department, delegates luncheon at 12:00 noon. Also municipal court procedures at 1:15 -2:30 p.m.

There being no further business, the meeting was adjourned.



HERBERT SIBLEY, RECORDER



DON KARNES, MAYOR

ORDINANCE NO. 96-01ADOPTED BY COUNCIL January 16, 1996INTRODUCED IN COUNCIL January 2, 1996AN ORDINANCE TO CHANGE THE DATE OF CITY ELECTION

WHEREAS, the City election for the City of Nitro, West Virginia is presently scheduled for June 4, 1996; and

WHEREAS, the State and County Primary election is presently scheduled for May 14, 1996; and

WHEREAS, Chapter 8, Article 5, Section 5 of the West Virginia Code of 1931, as amended, provides in part that:

"A municipal election date established by Charter provision may fall within twenty-five (25) days of a County and State Primary Election only where separate registration books are provided and maintained for municipal elections."

WHEREAS, the City of Nitro's election date is established by charter provision, however, it does not maintain separate registration books for the municipal election.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NITRO THAT:

The municipal election heretofore established by charter to be held on June 4, 1996, shall be held instead on Tuesday, June 11, 1996, pursuant to Chapter 8, Article 5, Section 5 of the West Virginia Code of 1931, as amended.

First Reading JANUARY 2, 1996

Seconded Reading January 16, 1996

  
RECORDER

  
MAYOR



## NITRO FIREMEN'S PENSION AND RELIEF FUND

## BUDGET

1996

## PENSIONS:

CLARENCE MCDANIEL	\$ 8,296.56
DENVER RAWLINGS	8,296.56
J L RAYNES	16,145.04
KENNETH KING	9,470.76
R L FAULKNIER	13,995.12
E W HEDRICK	20,364.96
JAMES STOVER	20,100.00

SECRETARY	480.00
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ACTUARY	1,500.00
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MISCELLANEOUS	500.00
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INVESTMENTS	<u>9,914.90</u>
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TOTAL	\$ <u>109,063.90</u>
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## NITRO POLICEMEN'S PENSION AND RELIEF FUND

## BUDGET

1996

## PENSIONS:

SHELBY HARRISON	\$ 13,286.04
KEN WEBB	11,986.56
JOHN JOYCE	12,035.16
ADA POST	4,963.92
BRUCE ANGELL	16,780.92

SECRETARY	1,200.00
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ACTUARY	1,500.00
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MISCELLANEOUS	500.00
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INVESTMENTS	<u>6,225.26</u>
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TOTAL	\$ <u>68,477.86</u>
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## CITY OF NITRO COUNCIL MEETING MINUTES

FEBRUARY 06, 1996

Mayor Karnes declared a quorum and called the meeting to order at 7:30 p.m. Others present: City Recorder/Treasurer Herbert Sibley, Councilman at Large Steven West, Councilman at Large Dean Miller, Councilman at Large James Hutchinson, Councilman Robert Young, Councilman George Atkins and Councilwoman Betty Boggess. Absent Councilman Frank Grover, Jr. Also present City Attorney Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF JANUARY 16, 1996 COUNCIL MEETING MINUTES: COUNCILMAN ROBERT YOUNG MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

AGENDA ITEM NO. 2 - 96-02 LEASE PURCHASE: Mayor Karnes read title only of RESOLUTION 96-02 AUTHORIZING LEASE WITH OPTION TO PURCHASE AGREEMENT. COUNCILMAN AT LARGE DEAN MOVED TO APPROVE RESOLUTION 96-02. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 3 - FIREMEN'S PENSION BD. MINUTES: COUNCILMAN GEORGE ATKINS MOVED TO MAKE FIREMEN'S PENSION BD. MINUTES A PART OF FEBRUARY 6, 1996 COUNCIL MEETING MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED. (Copy Attached)

AGENDA ITEM NO. 4 - BID TRASH TRUCK: Recorder/Treasurer Herbert Sibley read the bids; a 1986 GMC 23 yd. side loader packer, diesel \$7000. The other two bids submitted by WV Tractor were actually representing another company. One was a used Leach 20 yd, rear loader packer 1980, mounted on a 1988 GMC single axle cabin chassie for \$12000. The second bid was a 18 yd same brand name, 1982 mounted on 78 Ford diesel for \$10000. RECORDER/TREASURER HERBERT SIBLEY MOVED TO BUY THE \$7000 23 YD PACKER. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND AFTER MUCH DISCUSSION A VOTE WAS TAKEN AND CARRIED WITH COUNCILWOMEN BETTY BOGGESS ABSTAINING AND COUNCILMAN AT LARGE DEAN MILLER OPPOSING.

AGENDA ITEM NO. 5 - WW MEMORIAL PARK: Mayor Karnes yielded the floor to Councilman George Atkins. Councilman Atkins stated the report will be ready for the next scheduled council meeting.

AGENDA ITEM NO. 6 - FINANCE REPORT: Mayor Karnes yielded the floor to Rec/Treas Herbert Sibley. Mr. Sibley stated he has spent considerable time with the insurance companies and his recommendations are to stay with the company we have now. After a general discussion regarding premiums and benefits RECORDER/TREASURER HERBERT SIBLEY MOVED

TO ACCEPT THE BLUE CROSS PROPOSAL WITH THE NINE PERCENT INCREASE. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

Recorder/Treasurer Sibley stated he received a letter from West Virginia Municipal League regarding employment security rate, assigned to the city at 1 1/2 percent that is on an \$8000 per year, per employee. This would be protection of a forced employee cutback.

Recorder/Treasurer Sibley stated the main shelter at Ridenour Lake is in need of repair. The Greater Kanawha RC&D is going to cooperate with the City in revitalizing this shelter. The total program will cost approximately \$15000, Mayor Karnes stated the cost to the City will be fifty percent. Mayor Karnes said its called a soft grant, meaning our fifty percent can be labor, material, cost of equipment use, etc. A discussion followed. It was decided to pursue this very important project.

Councilman at Large Dean Miller questioned the safety of ice fishing at the Lake. Counselor Gaujot advised council regarding this matter. Included in the discussion that followed, was not only the safety aspect but also the liability the city may be exposed to.

AGENDA ITEMS NO. 7, 8 & 9 - ORD. EMPLOYMENT PROVISIONS:  
Mayor Karnes yielded the floor to Councilman at Large Steve West. Councilman West stated a meeting regarding the above agenda items is scheduled, just prior to Council meeting, at 7:00 p.m. February 20, for final recommendations. These items will be on the next agenda.

AGENDA ITEM NO. 10 - MAYOR'S REPORT: Mayor Karnes reported the city had three in attendance at the Mid-Winter Municipal Conference. Several candidates running for political office were interviewed. Several instructional classes were given regarding taxes, budgets, elections and municipal court procedures. Mayor Karnes commented this was one of the better conferences.

Councilman at Large Steve stated the sign at the corner of Bank Street and First Avenue was mis-leading. Mayor Karnes said he was upset that it implied the state was paying for the construction when actually the City of Nitro is removing the " famous hump" on 21st Street. Mayor Karnes said there will be a sign erected giving credit to the City of Nitro.

There being no further business, the meeting was adjourned.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER

**RESOLUTION AUTHORIZING LEASE WITH OPTION TO PURCHASE AGREEMENT**

At a duly called meeting of the governing body of Lessee held on the 23 day of January, 1996, the following recitals and resolution were introduced and adopted.

WHEREAS, the governing body of Lessee has determined that it is necessary and desirable and in the best interests of the Lessee to enter into a Lease with Option to Purchase Agreement (the "Lease Agreement") with COMVEST LTD. INC., of Clarksburg, West Virginia, for the purpose of obtaining the Equipment described in the Lease Agreement presented to this meeting; and

WHEREAS, the governing body of Lessee has taken the necessary steps, including any legal bidding requirements, under applicable law to arrange for the acquisition of such Equipment.

BE IT RESOLVED by the governing body of Lessee, as follows:

Section 1. Authorization. The governing body of Lessee does hereby approve the Lease Agreement substantially in the form presented to this meeting, and does hereby designate the following individual (the "Designated Representative") to execute the Lease Agreement with such changes thereto as such person deems appropriate, and any related documents necessary to the consummation of the transactions contemplated by the Lease Agreement. The Designated Representative is hereby authorized to take any action, execute any document, or give any consent which may from time to time be required by the Lessee under the Lease Agreement. Any such action taken or document executed or consent given by the Designated Representative in his capacity as the representative of the Lessee shall be deemed to be an act by the Lessee and any such action, execution or consent shall be conclusive evidence that the same is authorized by this Resolution.

Designated Representative: Don Karns Mayor

Section 2. Designation as Qualified Tax-Exempt Obligation. Pursuant to Section 265 (3)(B) of the Internal Revenue Code of 1986 (the Code), the Issuer hereby specifically designates the Lease and Equipment as a "qualified tax-exempt obligation" for purposes of Section 265 (b) (3) of the Code. The aggregate amount of tax-exempt obligations issued to date by the Issuer, in this calendar year, including the principal amount for the aforementioned Equipment Group A together with all other issues of such obligations reasonably expected in this calendar year, shall not exceed the maximum specified in said Section 265 (b) (3).

Section 3. Effective Date. This Resolution shall take effect immediately.

The undersigned certifies that the above resolution has not been repealed or amended and remains in full force and effect, and further certifies that the above and foregoing Lease Agreement is the same as presented at said meeting of the governing body of Lessee.

Seal:

[Signature]  
Secretary/Clerk

I hereby certify that I am the Recorder (office) of said Board and that the foregoing is a correct copy of the resolution passed as therein set forth, and that the same is now in full force.

Margaret Jane Young  
(To be signed by other than the Secretary)

## NITRO FIREMEN'S PENSION &amp; RELIEF FUND

JANUARY 26, 1996

The Nitro Fire Pension Board Meeting was called to order at the Fire Department at 9:00 A.M. Present were Captain E. W. Hedrick, Firefighters Ronnie King and Jeff Elkins. Also present was Pansy Armstead, Secretary. Absent were Mayor Don Karnes and Chief Steve Hardman.

AGENDA ITEM NO. 1 - APPROVAL OF DECEMBER 7, 1995 MEETING MINUTES: - Firefighter King moved the December 7, 1995 meeting minutes be approved as written. Motion was seconded by Firefighter Elkins, vote taken and it was unanimous.

AGENDA ITEM NO. 2 - EXPENDITURE BUDGET (ESTIMATE) - Firefighter King said an estimated expenditure budget was submitted to Council, but he prepared one that will be sent for the actuary. Captain Hedrick moved we accept the amended expenditure budget. Motion was seconded by Firefighter Elkins, vote taken and it was unanimous. (Budget Attached.)

AGENDA ITEM NO. 3 - OLD BUSINESS: - Firefighter King said Captain Stover retired January 9, 1996 and his annual pension will be around \$20,100 less monthly premium for health insurance.

AGENDA ITEM NO. 4 - NEW BUSINESS: - Firefighter King furnished the Board a copy of the contract from Ed Friend that needs to be signed for the actuary. Captain Hedrick moved the Board sign the contract. The motion was seconded by Firefighter Elkins and it was unanimously approved.

There being no further business, Captain Hedrick moved the meeting be adjourned.

  
PANSY ARMSTEAD, SECRETARY

NITRO FIREMAN'S PENSION & RELIEF FUND  
ESTIMATED EXPENDITURE BUDGET  
1996

PENSION DISBURSEMENTS      \$ 97,000.00

SECRETARY                      480.00

ACTUARY                        3,000.00

MISCELLANEOUS EXPENSES      1,000.00

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TOTAL                            \$101,480.00

## CITY OF NITRO COUNCIL MEETING MINUTES

FEBRUARY 20, 1996

Mayor Karnes declared a quorum and called the meeting to order at 7:30 p.m. Others present, City Recorder/Treasurer Herbert Sibley, Councilman at Large Steven West, Councilman at Large Dean Miller, Councilman at Large James Hutchinson, Councilman Robert Young, Councilman George Atkins and Councilwoman Betty Boggess. Absent was City Attorney Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF FEBRUARY 06, 1996 COUNCIL MEETING MINUTES: COUNCILMAN BOB YOUNG MOVED TO APPROVED THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

AGENDA ITEM NO. 2 - FUND DRIVE FIRE DEPT: Mayor Karnes yielded the floor to Firefighter Ron King to present to council a fund drive request which is done annually. After a short discussion regarding donations, COUNCILMAN AT LARGE STEVE WEST MOVED TO HONOR THIS REQUEST. THE MOTION WAS SECONDED BY JIM HUTCHINSON AND WAS CARRIED.

Mayor Karnes stated due to retirement of James "Smokey" Stover with 27 years of service with the Nitro Fire Department, a vacancy was created for Captain's position. Mayor Karnes read a letter to council from Dr. Charles Byrd, President and Harry Miller, Commissioner of the Fire Civil Service Commission. Following the testing of two firefighters the recommendation of the Commission, Mayor Karnes announced Ron King, with ten years of service, to the Captain's position.

COUNCILMAN FRANK GROVER, JR. MOVED TO MAKE THIS LETTER A PART OF COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 3 - PAT RAWLINGS ENG. FREDERICK ST.: Mayor Karnes yielded the floor to Pat Rawlings, Engineer from Dunn Engineers. Mr. Rawlings said the study was not in-depth but was designed to get an overall, general view of the problems and what it would cost to fix them. He said there were possibilities of discovering "various unknowns" once the repairs began, which may result in a cost increase. It was decided the job would require running a 36 inch diameter pipe from Kapok to Ivy Street and a 36 inch diameter pipe down Walker Street, draining into the river. The cost for this plan would approximate \$308,000, however Mr. Rawlings stated it could run as much as \$400,000. Mayor Karnes stated that when the State Highways Department built the road called 1st Ave. So., they failed to install adequate drainage in that area and that has been a major contributor to our problem.

The next step in the process will to look for funding.

AGENDA ITEM NO. 4 - ORDINANCE EST. DATE PETITION CANDIDACY: Mayor Karnes yielded the floor to Recorder/Treas. Herb Sibley. Mr. Sibley stated the Municipal Election has been established by Ord. 96-01 as June 11, 1996. This is sufficient time for preparation of such forms and ballots needed for this election with 96-02 Ord. being approved. It is necessary to establish dates of acceptance of petitions and a date of withdrawal from the ballot.

WITHOUT OBJECTION MAYOR KARNES READ TITLE ONLY OF ORD. 96-02 AN ORDINANCE TO ESTABLISH THE DATE OF ACCEPTANCE OF PETITIONS FOR CERTIFICATE OF CANDIDACY TO ELECTED MUNICIPAL OFFICES AND THE LAST DATE OF WITHDRAWAL BY PETITIONERS PRIOR TO CERTIFICATION BY COUNCIL.

RECORDER/TREASURER MOVED TO ADOPT ORD. 96-02 ON FIRST READING. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED. (Copy Attached)

AGENDA ITEM NO. 5 - W W MEMORIAL: Mayor Karnes yielded the floor to Councilman George Atkins. Councilman Atkins stated a new site for the memorial has been located at the corner of 21st Street and 1st Avenue (Marrs side of street). Councilman Atkins furnished Council with a copy of plans drawn up by Mr. Tom Bonner. Mr. Bonner than explained the plans to Council. Council commended Mr. Bonner for the time and the fine work done on this project. COUNCILMAN FRANK GROVER, JR. MOVED TO GIVE THE COMMITTEE AUTHORITY TO ADVERTISE FOR BIDS FOR COMPLETION OF THE WW MEMORIAL. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED.

AGENDA ITEM NO. 6 - BUSINESS & PROFESSIONAL ASSN: Mayor Karnes yielded the floor Councilman at Large Dean Miller. Councilman Miller asked which date would the July 4th celebration be held. Mayor Karnes stated Saturday the 6th will be the annual celebration. Councilman at Large Miller said the Association feels the July 4th celebration should be held on the 4th not the 6th of July. Also he said, they requested, if possible a sign be erected at the end of 21st Street indicating Ridenour Lake. Mr. Miller said the Antique Car Show (May 4th) has requested the street in front of the old high school, across from Ben Franklins, instead of Bank Street. COUNCILMAN AT LARGE DEAN MILLER MOVED TO RESERVE PARKING ON BOTH SIDES OF TWENTY FIRST STREET FROM BANK STREET TO SECOND AVENUE AND FROM SECOND AVENUE TO THIRD AVE. ON THE COMMUNITY CENTER SIDE OF STREET. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.

COUNCILMAN AT LARGE DEAN MILLER MOVED A SIGN BE ERECTED ON 21ST STREET DIRECTING ARROW TO RIDENOUR LAKE. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.



A discussion regarding signs followed.

AGENDA ITEM NO. 7 - BID VAN FIRE DEPT: Mayor Karnes yielded the floor to Recorder/Treasurer Herb Sibley. Mr. Sibley said he had only received one bid. Councilman at Large Jim Hutchinson opened bid from Larry M. Angell, 808 Dupont Avenue, Nitro WV 25143. A 84 (new engine) GMC Valu-Van 35, 350 c i. 4-Bolt Main 1-Ton, Aluminum Body, Solid Steel rear bumper w/ trailer hitch, total Cost \$6000. Firefighter King stated this van would be used for a hazardous material response vehicle/incident command center. COUNCILMAN AT LARGE DEAN MILLER MOVED TO RETURN THIS MATTER TO COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED WITH COUNCILMEN BOB YOUNG, FRANK GROVER, JR. AND STEVE WEST OPPOSING.

COUNCILMAN AT LARGE STEVE WEST MOVED TO CHANGE THE AGENDA TO ALLOW THE FIRST PART OF THE MAYOR'S REPORT TO BE THE NEXT ITEM ADDRESSED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED.

AGENDA ITEM NO. 12 - MAYOR'S REPORT: Mayor Karnes stated Council has a copy of the Planning Commission Minutes, and there are two items that need to be addressed. Request from Anne and John Brown, Lou and Linda Wendell, Rusty and Cyndi Akers and Randy and Sharon Saunders to abandon a section of River Drive adjoining their property. Second request from Mrs. Eva Summers to establish ownership of last driveway on left side of Easter Road. A public hearing to be held prior to the next council meeting if we can get the public notice compliance completed in time.

COUNCILMAN AT LARGE STEVE WEST MOVED TO MAKE THE PLANNING COMMISSION MINUTES A PART OF THE FEBRUARY 20, 1996 COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 8 - FINANCE REPORT: Mayor Karnes yielded the floor to City Recorder/Treasurer Herb Sibley. Mr. Sibley announced a Finance Meeting Tuesday, February 27, 1996 at 7:00 p.m. to discuss budget. Also Mr. Sibley said regarding the election, the county has increased the pay for election workers and we will probably have to follow suit. COUNCILMAN AT LARGE DEAN MILLER MOVED TO PAY ELECTION WORKERS THE SAME AS THE COUNTY. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED.


A discussion regarding collection of sanitary sewer and municipal service followed.

AGENDA ITEM NO. 9 - ORDINANCE 96-03 EMPLOYMENT PROVISIONS: Mayor Karnes yielded the floor to Councilman at Large Steve West. COUNCILMAN AT LARGE STEVE WEST MOVED

MAYOR KARNES READ TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND CARRIED. MAYOR KARNES READ TITLE ONLY OF ORD. 96-03 AN ORDINANCE ESTABLISHING COMPENSATION LEVELS FOR THE MAYOR, RECORDER, AND CITY COUNCIL. EFFECTIVE JULY 1, 1996 THRU JUNE 30, 2000. COUNCILMAN AT LARGE DEAN MILLER MOVED TO AMEND THE MAYOR'S SALARY TO \$31000, THE RECORDER TO \$17500 AND COUNCIL TO \$1800. THE MOTION WAS SECONDED BY COUNCIL AT LARGE JIM HUTCHINSON, AFTER DISCUSSION A VOTE WAS TAKEN AND THE AMENDMENT WAS DEFEATED. A VOTE WAS THEN TAKEN ON THE MAIN MOTION AND PASSED WITH COUNCILMEN AT LARGE DEAN MILLER, JIM HUTCHINSON, COUNCILMAN GEORGE ATKINS AND COUNCILWOMAN BETTY BOGGESS OPPOSING. (Copy attached)

There being no further business the meeting was adjourned.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER



DON KARNES  
MAYOR

February 20, 1996

The written examination for the vacant Captain's slot was given Friday February 16, 1996.

The examinations were graded Monday, February 19, 1996 by Dr. Charles Byrd and Harry K. Miller.

The results are as follows:

Ron King 114 correct out of a possible 175

Jeff Elkins 86 correct out of a possible 175.

The Firefighter's Civil Service Commission for the City of Nitro, West Virginia used the following formula for determining the overall score for both candidates.

#### Written examination

Ron King 114 points out of 175 = 70%

Jeff Elkins 86 points out of 175 = 52.8%

$$\frac{86 \times 70}{114 \quad 1} = 52.8$$

#### Experience i.e. seniority

		Total
Ron King hiring date, 8-31-86	test date, 2-19-96	(3454)

Jeff Elkins	2-24-90	2-19-96 (2182)
-------------	---------	----------------

Ron King 3454 = 30%

Jeff Elkins 2182 x 30 = 18.9%

#### Service i.e. Performance

Ron King - No suspensions = 0

NITRO, WEST VIRGINIA 25143

Jeff Elkins - No suspensions = 0

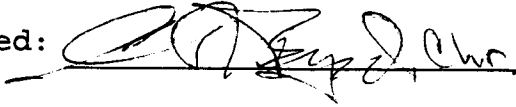
Written + Seniority + Performance

Ron King 70% + 30% + 0 = 100%

Jeff Elkins 52.8% + 18.9% + 0 = 71.7%

Therefore Ron King is the top candidate for the captain's position, and is recommended to the Mayor and City Council for promotion to the rank of captain of the Nitro Fire Department.

Signed:



Harry K. Miller

ORDINANCE 96-02

AN ORDINANCE TO ESTABLISH THE DATE OF  
ACCEPTANCE OF PETITIONS FOR CERTIFICATE  
OF CANDIDACY TO ELECTED MUNICIPAL OFFICES  
AND THE LAST DATE OF WITHDRAWAL BY  
PETITIONERS PRIOR TO CERTIFICATION BY  
COUNCIL

WHEREAS, the Municipal Election has been established by Ordinance 96-01 as June 11, 1996 being the second Tuesday of June; and

WHEREAS, sufficient time must be allowed for preparation of such forms and ballots needed for this election; and

WHEREAS, it is necessary to establish dates of acceptance of Petitions for Candidacy to Municipal Elected offices and a date of withdrawal, if desired, from these Petitions; and

WHEREAS, Chapter 8, Article 5, Section 5 of the West Virginia Code of 1931, as amended, requires these dates to be noted.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL of the City of Nitro that:

In each quadrennial election of officials for the City of Nitro, the Recorder for the City shall first accept Petitions for Certificates of Candidacy for Mayor, Recorder, Council at Large and Councilmen for Wards I, II, III and IV on the second Monday of March in that year with the last date of acceptance of these Petitions being the last Friday of March at the close of the City Business Day. The last day of Withdrawal of Petitions for Candidacy shall be the first Monday of April in the Election year. The first Tuesday in April in the Election year, said Petitions for Candidacy shall be examined by Council to determine proper residency and as Registered voters with the correct number of signatures on the petitions ie; Mayor, Recorder and Council at Large shall have 25 signatures and Ward Councilmen shall have 20 signatures. A filing fee of Ten Dollars (\$10.00) shall be required from each Petitioner paid at the time of filing. A drawing for ballot position in each category as listed herein, ie: Mayor, Recorder, Council at Large and Each Ward listed after Certification by Council in that same meeting.

FIRST READING: FEBRUARY 20, 1996

SECOND READING: MARCH 05, 1996

  
DON KARNES, MAYOR

  
HERBERT G. SIBLEY, RECORDER



ORDINANCE NO. 96-03

AN ORDINANCE ESTABLISHING COMPENSATION LEVELS  
FOR THE MAYOR, RECORDER, AND CITY COUNCIL

WHEREAS, The elected officials of Mayor, Recorder and Council of the City of Nitro have not had an increase in compensation since July 1984; and

WHEREAS, Council finds that an increase in compensation is appropriate;

THEREFORE, BE IT ORDAINED by the City Council of the City of Nitro, Kanawha and Putnam Counties, West Virginia, that the following salary schedule be instituted on July 1, 1996, in accordance with Part One, Article 157.02, of the Codified Ordinances of the City of Nitro, West Virginia.

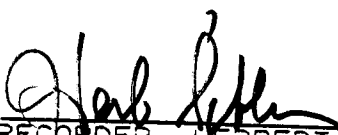
MAYOR - \$37,500 per annum  
RECORDER - \$20,000 per annum  
COUNCIL - \$ 3,600 per annum

This ordinance shall be effective as of July 1, 1996

Passed on First Reading: \_\_\_\_\_

Adopted on Second Reading: \_\_\_\_\_

  
DON KARNES, MAYOR

  
RECORDER, HERBERT SIBLEY

## CITY OF NITRO COUNCIL MEETING MINUTES

MARCH 05, 1996

Mayor Karnes declared a quorum and called the meeting to order at 7:30 p.m. Other members present were, City Recorder/Treasurer Herbert Sibley, Councilman at Large Steven West, Councilman at Large Dean Miller, Councilman at Large Jim Hutchinson, Councilman Robert Young, Councilman George Atkins, Councilman Frank Grover, Jr. and Councilwoman Betty Boggess. Also present City Attorney Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF FEBRUARY 20, 1996 COUNCIL MEETING MINUTES: COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED.

AGENDA ITEM NO. 2 - CAPTAIN STOVER RETIREMENT: Mayor Karnes presented Captain James "Smokey" Stover with a plaque in recognition of twenty seven years of dedicated service with the City of Nitro Fire Department. Mayor Karnes congratulated Captain Stover for a job well done.

AGENDA ITEM NO. 3 - SANITARY BOARD BUDGET: Mayor Karnes stated everyone has a copy of the Sanitary Board Budget and it will be brought back on March 19, 1996 Council Meeting Agenda for Council approval. If you have any questions contact me or Connie Stephens.

AGENDA ITEM NO. 4 - VAN - FIRE DEPARTMENT: Mayor Karnes yielded the floor to Councilman Frank Grover, Jr., . Councilman Grover stated the Police and Fire Committee met and their recommendations were to buy the van. COUNCILMAN FRANK GROVER MOVED TO HONOR THE BID AND PURCHASE THE VAN. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

AGENDA ITEM NO. 5 - FINANCE & BUDGET: Mayor Karnes yielded the floor to City Recorder/Treasurer Herbert Sibley. Mr. Sibley stated there is approximately a \$100,000 increase in the proposed budget. However, a Finance Committee Meeting is scheduled at 7:00 p.m. next Tuesday, March 12, 1996 and there will probably be amendments made. It must be in the States hands by March 28, and approved by Council.

AGENDA ITEM NO. 6 - BUSINESS & PROFESSIONAL ASSN. - Mayor Karnes said the Association was planning a dance at the Community Center, the Antique Car Show on May 4 and the dance competition April 13.

AGENDA ITEM NO. 7 - SECOND READING ORD. 96-02 - Without objection Mayor Karnes read title only of ORDINANCE 96-02 AN ORDINANCE TO ESTABLISH THE DATE OF ACCEPTANCE OF PETITIONS FOR CERTIFICATE OF CANDIDACY TO ELECTED MUNICIPAL OFFICES AND THE LAST DATE OF WITHDRAWAL BY PETITIONERS PRIOR TO CERTIFICATION BY COUNCIL. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO PASS ORD. 96-02. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED. (Copy attached)


AGENDA ITEM NO. 8 - SECOND READING ORD. 96-03 : Mayor Karnes yielded the floor to Councilman at Large Steve West. COUNCILMAN WEST MOVED THIS AGENDA ITEM BE PUT BACK INTO COMMITTEE. THE MOTION WAS SECONDED BY CITY RECORDER HERBERT SIBLEY AND WAS CARRIED.

AGENDA ITEM NO. 9 - MAYOR'S REPORT: Mayor Karnes stated with all the chemical industry in this area, there is an organization called "The Nitro Area Community Forum" an organization that tracks and acts as a liaison between industries and citizens. The Forum has requested an elected official to serve as a member. Mayor Karnes read Resolution 96-03 in its entirety. COUNCILMAN AT LARGE STEVE WEST MOVED TO AMEND RESOLUTION TO INCLUDE COUNCILMAN GEORGE ATKINS. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR., AND WAS CARRIED.

COUNCILMAN ROBERT YOUNG MOVED TO PASS RESOLUTION 96-03 AS AMENDED. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR., AND WAS CARRIED. (Copy attached)

Councilman George Atkins stated another site has been chosen for the WW Memorial Park on the corner of 21<sup>st</sup> Street and First Avenue. Councilman Atkins said all the drawings are finished. If we are in agreement with AEP they will order lights and maintain them. We still have to meet with Department of Highways for their approval. After this is done we are ready for bids.

There being no further business, the meeting was adjourned.

  
Don Karnes, Mayor

  
Herbert Sibley, Recorder



ORDINANCE 96-02

AN ORDINANCE TO ESTABLISH THE DATE OF  
ACCEPTANCE OF PETITIONS FOR CERTIFICATE  
OF CANDIDACY TO ELECTED MUNICIPAL OFFICES  
AND THE LAST DATE OF WITHDRAWAL BY  
PETITIONERS PRIOR TO CERTIFICATION BY  
COUNCIL

WHEREAS, the Municipal Election has been established by Ordinance 96-01 as June 11, 1996 being the second Tuesday of June; and

WHEREAS, sufficient time must be allowed for preparation of such forms and ballots needed for this election; and

WHEREAS, it is necessary to establish dates of acceptance of Petitions for Candidacy to Municipal Elected offices and a date of withdrawal, if desired, from these Petitions; and

WHEREAS, Chapter 8, Article 5, Section 5 of the West Virginia Code of 1931, as amended, requires these dates to be noted.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL of the City of Nitro that:

In each quadrennial election of officials for the City of Nitro, the Recorder for the City shall first accept Petitions for Certificates of Candidacy for Mayor, Recorder, Council at Large and Councilmen for Wards I, II, III and IV on the second Monday of March in that year with the last date of acceptance of these Petitions being the last Friday of March at the close of the City Business Day. The last day of Withdrawal of Petitions for Candidacy shall be the first Monday of April in the Election year. The first Tuesday in April in the Election year, said Petitions for Candidacy shall be examined by Council to determine proper residency and as Registered voters with the correct number of signatures on the petitions ie; Mayor, Recorder and Council at Large shall have 25 signatures and Ward Councilmen shall have 20 signatures. A filing fee of Ten Dollars (\$10.00) shall be required from each Petitioner paid at the time of filing. A drawing for ballot position in each category as listed herein, ie; Mayor, Recorder, Council at Large and Each Ward listed after Certification by Council in that same meeting.

FIRST READING: FEBRUARY 20, 1996

SECOND READING: \_\_\_\_\_

*Don Karnes*  
DON KARNES, MAYOR

*Herbert G. Sibley*  
HERBERT G. SIBLEY, RECORDER



RESOLUTION 96-03  
DON KARNES  
MAYOR

A RESOLUTION PASSED BY THE COUNCIL  
OF THE CITY OF NITRO APPOINTING  
COUNCILMAN AT LARGE STEVEN WEST AND  
COUNCILMAN GEORGE ATKINS TO THE  
BOARD OF DIRECTORS TO THE NITRO  
AREA COMMUNITY FORUM.

WHEREAS, in the opinion of the Nitro City Council,  
Steven West and George Atkins are well qualified to act in  
the capacity of directors on the Board of Directors to the  
Nitro Area Community Forum and current official position; and

WHEREAS, in the opinion of the Nitro City Council, Steve  
West would be a distinct asset to said Board of Directors of  
the Nitro Area Community Forum, and would be able to perform  
the duties and functions of such office with high degree of  
skill and ability; and

WHEREAS, the Council of the City of Nitro, in their  
official capacity, are desirous of endorsing Steve West for  
the aforesaid position.

NOW, THEREFORE, BE IT RESOLVED that the Council of the  
City of Nitro does hereby go on record as endorsing Steve  
West and George Atkins for positions on the Board of  
Directors to the Nitro Area Community Forum.

Passed this 6th day of March, 1996.

*Don Karnes*  
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*Steve West*  
*George Atkins*  
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## CITY OF NITRO COUNCIL MEETING MINUTES

MARCH 19, 1996

Mayor Karnes declared a quorum and called the meeting to order at 7:30 p.m. Other members present were, City Recorder/Treasurer Herbert Sibley, Councilman at Large Steven West, Councilman at Large Jim Hutchinson, Councilman Robert Young, Councilman George Atkins and Councilwoman Betty Boggess. Absent were Council at Large Dean Miller and Councilman Frank Grover, Jr.,. Also present City Attorney Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF MARCH 05, 1996 COUNCIL MEETING MINUTES: COUNCILMAN ROBERT YOUNG MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 2 - MOTEL EXPANSION: Mayor Karnes yielded the floor to City Building Official, Bob Sergent to explain the Motel expansion. Mr. Sergent stated the expansion that has taken place and was duly approved, is in a flood zone. FEMA (Federal Emergency Management Agency) guide lines permits expansion into a flood area as long as the expansion is not more than 50 percent value of your business. Twelve rooms have been added and all requirements have been met. After a short discussion COUNCILMAN GEORGE ATKINS MOVED TO GRANT THE VARIANCE. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED.

AGENDA ITEM NO. 3 - ABANDON PORTION EASTER ROAD: City Attorney advised Council to have the partitioner provide the City with proper title examination, certification from their Attorney that the street belongs to the City and it is a street the City can abandon. This must be done before the City can abandon the street. Partitioner would bear the cost. COUNCILMAN GEORGE ATKINS MOVED TO PUT THIS MATTER IN COMMITTEE WITH RECOMMENDATIONS AT THE NEXT COUNCIL MEETING. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 4 - ABANDON PORTION RIVER AVENUE: After a discussion, COUNCILMAN BOB YOUNG MOVED THE CITY ATTORNEY WRITE AN ORDINANCE AND PRESENT TO COUNCIL AT THE APRIL 02, MEETING. THE MOTION WAS SECONDED BY CITY RECORDER/TREASURER HERB SIBLEY AND WAS CARRIED.

AGENDA ITEM NO. 5 - ORD. 96-03: COUNCILMAN AT LARGE STEVE WEST MOVED MAYOR KARNES READ ORD. 96-03 AN ORDINANCE ESTABLISHING COMPENSATION LEVELS FOR THE MAYOR, RECORDER AND CITY COUNCIL. Councilman at Large Steve West stated an open committee meeting has been held regarding this matter. After discussion, COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE THE FIRST READING OF ORD. 96-03. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 6 - BUDGET: Recorder/Treasurer Herbert Sibley furnished Council a copy of the 96/97 budget. RECORDER/TREAS SIBLEY MOVED TO APPROVE THE BUDGET AS PRESENTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED. (Copy attached).

AGENDA ITEM NO. 7 - SANITARY BOARD BUDGET: COUNCILMAN BOB YOUNG MOVED TO APPROVE THE SANITARY BOARD BUDGET AND MAKE IT A PART OF THE COUNCIL MEETING MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 8 - BIKE -A-THON REQUEST: Mayor Karnes stated he had received the annual St. Jude Bike-A-Thon-request and recommended they work with the Police Department regarding route. COUNCILMAN GEORGE ATKINS MOVED TO GRANT REQUEST. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 9 - BUS. & PROF. ASSN: Due to the absence of Councilman at Large Dean Miller, Mayor Karnes yielded the floor to Vernon Mills spokesman for the Assn. Mr. Mills stated the dance Competition is still being planned. The Association voted against the promotion of the "Alley Cats". Also will be donating \$300.00 to the school reading program.

AGENDA ITEM NO. 10 - RIC CERTIFICATION: Mayor Karnes stated the Regional Intergovernmental Council asked Municipalities to approve their Funding formula and mail them certification of this action. The City's contribution is \$1451.80. This is determined by the population of the City. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THIS CONTRIBUTION. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED. (Copy attached)

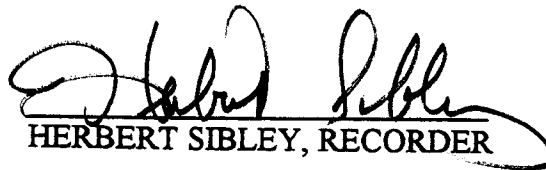
AGENDA ITEM NO. 11 - RESOLUTION 96-04: Mayor Karnes read Resolution 96-04 in its entirety. A RESOLUTION AUTHORIZING MAYOR DON KARNES TO ENTER INTO A CONTRACTUAL AGREEMENT WITH THE WEST VIRGINIA DEVELOPMENT OFFICE AND THE CITY OF NITRO. COUNCILMAN AT LARGE STEVE WEST MOVED TO PASS RESOLUTION 96-04. THE MOTION WAS SECONDED AND WAS CARRIED. (Copy attached).

AGENDA ITEM NO. 12 - MAYOR'S REPORT: Mayor Karnes stated that he along with WV Municipal League members met with a delegation from Japan on economical development in West Virginia. Mayor Karnes said they made many comparisons between the two countries. He said it was a very enjoyable meeting.

There being no further business, the meeting was adjourned.



DON KARNES, MAYOR



HERBERT SIBLEY, RECORDER



ORDINANCE NO: 96-03

AN ORDINANCE ESTABLISHING COMPENSATION LEVELS  
FOR THE MAYOR, RECORDER, AND CITY COUNCIL

WHEREAS, the elected officials of Mayor, Recorder and Council of the City of Nitro have not had an increase in compensation since July 1984: and

WHEREAS, Council finds that an increase in compensation is appropriate:

THEREFORE, BE IT ORDAINED, by the City Council of the City of Nitro, Kanawha and Putnam Counties, West Virginia, that the following salary schedule be instituted on July 1, 1996, in accordance with Part One, Article 157.02, of the Codified Ordinances of the City of Nitro, West Virginia.

MAYOR	\$31,000 per annum
RECORDER	\$16,500 per annum
COUNCIL	\$ 2,400 per annum

This ordinance shall be effective as of July 1, 1996

Passed on First Reading: 3/19/96

Adopted on Second Reading: \_\_\_\_\_

Don Karnes

DON KARNES, MAYOR

Herbert Sibley  
HERBERT SIBLEY, RECORDER

FISCAL YEAR JUNE 30, 1997  
CITY OF NITRO  
LEVY ESTIMATE

STATE OF WEST VIRGINIA  
CITY OF NITRO TO-WIT:

In accordance with Code #11-8-14, as amended, the Council proceeded to make an estimate of the amounts necessary to be raised by levy of taxes for the current fiscal year, and doth determine and estimated the several amounts to be as follows:

CURRENT REGULAR MUNICIPAL PURPOSES ESTIMATE

The amount due and the amount that will become due and collectible from every source during the fiscal year INCLUDING THE LEVY OF TAXES, is as follows:

<u>REVENUE SOURCE</u>	
PROPERTY TAXES	\$ 613,023
BUILDING PERMITS	15,000
INSPECTIONS	5,000
B & O TAX	797,653
UTILITY TAXES	169,000
RECREATION	40,000
WINE AND LIQUOR TAXES	56,000
LICENSES	35,000
DOG TRACK	100,000
INTEREST	6,000
CIVIC BENEFITS ASSOC	171,200
RENT	12,000
COURT COSTS	27,000
COLLECTION INCOME	6,200
LIBRARY FEES	1,000
MUNICIPAL SERVICE	497,144
FRANCHISE FEES	2,500
COAL SEVERANCE	15,000
REIMBURSEMENTS	<u>125,200</u>
TOTAL ESTIMATED REVENUE	\$ <u>2,693,920</u>

MAYOR

WAGES	\$	49,772
RETIREMENT		4,728
FICA		3,808
DUES		2,300
SUPPLIES		1,500
TRAVEL		<u>4,000</u>
		<u>66,108</u>

COUNCIL

WAGES	16,800
FICA	1,285
SENIOR CITIZENS	<u>1,200</u>
	<u>19,285</u>

RECORDER

WAGES	16,500
RETIREMENT	1,568
FICA	1,262
LEGAL ADS	2,500
SUPPLIES	1,000
CONTRACT SERVICES	1,000
TRAVEL	500
ELECTION	<u>8,000</u>
	<u>32,330</u>

TREASURER

WAGES	12,600
RETIREMENT	1,197
FICA	964
WORKERS COMPENSATION	66,272
CONTRACT SERVICES	2,500
SUPPLIES	1,000
TRAVEL	<u>600</u>
	<u>85,133</u>

BUILDING INSPECTOR

WAGES	41,723
RETIREMENT	3,964
FICA	3,192
DUES	300
SUPPLIES	1,000
TRAVEL	1,500
CONTINUING EDUCATION	<u>1,000</u>
	<u>52,679</u>



CITY HALL

WAGES	58,116
RETIREMENT	5,521
FICA	4,446
CONTRACT SERVICES	7,500
PROFESSIONAL SERVICES	20,000
INSURANCE	84,800
GROUP INSURANCE	288,000
SUPPLIES	12,000
COMPUTER SUPPLIES	5,000
ELECTRIC	18,000
GAS	6,000
WATER	14,000
TELEPHONE	17,000
FIRE HYDRANTS	13,000
STREET LIGHTS	40,000
	<u>593,383</u>

POLICE DEPARTMENT

WAGES	404,775
RETIREMENT	30,349
FICA TAX	30,965
TELETYPE	1,600
DEPT SUPPLIES	9,000
UNIFORMS	11,500
AUTO SUPPLIES	20,000
MAINTENANCE AND REPAIRS	10,000
CRIME PREVENTION	1,500
FOOD AND DRUGS	400
TRAINING/EDUCATION	5,000
TOWER RENTAL	600
CRIME VICTIM FUND	10,000
EQUIPMENT RENEWAL	600
POLICE RESERVE	1,200
CAPITAL OUTLAY	28,944
	<u>566,433</u>

FIRE DEPARTMENT

WAGES	239,169
RETIREMENT	36,000
FICA	18,296
CONTRACT SERVICES	1,200
PROFESSIONAL SERVICES	6,000
SUPPLIES	14,500
UNIFORMS	4,700
AUTO SUPPLIES	7,000
MAINTENANCE AND REPAIRS	6,000
TRAINING	6,000
CAPITAL OUTLAY	17,001
	<u>355,866</u>

RECREATION DEPARTMENT

WAGES	81,414
RETIREMENT	5,853
FICA	6,228
CONTRACT SERVICES	1,000
MAINTENANCE AND REPAIRS	7,500
CALENDAR	4,900
SUPPLIES	18,800
	<u>125,695</u>

PUBLIC WORKS

WAGES	297,150
RETIREMENT	28,229
FICA	22,732
CONTRACT SERVICES	12,000
TRASH BAGS	20,000
SUPPLIES	26,000
AUTO SUPPLIES	25,000
EQUIPMENT REPAIRS	11,500
LANDFILL	200,000
ASPHALT, SAND AND STONE	25,000
CAPITAL OUTLAY	40,000
STREET PAVING	30,000
	<u>737,611</u>

LIBRARY

WAGES	38,410
RETIREMENT	3,649
FICA	2,938
CONTRACT SERVICES	1,500
SUPPLIES	500
MAINTENANCE AND REPAIRS	500
BOOKS	3,000
CONTINUING EDUCATION	2,000
	<u>52,497</u>

HUMANE OFFICER

SHELTER FEES	3,600
UNIFORMS	300
AUTO SUPPLIES	2,400
MAINTENANCE AND REPAIRS	600
	<u>6,900</u>

TOTAL ESTIMATED EXPENDITURES      \$    2,693,920

## NITRO SANITARY BOARD

APPROVED 2/27/96

## FISCAL YEAR BUDGET PROPOSAL

FY / 96-97

ESTIMATED REVENUES	\$	1155000.00
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## ESTIMATED EXPENSES (ADM)

SALARIES (no increase)	\$	266386.00
FICA		33031.86
MEDICAID		7725.19
RETIREMENT		25306.67
HEALTH/LIFE INSURANCE		53000.00
WV STATE UNEMPLOYMENT		300.00
WORKMEN'S COMP.		10096.00
OTHER EMPLOYEE EXPENSES		500.00

TOTAL WAGE RELATED EXPENDITURES	\$	396345.73
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## GENERAL EXPENSES

UTILITIES	\$	110000.00
INSURANCE		40000.00
SUPPLIES		18000.00
MAINTENANCE & REPAIRS		8000.00
SLUDGE RELATED		80000.00
GASOLINE		10000.00
RENT		9000.00
EQUIPMENT RENTAL		2000.00
LEGAL SERVICES		46000.00
BILLING/COLLECTING/ACCOUNTING		42000.00
SHOP & LABORATORY		14000.00
UTILITY TAX		17000.00
OPERATOR TRAINING		900.00
MISCELLANEOUS GENERAL EXPENSES		12000.00

TOTAL OPERTING EXPENDITURES	\$	408900.00
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## DEBT SERVICE EXPENSE

HUNTINGTON BANK - NITRO	\$	10000.00
STATE SINKING FUND-INTEREST		12000.00

TOTAL INTEREST & DEBT SERVICE	\$	22000.00
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CAPITAL EXPENDITURES & PREVENTATIVE MAINTENANCE		75000.00
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TOTAL ESTIMATED EXPENDITURES	\$	902245.73
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FUNDS OBLIGATED TO CONSTRUCTION PROJECTS	\$	252754.27
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CARMEN KOSTELANSKY  
4122 3RD AVENUE  
NITRO, 25143  
755-2213

NITRO CITY COUNCIL;

IT'S THAT TIME OF THE YEAR AGAIN, FOR THE ANNUAL ST. JUDE CHILDREN'S RESEARCH HOSPITAL BIKE-A-THON. IT HAS BEEN SCHEDULED FOR APRIL 21, 1996, IF YOU APPROVE. THAT IS STILL ON A SUNDAY FROM 3:00PM TO 5:00PM.

WE EXPERIENCED SOME DIFFICULTY LAST YEAR WITH THE RIDERS RIDING ON 21ST STREET. IT SEEMED MORE DANGEROUS THAN USUAL. MAYBE BECAUSE OF THE PRETTY WEATHER THAT DAY. IS THERE ANY POSSIBILITY THAT WE COULD CHANGE THE ROUTE? I AM NOT SURE WHERE THE SAFEST PLACE WOULD BE FOR THEM TO RIDE. MAYBE CLOSE A SECTION OF PLANT ROAD? WOULD YOU PLEASE LET ME KNOW IF YOU HAVE AN IDEA? IF NOT, I GUESS WE WOULD KEEP IT ON 21ST STREET.

THANK YOU!!!

SINCERELY,

  
CARMEN KOSTELANSKY

## CERTIFICATION

I, Don Karnes, duly elected Mayor, of the City of Nitro, do hereby certify that the FY 1997 Budget and Funding Formula adopted by the BCKP Regional Intergovernmental Council was submitted to the City Council Council of the City of Nitro, and that said Budget and Funding Formula were approved by the City Council of Nitro and that the City of Nitro's financial contribution to the BCKP Regional Intergovernmental Council as set forth in said funding formula was approved and included in the City of Nitro FY 1997 Budget.

Don Karnes  
Mayor

3/19/96  
Date

Herbert D. Libby  
Attest

3/19/96  
Date

## REGIONAL INTERGOVERNMENTAL COUNCIL

## LOCAL CONTRIBUTION SCHEDULE

<u>Member</u>	<u>Total Contribution</u>
Boone County	\$ 7,329.52
Clay County	2,347.84
Kanawha County	24,179.35
Putnam County	10,591.86
Bancroft	50.06
Belle	572.81
Buffalo	141.13
Cedar Grove	197.92
Charleston	23,982.82
Chesapeake	259.47
Clay	183.64
Clendenin	282.58
Danville	136.52
Dunbar	1,828.49
East Bank	144.61
Eleanor	259.62
Glasgow	718.40
Handley	66.80
Hurricane	1,046.60
Madison	580.18
Marmet	385.54
<del>Zero</del>	<del>1,052.80</del>
Poca	208.75
Pratt	95.89
St. Albans	2,404.52
So. Charleston	5,333.35
Sylvester	26.62
Whitesville	103.20
Winfield	278.11
 TOTALS	 <u>\$85,188.00</u>

Adopted by Full Council on March 6, 1996

Don Karnes  
Don Karnes, Secretary

c:\mar2

**RESOLUTION 96-4****AUTHORIZING MAYOR DON KARNES TO  
ENTER INTO A CONTRACTUAL AGREEMENT  
WITH THE WEST VIRGINIA DEVELOPMENT  
OFFICE AND THE CITY OF NITRO.**

**WHEREAS, the City of Nitro received a state/local contract between the West Virginia Development Office and the City of Nitro.**

**WHEREAS, this contract outlines the conditions under which the City of Nitro's Governor's Community Partnership Grant program must be implemented.**


**WHEREAS, Legal Counsel has reviewed the contract; and**

**WHEREAS, City Council accepts the conditions of the contract; authorize Don Karnes, Mayor of the City of Nitro to sign the last page of said contract, and**

**WHEREAS, THE WV Development, Grants Management Specialist's Office may process a grant agreement.**

**Passed by the City Council of the City of Nitro, this 19th day of March, 1996.**

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER

# CITY OF NITRO COUNCIL MEETING MINUTES

APRIL 02, 1996

Mayor Karnes declared a quorum and called the meeting to order at 7:30 p.m. Other members present were, City Recorder/Treasurer Herbert Sibley, Councilman at Large Steven West, Councilman at Large Jim Hutchinson, Councilman at Large Dean Miller, Councilman George Atkins, Councilman Robert Young, Councilman Frank Grover, Jr., and Councilwoman Betty Bogges. Also present, Candidates running for City Offices and Citizens. Absent City Attorney, Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF MARCH 19, 1996 COUNCIL MEETING MINUTES: COUNCILMAN ROBERT YOUNG MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

AGENDA ITEM NO. 2 - PUBLIC HEARING: COUNCILMAN BOB YOUNG MOVED TO MAKE THE MARCH 19TH PUBLIC HEARING MINUTES A PART OF MARCH 19 COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED.

AGENDA ITEM NO. 3 - REPORT EASTER RD/RIVER AVE: Mayor Karnes furnished everyone with a letter from the City Attorney Phillip Gaujot regarding this issue. Mayor Karnes read a portion of the letter stating the City does not have enough information to act on these matters.

AGENDA ITEM NO. 4 - CEREGS (AREA FORUM) Mayor Karnes yielded the floor to Councilman at Large Steve West. Councilman at Large West stated this a group of people that go by the name CEREG, ( COMMUNITY EMERGENCY RESPONSE EVALUATION GROUP) . There will be at least two more meetings to prepare a report to be given to the Emergency Planning Commission in Kanawha and Putnam County. The Nitro Area Forum is a part of CEREG. A meeting is scheduled Thursday, April 4, 1996 at 5:30 p.m. in the Nitro Community Center. The committee is composed of public safety people, plant personnel, emergency responders and citizens. They have prepared a scenario, wanting people to tell them what they expect during an emergency. In other words how soon do we feel we should be notified of a leak. Councilman at Large West commented he was not as concerned about the plants as he is the railroad traffic because it takes so long to find out what the railroad car was carrying. The plants usually know immediately what the problem is. The Committee is developing time lines, what to expect and when.

Councilman at Large Steve West encouraged all Council to attend the next meeting.

AGENDA ITEM NO. 5 - SECOND READING ORD. 96-03: COUNCILMAN AT LARGE STEVE WEST MOVED MAYOR KARNES READ TITLE ONLY OF ORD. 96-03 AND TO ADOPT ON SECOND READING. THE MOTION WAS SECONDED BY RECORDER/TREASURER HERB SIBLEY. MOTION PASSED



WITH COUNCILMAN AT LARGE DEAN MILLER AND COUNCILMAN GEORGE ATKINS OPPOSING. (copy attached)

AGENDA ITEM NO. 6 - FINANCE REPORT: Mayor Karnes yielded the floor to Recorder/Treasurer Herbert Sibley. Mr. Sibley stated he did not have a financial statement ready for the meeting this time, but he will have a combined financial report for the next meeting.

AGENDA ITEM NO. 7 - CANDIDATE PETITION ACCEPT/COUNCIL: Mayor Karnes yielded the floor to Recorder/Treasurer Herbert Sibley. Mr. Sibley furnished council with a list of candidates. He said he had certified the attached list of candidates for various offices in the Nitro, West Virginia City election, June 11, 1996 were properly prepared and timely presented. Each petition has correct amount paid and to the best of my knowledge should be accepted to participate in this election. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO ACCEPT PETITIONS AS SUBMITTED. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER AND WAS CARRIED. (copy attached)


AGENDA ITEM NO. 8 - BUSINESS & PROFESSIONAL ASSN: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller reported the drive-in portion of the Car Show will be at Town & Country on Friday, May 3rd, 7:00 to 9:00. Car Show will be Saturday from 9:00 a.m. to 4:00 p.m. Also he requested to close Bank Street from 21st Street to 20th Street. COUNCILMAN GEORGE ATKINS MOVED TO DENY THE REQUEST FOR CLOSURE OF BANK ST. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS AND WAS CARRIED.

AGENDA ITEM NO. 9 - BALLOT POSITIONS: Mayor Karnes yielded the floor to City Rec/Treas Herbert Sibley. Mr. Sibley asked Chief Blankenship to draw for the order of positioning on ballot. They are as follows: OFFICE OF MAYOR: 1. Don Karnes, 2. Dean Miller, 3. Larry Angel, 4. Rusty Casto, 5. Bill Gibson. RECORDER: Herbert Sibley. COUNCIL AT LARGE: 1. Steve West, 2. Vernon Mills, 3. Richard Savilla, 4. Lawrence Hill, 5. Greg Patton, 6. Mike Shrewsbury, 7. Bob Mattox. WARD 1 COUNCILMAN: 1. Bob Young, 2. James (Smokey) Stover. WARD II COUNCILPERSON: 1. Dave Miller, 2. Betty Jo Boggess. WARD III COUNCILMAN: 1. Chuck Boggs, 2. George Atkins, 3. John Caldwell, 4. Tim Harrison. WARD IV: Frank Grover. RECORDER/TREASURER HERBERT SIBLEY MOVED THIS PETITION FOR CANDIDACY OF ELECTIVE OFFICES BALLOT POSITION BE ACCEPTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

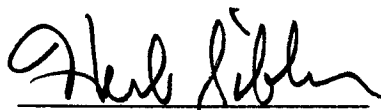
AGENDA ITEM NO. 10 - MAYOR'S REPORT: Mayor Karnes yielded the floor to Councilman George Atkins. Councilman Atkins reported the drawings regarding the Memorial Park were sent to the Department of Highways and there have been some alterations. The recommendations were to change the 2 foot walk to a 4 foot walk, put stainless steel posts and lights inside the curb. Otherwise the drawings have been approved and ready for bids.

Mayor Karnes stated the Planning Commission just passed out copies of their minutes regarding a new sub-division. (Cherry Ridge section of the Lakeview Estates) The Planning Commission and Building Official recommendations were to approve this project. After discussion COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE CHERRY RIDGE SECTION OF LAKEVIEW ESTATES. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED, WITH COUNCILMAN AT LARGE STEVE WEST AND COUNCILMAN FRANK GROVER, JR. OPPOSING. (Copy attached).

There being no further business, the meeting was adjourned.

A handwritten signature in cursive script, reading "Don Karnes", written over a horizontal line.

Don Karnes, Mayor

A handwritten signature in cursive script, reading "Herb Sibley", written over a horizontal line.

Herb Sibley, Recorder

**PUBLIC HEARING APRIL 02, 1996**

The public hearing was called to order by Mayor Don Karnes in Council Chambers at City Hall, April 02, 1996 at 7:15 p.m. Others present: City Recorder/Treasurer Herbert Sibley, Councilmen at Large Steve West, Dean Miller, Jim Hutchinson, Councilmen Robert Young, George Atkins, Frank Grover and Councilwoman Betty Boggess. Also present candidates running for City Offices and Citizens. (copy attached)

Mayor Karnes stated the purpose of this hearing is to obtain public input regarding Ord. 96-03, an Ord. to establish compensation levels for the Mayor, City Recorder and City Council. Mayor Karnes opened the floor for discussion.

There being no public input, the meeting was adjourned.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER



ORDINANCE NO: 96-03

AN ORDINANCE ESTABLISHING COMPENSATION LEVELS  
FOR THE MAYOR, RECORDER, AND CITY COUNCIL

WHEREAS, the elected officials of Mayor, Recorder and Council of the City of Nitro have not had an increase in compensation since July 1984; and

WHEREAS, Council finds that an increase in compensation is appropriate:

THEREFORE, BE IT ORDAINED, by the City Council of the City of Nitro, Kanawha and Putnam Counties, West Virginia, that the following salary schedule be instituted on July 1, 1996, in accordance with Part One, Article 157.02, of the Codified Ordinances of the City of Nitro, West Virginia.

MAYOR	\$31,000 per annum
RECORDER	\$16,500 per annum
COUNCIL	\$ 2,400 per annum

This ordinance shall be effective as of July 1, 1996

Passed on First Reading: \_\_\_\_\_

Adopted on Second Reading: \_\_\_\_\_

A handwritten signature in cursive script, appearing to read 'Don Karnes', written over a horizontal line.

DON KARNES, MAYOR

A handwritten signature in cursive script, appearing to read 'Herb Sibley', written over a horizontal line.

HERBERT SIBLEY, RECORDER

CITY OF NITRO  
 Petitions for candidacy  
 to Elective Offices  
 JUNE 11, 1996

Approved  
 by Council

Council-At-Large Ward II

- ① DAVE MILLER
- ② EARNON MILLS
- ③ RICHARD SAULIN II
- ④ LAWRENCE HILL
- ⑤ GREG PATTON
- ⑥ MIKE SHREWSBURY
- ⑦ BOB MATHOX

WARD III

- ① STEVE WEST
- ② TIM HARRISON
- ③ GEORGE ATKINS
- ④ JOHN CRAWELL
- ⑤ CHUCK BOGGS

WARD IV

FRANK GROVEN

WARD I

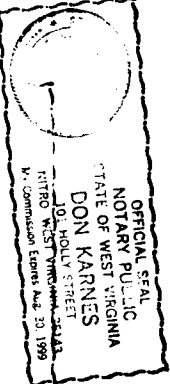
- ① BOB YOUNG
- ② SMOKEY STOVER

Herb Sibley

order

I certify that the attached list of candidates for various offices in the Nitro, W Va City election to be held June 11, 1996 were properly prepared and timely presented. Each petition has the correct amount paid and to the best of my knowledge should be accepted to participate in this election.

Herbert G Sibley, Recorder 4/2/96



Notary Public  
 Don Karnes  
 100 Holly Street  
 Nitro, West Virginia 25133  
 Commission Expires Aug. 30, 1999

## CITY OF NITRO COUNCIL MEETING MINUTES

APRIL 16, 1996

Mayor Karnes declared a quorum and called the meeting to order. Other members attending were City Recorder/Treasurer Herbert Sibley, Councilman at Large Steve West, Councilman at Large Dean Miller, Councilman at Large Jim Hutchinson, Councilman Robert Young, Councilman George Atkins and Councilwoman Betty Jo Boggess. Absent Councilman Frank Grover, Jr. Also present was City Attorney Phillip Gaujot.

AGENDA ITEM NO. 1 - APPROVAL OF APRIL 02, 1996 COUNCIL MEETING MINUTES: COUNCILMAN ROBERT YOUNG MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.

AGENDA ITEM NO. 2 - LAY THE LEVY: Mayor Karnes yielded the floor to Rec/Treas Herb Sibley. Mr. Sibley stated this is done every year, the levy is based on property evaluation furnished to us through WV Tax Department. After the budget is prepared and sent to State Tax Department for approval, then Council must lay the levy. Rec/Treas Sibley furnished Council with a copy of the rates. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE LEVY. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 3 - WV SOIL CONSERVATION GRANT: Mayor Karnes yielded the floor to Recreation Director Jay Long. Mr. Long stated before he addressed the grant, he received a late request for a Little League Parade, April 27 at 11:00 a.m. beginning at Nitro Moose Lodge. Also they have requested a police cruiser and fire truck for this parade. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE REQUEST. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED. (Copy attached)

Director Long furnished council with a copy of "Ridenour Lake Shelter Revitalization Project". Mr. Long stated the WV State Soil Conservation Agency has funded \$10,000 for Nitro Outdoor Recreation Critical Area Treatment Project at Ridenour Lake. This comes in six phases, (a) concrete slab, (b) drainage around shelter, (c) control water run-off, (d) re-seed flat area around shelter, (e) plantings, (f) steps on the front hill.

Mr. Long said the complete project will be approximately \$15,000. The City will furnish the labor. Mayor Karnes stated this is a soft grant. COUNCILMAN BOB YOUNG MOVED TO APPROVE AND AUTHORIZE MAYOR KARNES TO ADMINISTER THE GRANT. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 4 - FINANCE REPORT: Mayor Karnes yielded the floor to City Rec/Treas. Herbert Sibley. Mr. Sibley furnished Council with a copy of the financial statement and announced a finance meeting scheduled for Tuesday, April 23 rd. at 7: 00 p.m. to discuss this statement. Recorder/Treasurer Sibley briefly explained the report.

AGENDA ITEM NO. 5 - CEREG: Mayor Karnes yielded the floor to Councilman at Large Steve West. Councilman West stated the committee met again last Thursday night and the attendance was good, with most of the emergency officers and plant personnel attending. However, there is still a need for citizens. The final meeting will be this Thursday, April 25th at 5:30 p.m. for the completion of the plans for the Nitro area. Councilman West commented there were representatives from Police Agencies from the County and State, but our City Police were not there. A question and answer session followed.

AGENDA ITEM NO. 6 - POLL OFFICIAL APPROVAL: Mayor Karnes yielded the floor to Recorder/Treasurer Herb Sibley. COUNCILMAN BOB YOUNG MOVED TO APPROVE THE POLL OFFICIAL LIST. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS AND WAS CARRIED WITH COUNCILMAN AT LARGE DEAN MILLER ABSTAINING. (Copy attached)

AGENDA ITEM NO. 7 - BUSINESS & PROFESSIONAL ASSOCIATION: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller stated the Association has planned a "meet the candidate" day May 23rd, 7:30 p.m. at the Community Center. Letters have been sent to all candidates. Also He, announced the "Cruise-in" and Car Show will be the 3rd and 4th.

AGENDA ITEM NO. 8 - ORD. 96-04 ABAND PORTION RIVER AVENUE: Mayor Karnes yielded the floor to the City Attorney Phillip Gaujot. Counselor Gaujot stated River Avenue that is open to traffic runs from Kanawha Avenue straight back to Kanawha River and that portion of River Avenue is restricted to traffic. The other part of River Avenue as depicted on the city map shows it runs in an east- west direction and back north - south direction back to Kanawha Avenue. Counselor Gaujot explained the Ordinance to Council. **Counselor Gaujot read Ordinance 96-04 in its entirety.** After discussion COUNCILMAN AT LARGE STEVE WEST MOVED TO PASS ORD. 96-04 ON FIRST READING. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 9 - RESOLUTION 96-03 1-64 PUTNAM CO: COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE THE RESOLUTION WITH COUNSELOR GAUJOT READING TITLE ONLY OF RESOLUTION I-64 PUTNAM CO. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON AND WAS CARRIED. ( Copy Attached)

AGENDA ITEM NO. 10 - RESOLUTION 96-04 1-64 KANAWHA CO:  
COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE RESOLUTION  
1-64 KANAWHA CO. WITH COUNSELOR READING TITLE ONLY. THE  
MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS  
CARRIED. ( Copy attached)

AGENDA ITEM NO. 11 - RESOLUTION 96- 05 STORAGE PROPERTY:  
COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE RESOLUTION  
STORAGE PROPERTY WITH COUNSELOR READING TITLE ONLY. THE  
MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND  
WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 11 1/2 - RESOLUTION 96-06 ARTEL PROPERTY:  
COUNCILMAN GEORGE ATKINS MOVED TO APPROVE RESOLUTION ARTEL  
PROPERTY WITH COUNSELOR GAUJOT READING TITLE ONLY. THE  
MOTION WAS SECONDED BY COUNCILMAN AT LARGE DEAN MILLER AND  
WAS CARRIED.


AGENDA ITEM NO. 12 - ORDINANCE - 96-05 TAX INCENTIVES:  
City Attorney Phillip Gaujot read Ordinance in its entirety, and RECORDER HERBERT  
SIBLEY MOVED TO APPROVE THE ORDINANCE FOR THE FIRST READING .  
THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM  
HUTCHINSON AND WAS CARRIED. (Copy attached)

AGENDA ITEM NO. 13 - PUBLIC HEARING MINUTES: COUNCILMAN  
BOB YOUNG MOVED TO MAKE THE PUBLIC HEARING MINUTES A PART OF  
THE APRIL 16 COUNCIL MINUTES. THE MOTION WAS SECONDED BY  
COUNCILMAN GEORGE ATKINS AND WAS CARRIED.

AGENDA ITEM NO. 14 - MAYOR'S REPORT: Mayor Karnes stated the  
damage to the wall at the Church of Christ warranted an investigation by the Department  
of Transportation to determine whether or not a caution light would be necessary at this  
location for safety of drivers.

There being no further business, the meeting was adjourned.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER



LEVY RATE SHEET

115

RATES OF LEVY LAID BY:

CITY OF NITRO

(LEVYING BODY)

KANAWHA/PUTNAM

(COUNTY)

AND APPROVED BY THE STATE TAX COMMISSIONER FOR COUNTY, SCHOOL, OR MUNICIPAL PURPOSES FOR THE FISCAL YEAR BEGINNING JULY 1, 1996 IN ACCORDANCE WITH CHAPTER II, ARTICLE 8 OF THE WEST VIRGINIA CODE, AS AMENDED.

	CURRENT LEVY RATE	EXCESS LEVY RATE	PUBLIC/PERM. IMPROVEMENT LEVY RATE	BOND LEVY RATE	TOTAL LEVY RATE
CLASS I	10.45	6.12			16.57
CLASS II	20.90	12.24			33.14
CLASSES III AND/OR IV	41.80	24.48			66.28
RATES ARE TO BE STATED IN CENTS PER ONE HUNDRED DOLLARS VALUATION					

The above is a true list of the levies laid by the County Commission, Board of Education, or

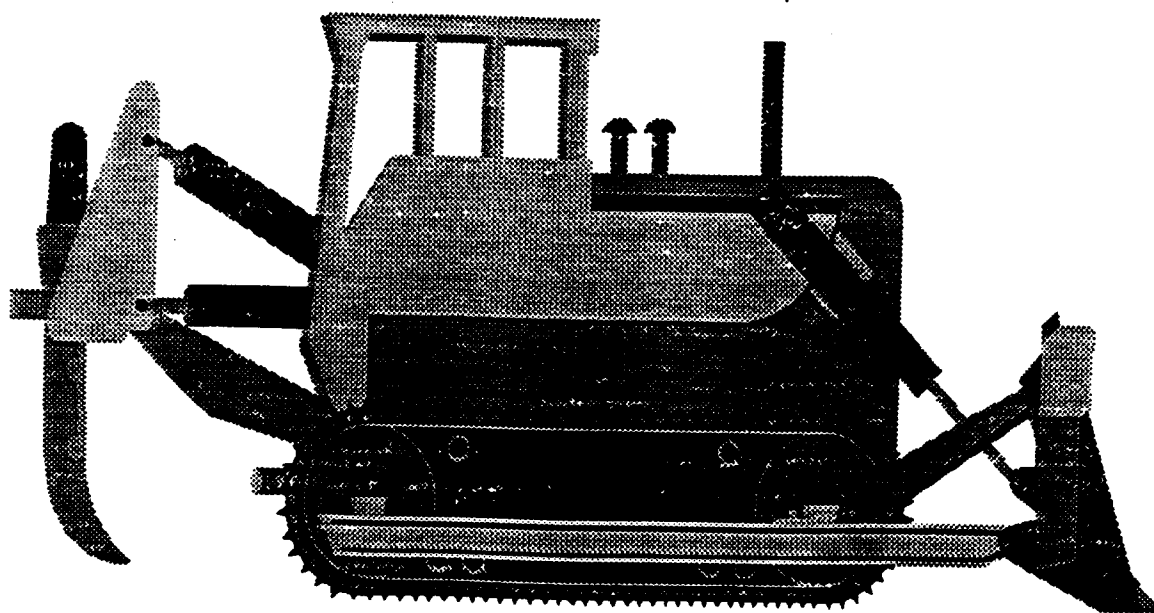
Municipal Council of CITY OF NITRO on the 16 day of April, 1996  
and APPROVED BY THE STATE TAX COMMISSIONER.



County Clerk  
Secretary, County Board of Education  
Municipal Clerk or Recorder

NOTE: This form is to be submitted within three days after the governing body meets to lay the levy on the third Tuesday in April. **DO NOT MAIL IT WITH THE BUDGET DOCUMENT.** Retain the pink copy for your files and mail the white and yellow copies (along with your Levy Order) to the Department of Tax and Revenue, Chief Inspector Division, P. O. Drawer 2389, Charleston, West Virginia 25328. Upon receipt, one copy will be stamped "Approved" and forwarded to the assessor of your county to be used in extending the levies.

# Ridenour Lake Shelter Revitalization Project



### Executive Summary

The City of Nitro, the Great Kanawha R. C. & D. and the WV State Soil Conservation Agency have agreed to address several problems at Ridenour Lake Picnic Shelter #1, including to remove and replace cracked concrete floor, control stormwater runoff from the immediate area, repair the badly eroded area around the shelter, and stabilize a hill alongside the shelter.

### Treatment Plan

- A. Replace the concrete slab.
- B. Improve drainage around the shelter.
- C. Control water run-off.
- D. Re-seed around the shelter.
- E. Plantings on the up-slope of the hillside.
- F. Repair steps which lead to the shelter.

### Proposed Plan and Estimated Costs

- A. Concrete Slab: remove the existing slab and replace it with a new slab and improved base.

<u>Activity</u>	<u>Amount</u>	<u>Cost/Unit</u>	<u>Cost</u>
Remove existing slab (3 man crew for 4 days)	96 hours	\$ 15.00	\$ 1,440.00
Rental of air compressor and jackhammer	4 days	\$200.00	\$ 800.00
Reinforcing 6 gauge wire mesh	2.50 rolls	\$95.00/roll	\$ 238.00
Concrete (24 x 65 x 0.5 = 780 cu ft)	29 c.yds	\$60.00/yd	\$ 1,733.00
Gravel, 4 in. base underneath concrete (24 x 65 x 0.33 = 519 cu ft)		\$12.00/ton	\$ 312.00
Total			<u>\$ 4,523.00</u>

\*posts for the shelter roof are grounded in individual bases, and will not be disturbed during slab replacement.

- B. Drainage around Shelter: drainage along sides of shelter, parallel to hillside. Leave drains uncovered, no grass planted here.

<u>Activity</u>	<u>Amount</u>	<u>Cost/Unit</u>	<u>Cost</u>
Dig trenches along shelter (Backhoe and operator)	4 hours	\$ 50.00	\$ 200.00
Install drainpipe in trenches (140 ft + 30 ft) (Labor)	1 hour	\$ 15.00	\$ 15.00
6 in. corrugated plastic pipe	200 feet	\$ .50/ft	\$ 100.00

Gravel to fill trenches (140 ft. x 2 x 2 = 560 cu ft) 9 tons \$ 12.00 \$ 90.00  
size #57

Labor to fill trenches with gravel 8 hours \$ 15.00 \$ 120.00

Land Grading and shaping to bring water to the drain tiles  
(Backhoe and operator) 8 hours \$ 50.00 \$ 400.00  
Tie side ditches directly to outlet drain

Replace outlet drain with 12 in. c.m.p. 20 feet \$ 7.00 \$ 140.00  
/ foot

Repair concrete walkway \$ 100.00

Total \$1,165.00

\*with the c.m.p. we will need a way to turn the pipe down the slope: 1) fitting to turn the pipe, or 2) a box head wall on the drainpipe

C. Control water run-off: place a diversion ditch at the top of the hill to divert the water into an existing swale.

D. Re-seed flat area around the shelter: to stabilize area around shelter with grass.

Activity	Amount	Cost/Unit	Cost
*Bury Geo-blocks to hold turf in place and withstand wear (Material only)	3000 sq ft	\$ 2.25/ sq-foot	\$6,750.00
Labor to install Geo-blocks (a 4 man crew 2 days)	64 hours	\$ 15.00	\$ 960.00
Topsoil	30 tons	\$ 10.00	\$ 300.00
Labor to spread topsoil (Backhoe and operator)	24 hours	\$ 50.00	\$1,200.00
Seed with a mix of Falcon Tall fescue and Lynn Perennial Ryegrass	5 lbs. 5 lbs.	\$ 2.00 \$ 1.10	\$ 10.00 \$ 5.50
Lime and fertilizer as specified by a soil test			\$ 200.00
Total			<u>\$9,425.50</u>

alternative to geo-block: coconut fiber turf reinforcement blanket, straw mulch with seed, estimated price of \$650.00.

E. Plantings: along back hill to discourage foot traffic on the steep bank.

suggestions: burning bush (wahoo), usually 6 - 12 ft tall  
forsythia  
scrub pine

F. Steps on the front hill: reset them to prevent further slipping and setting.

NITRO MUNICIPAL CITY ELECTION  
CITY ELECTION  
ELECTION OFFICIALS

PRECINCTS 22-23

CLERK	RESA FACILITY - 39TH STREET.
CLERK	ETHEL HALL
SUPPLY COMMISSIONER	VELVA COPEN
COMMISSIONER (ESCORT)	ALICE WOODALL
COMMISSIONER	NONOKA JANE BROGAN
	LUCILLE MINSKER

PRECINCT 349

CLERK	NITRO WOMAN'S CLUB
CLERK (ESCORT)	CATHERINE GOTTSCHALK
SUPPLY COMMISSIONER	GEORGE K. FRAME
COMMISSIONER	CHARMAINE MAZZEI
COMMISSIONER	CAROLYN PARSONS
	CORABELL SMITH HANNA

PRECINCT 350

CLERK	NITRO WOMAN'S CLUB
CLERK (ESCORT)	VIRGINIA HUNTER
SUPPLY COMMISSIONER	GRACE MILLER
COMMISSIONER	WILLA E. FRAZIER
COMMISSIONER	CORA JARVIS
	MATILDA MYNES

PRECINCT 351

CLERK	NITRO ELEMENTARY SCHOOL
CLERK (ESCORT)	ISABELLE HUDNALL
SUPPLY COMMISSIONER	CHARLES HUDSON
COMMISSIONER	CLYDE MYNES
COMMISSIONER	EVELYN HOPPER
	MARTHA TAYLOR

PRECINCT 352

CLERK	NITRO ELEMENTARY SCHOOL
CLERK	OPAL MILLER
SUPPLY COMMISSIONER	POLLY TUCKER
COMMISSIONER (ESCORT)	LESTER HUDNALL, JR
COMMISSIONER	CHARLIE MILLER
	DORIS J. HUDNALL

PRECINCT 353

CLERK	USWA LOCAL UNION 12610
CLERK (ESCORT)	IRIS MILES
SUPPLY COMMISSIONER	DON MITCHELL
COMMISSIONER	LEROY MILES
COMMISSIONER	RUTH MITCHELL
	TAMMY S. SHAMBLIN

PRECINCT 354

CLERK (ESCORT)	SHAWNEE COMMUNITY CENTER
CLERK	SANDRA DEEL
SUPPLY COMMISSIONER	BARBARA COX
COMMISSIONER	WANDA SMITH
COMMISSIONER	WENONA HAMMONDS
	EARLENE PRIDY

ALTERNATES

JOAN EADS

DONNA WILCOX

PATRICIA A. WOODS

SUSAN W. SMITH

CHARLES BYRD

BALLOT COMMISSIONERS

DR. GUY CASSELL

HESS STAHL

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<u>PRECINCT</u>	<u>WARD</u>	<u>POLLING PLACE</u>
22 & 23	I	RESA - 39TH ST. EAST
349	I	NITRO WOMANS CLUB
350	II	NITRO WOMANS CLUB
351	II	NITRO ELEMENTARY SCHOOL
352	III	NITRO ELEMENTARY SCHOOL
353	III	USA LOCAL UNION 12610 510 MAIN AVENUE
354	IV	SHAWNEE HILLS COMMUNITY CENTER 234 LEE STREET

ORDINANCE NO. 96-04

AN ORDINANCE ABANDONING AND DISCLAIMING ANY INTEREST OF THE CITY OF NITRO, WEST VIRGINIA, IN A CERTAIN STRIP OF LAND APPROXIMATING 30 FEET IN WIDTH, BEING PART OF RIVER DRIVE, AND LOCATED ON THE SOUTHERLY LINE OF LOTS 14 THROUGH 26 OF EAST CRAWFORD SECTION TWO IN THE CITY OF NITRO, NITRO DISTRICT, KANAWHA COUNTY, WEST VIRGINIA

WHEREAS, by map of East Crawford Section Two, as shown upon that certain plat titled, "Property Map for John M. and Anne G. Brown Being Tax Parcels 76, 77, 86.2, 89, 93, & 94 East Crawford Sec. Two in the City of Nitro, Nitro District, Kanawha County, WV, Scale: 1" = 30', prepared by Wilkinson Surveying and Engineering, Inc., dated March 31, 1995, Rev. March 28, 1996, R/W Abandoned," a copy of which is attached hereto and marked as Exhibit A, now within the city limits of the City of Nitro, there is laid down and shown part of a certain street designated River Drive, approximately 30 feet in width, and running in a easterly-westerly direction approximately 364.62 feet, and in a northerly-southerly direction approximately 410.40 feet, and containing 19,857 square feet, more or less; and

WHEREAS, some question has arisen to whether there has ever been a complete dedication of this part of River Avenue as a public street inasmuch as the City of Nitro has never accepted said street, there has never been any use of it by the general public as a street for either pedestrian or vehicular traffic, nor has there ever been any municipal order or action accepting what might be construed as an offer of dedication by the recordation of said map

of East Crawford Section Two, nor has the City of Nitro ever exercised any act of ownership or dominion and control over this strip of land by way of maintaining, repairing, or paving it; and

WHEREAS, it is the interest of the public at large, including the citizenry of the City of Nitro, to avoid any possible responsibility or liability on the part of said City to maintain, repair, or pave said strip of land in the future; and since it has never been required for public use, Council now desires to abandon any right or rights of the City of Nitro in and to said strip of land known as part of River Drive.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Nitro:

1. That this Council does hereby abandon and disclaim any interest the City of Nitro may have as a street, right of way, alleyway, or walkway for the purpose or purposes of pedestrians or vehicular traffic, that part of River Avenue consisting of a certain strip of land approximately 30 feet in width, and running in a easterly-westerly direction approximately 364.62 feet, and in a northerly-southerly direction approximately 410.40 feet, and containing 19,857 square feet, more or less, as shown upon the aforesaid map of East Crawford Section Two attached to this Ordinance as Exhibit A.

2. And further, this Council does abandon and disclaim any rights to said strip of land for use by said City of Nitro, its citizens, or the public at large, to go upon, use or claim any right or title thereto.



3. And further, this Council acknowledges that the portion of River Avenue consisting of said strip of land was never accepted by the City of Nitro as a public street.

Passed on First Reading: 4/16/96

Adopted on Second Reading: 5/7/96

Don Karnes  
DON KARNES, MAYOR  
Robert D. Sibley  
CITY RECORDER

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RESOLUTION NO. 96-25

A RESOLUTION TO ANNEX TERRITORY CONTIGUOUS  
WITH THE PRESENT BOUNDARIES OF THE  
CITY OF NITRO BY MINOR BOUNDARY ADJUSTMENT

WHEREAS, the City of Nitro, a municipal corporation, by its council wishes to apply to the Putnam County Commission for permission to annex by minor boundary adjustment real estate in Putnam County, West Virginia, adjoining and contiguous with the City of Nitro, West Virginia.

WHEREAS, the City Attorney, Phillip D. Gaujot, is directed to file with the Putnam County Commission, an application to annex by minor boundary adjustment real estate in Putnam County, West Virginia, adjoining and contiguous with the City of Nitro, as shown upon that certain metes and bounds description attached hereto and marked as Exhibit "A" and incorporated herewith; and,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Nitro, West Virginia, that the City Attorney, Phillip D. Gaujot, proceed with the application filed with the Putnam County Commission to annex by minor boundary adjustment real estate in Putnam County, West Virginia, adjoining and contiguous with the City of Nitro, as shown upon that certain metes and bounds description attached hereto and marked as Exhibit "A" and incorporated herewith.

Motion Made by Councilman STEVE WEST,  
Seconded by Councilman GEORGE ATKINS to  
adopt this resolution.

Motion carried unanimously.

ADOPTED: 4/16/76

Don Kames  
MAYOR

Robert A. Libby  
RECORDER

RESOLUTION NO. <sup>06</sup>~~96-04~~

A RESOLUTION TO ANNEX TERRITORY CONTIGUOUS  
WITH THE PRESENT BOUNDARIES OF THE  
CITY OF NITRO BY MINOR BOUNDARY ADJUSTMENT

WHEREAS, the City of Nitro, a municipal corporation, by its council wishes to apply to the Kanawha County Commission for permission to annex by minor boundary adjustment real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, West Virginia.

WHEREAS, the City Attorney, Phillip D. Gaujot, is directed to file with the Kanawha County Commission, an application to annex by minor boundary adjustment real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, as shown upon that certain metes and bounds description attached hereto and marked as Exhibit "A" and incorporated herewith; and,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Nitro, West Virginia, that the City Attorney, Phillip D. Gaujot, proceed with the application filed with the Kanawha County Commission to annex by minor boundary adjustment real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, as shown upon that certain metes and bounds description attached hereto and marked as Exhibit "A" and incorporated herewith.

Motion Made by Councilman STEVE WEST,  
Seconded by Councilman DEAN MILLER to  
adopt this resolution.

Motion carried unanimously.

ADOPTED: 4/12/96

Don Kernes  
MAYOR

Herbert J. Sebl  
RECORDER

STOKES

RESOLUTION NO. 96-07

A RESOLUTION TO ANNEX TERRITORY CONTIGUOUS  
WITH THE PRESENT BOUNDARIES OF THE  
CITY OF NITRO BY MINOR BOUNDARY ADJUSTMENT

WHEREAS, the City of Nitro, a municipal corporation, by its council, wishes to apply to the Kanawha County Commission for permission to annex by minor boundary adjustment 194.12 acres, more or less, of real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, West Virginia.

WHEREAS, the City Attorney, Phillip D. Gaujot, is directed to file with the Kanawha County Commission, an application to annex by minor boundary adjustment real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, as shown upon that certain metes and bounds description attached hereto and marked as Exhibit "A" and incorporated herewith; and,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Nitro, West Virginia, that the City Attorney, Phillip D. Gaujot, proceed with the application filed with the Kanawha County Commission to annex by minor boundary adjustment real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, as shown upon that certain metes and bounds description attached hereto and marked as Exhibit "A" and incorporated herewith.

Motion Made by Councilman STEVE WEST,  
Seconded by Councilman DEAN MILLER to  
adopt this resolution.

Motion carried unanimously.

ADOPTED:

4/10/96

Don Rasmussen  
MAYOR

Debra D. Lipp  
RECORDER

f:\wp51\client\nitro\annexres.2

RESOLUTION NO. 96-08

A RESOLUTION TO ANNEX TERRITORY CONTIGUOUS  
WITH THE PRESENT BOUNDARIES OF THE  
CITY OF NITRO BY MINOR BOUNDARY ADJUSTMENT

WHEREAS, the City of Nitro, a municipal corporation, by its council, wishes to apply to the Kanawha County Commission for permission to annex by minor boundary adjustment 0.93 acre tract of real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, West Virginia.

WHEREAS, the City Attorney, Phillip D. Gaujot, is directed to file with the Kanawha County Commission, an application to annex by minor boundary adjustment real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, as shown upon that certain metes and bounds description attached hereto and marked as Exhibit "A" and incorporated herewith; and,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Nitro, West Virginia, that the City Attorney, Phillip D. Gaujot, proceed with the application filed with the Kanawha County Commission to annex by minor boundary adjustment real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, as shown upon that certain metes and bounds description attached hereto and marked as Exhibit "A" and incorporated herewith.



Motion Made by Councilman STEVE WEST,  
Seconded by Councilman DEAN MILLER to  
adopt this resolution.

Motion carried unanimously.

ADOPTED:

4/16/96

Don Karnus  
MAYOR

Debra J. Hilby  
RECORDER

ORDINANCE NO. <sup>09</sup>~~76-05~~

AN ORDINANCE TO PROVIDE TAX INCENTIVES FOR  
ECONOMIC DEVELOPMENT TO INDUSTRIAL AND COMMERCIAL  
DEVELOPERS, GRANTING TAX CREDITS AND/OR REBATES  
UP TO ONE HUNDRED PERCENT (100%) OF THE BUSINESS  
AND OCCUPATION TAX PAID TO THE CITY

WHEREAS, the City of Nitro has a vital interest in aggressively pursuing economic development that will bring new jobs and resources to the City for the twenty-first century; and

WHEREAS, the addition of large commercial and industrial developments that bring increased traffic will benefit existing businesses and spur additional economic opportunities; and

WHEREAS, the high land development and construction costs due to the hilly terrain, lack of public utilities, and limited access have impeded economic development in many areas of the City and in areas that could potentially become annexed to the City; and

WHEREAS, other cities in the surrounding area are offering incentives to attract new economic development, putting the City at a competitive disadvantage; and

WHEREAS, the granting of incentives to promote economic development that will provide growth, jobs, and tax revenue for the City is in the public interest;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Nitro, Kanawha and Putnam Counties, West Virginia, that Council hereby authorizes the mayor to pursue agreements with industrial and commercial developers granting tax credits of up to one-hundred percent (100%) of the Nitro business and occupation tax owed, or rebates of up to one-hundred percent (100%) of the Nitro business

and occupation tax paid, as a result of the development; provided that any such agreement contain the following provisions:


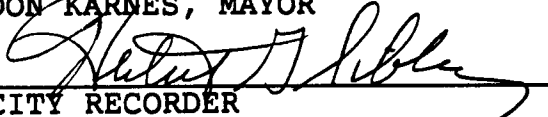
a. An agreement by the developer that the facility will provide a minimum of 50 new jobs within 12 months of the first day of occupation of the facility;

b. That Council review and approve any agreement proposed to be entered into between the City of Nitro and/or the Nitro Development Authority with any industrial and commercial developer by resolution, with said agreement being made a part of the public record.

That the mayor may enter into agreements with the Nitro Development Authority in order to carry out the purposes of this Resolution, under the same terms and conditions as set forth above.

Passed on First Reading: April 16, 1996

Adopted on Second Reading: MAY 7, 1996

  
DON KARNES, MAYOR  
  
CITY RECORDER

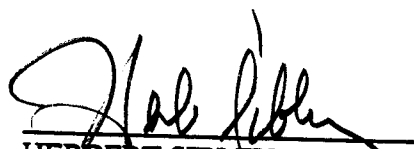
PUBLIC HEARING APRIL 02, 1996

The public hearing was called to order by Mayor Don Karnes in Council Chambers at City Hall, April 02, 1996 at 7:15 p.m. Others present: City Recorder/Treasurer Herbert Sibley, Councilmen at Large Steve West, Dean Miller, Jim Hutchinson, Councilmen Robert Young, George Atkins, Frank Grover and Councilwoman Betty Boggess. Also present candidates running for City Offices and Citizens. (copy attached)

Mayor Karnes stated the purpose of this hearing is to obtain public input regarding Ord. 96-03, an Ord. to establish compensation levels for the Mayor, City Recorder and City Council. Mayor Karnes opened the floor for discussion.

There being no public input, the meeting was adjourned.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER

## CITY OF NITRO COUNCIL MEETING MINUTES

MAY 07, 1996

Mayor Karnes declared a quorum and called the meeting to order 7:30 p.m.. Other members attending were City Recorder/Treasurer Herbert Sibley, Councilman at Large Steven West, Councilman at Large Dean Miller, Councilman at Large James Hutchinson, Councilman Robert Young, Councilman George Atkins, and Councilman Frank Grover, Jr. Absent: Councilwoman Betty Boggess. Also present City Attorney Phil Gaujot.

AGENDA ITEM NO. 1- APPROVAL OF APRIL 16, 1996 MINUTES:  
COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED.

AGENDA ITEM NO. 1A - PLANNING COMMISSION MINUTES: Mayor Karnes read a portion of the minutes to council, COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO ACCEPT THE RECOMMENDATIONS OF THE PLANNING COMMISSION. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO MAKE THE PLANNING COMMISSION MINUTES A PART OF THE COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG AND WAS CARRIED. (copy attached)

Without objection Mayor Karnes moved **Agenda Item No. 8 -Westside Parking** to Agenda Item No-1B: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller stated ever since the high school moved to Park Avenue, parking has become a problem. He said he did not feel the Kanawha County Board of Education is very cooperative. He suggested loading the buses on the parking lot, and posting a five minute parking in front of the school to pick up the students would help. The parents are parking in front of the houses on Park Avenue blocking all the parking there. Councilman at Large Miller recommended a committee be appointed to address this problem. Several citizens from Park Avenue requested time to speak. Alice Homes requested a sign for "**residents only**" on Park Avenue. E. W. Thompson suggested parents picking up children come down Park Avenue and pickup the students from the sidewalk. Councilman Atkins commented the public is parking on both sides of the road and an emergency vehicle could not get through. Reba Adams stated the same concerns. After discussion, Mayor Karnes appointed a committee with Councilman at Large Dean Miller, Councilman George Atkins, Police Chief Gary Blankenship, Nitro High School Principal and any of the concerned citizens that would like to serve. Mayor Karnes stated

when they have scheduled a meeting let him know so he can announce it to the other council members. The committee will bring their recommendations back to City Council.

96-05

AGENDA ITEM NO. 2 - SECOND READING OF ORD. 96-04:

COUNCILMAN AT LARGE STEVE WEST MOVED TO READ TITLE ONLY AND ADOPT ORD. 96-04 ON SECOND READING. MOTION WAS SECONDED BY COUNCILMAN BOB YOUNG. MAYOR KARNES READ TITLE 96-04 AN ORDINANCE TO PROVIDE TAX INCENTIVES FOR ECONOMIC DEVELOPMENT TO INDUSTRIAL AND COMMERCIAL DEVELOPERS, GRANTING TAX CREDITS AND/OR THE BUSINESS AND OCCUPATION TAX PAID TO THE CITY. After discussion COUNCILMAN AT LARGE MILLER MOVED TO AMEND ORD. 96-04, page one should be amended to 100% first year, second year 90%, third 80% and fourth year 70, fifth year 60 %, sixth year 50%, seventh year 40%, eighth year 30, ninth year 20, tenth year 10% after that no reduction. Also to amend page 2 and add paragraph c: There is a time limit. A ten year maximum. THE MOTION TO AMEND DIED FOR LACK OF SECOND. THE MOTION PASSED WITH COUNCILMAN AT LARGE MILLER AND COUNCILMAN GEORGE ATKINS ABSTAINING. (Copy Attached).

City Attorney Phillip Gaujot explained this legislation is just an enabling piece of legislation it just says you are opening the door to negotiations, each proposal that comes to the City for consideration.

96-04

AGENDA ITEM NO. 3 - ORD. 96-05: COUNCILMAN AT LARGE STEVE WEST MOVED TO READ TITLE ONLY AND ADOPT ORD. 96-05 ON THE SECOND READING. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON. MAYOR KARNES READ ORD. 96-05 AN ORDINANCE ABANDONING AND DISCLAIMING ANY INTEREST OF THE CITY OF NITRO, WEST VIRGINIA, IN A CERTAIN STRIP OF LAND APPROXIMATING 30 FEET IN WIDTH, BEING PART OF RIVER DRIVE, AND LOCATED ON THE SOUTHERLY LINE OF LOTS 14 THROUGH 26 OF EAST CRAWFORD SECTION TWO IN THE CITY OF NITRO, NITRO DISTRICT, KANAWHA COUNTY, WEST VIRGINIA. A VOTE WAS TAKEN AND IT WAS UNANIMOUS. (copy attached)

AGENDA ITEM NO.4- POLICE WEEK: Mayor Karnes announced week of May 12 thorough May 18, 1996 has been proclaimed Police Week. Mayor Karnes read proclamation 96-02 in its entirety and called on the citizens to observe Wednesday, May 15, 1996 as **Police Officers Memorial day** in Nitro. COUNCILMAN FRANK GROVER, JR. MOVED TO ADOPT PROCLAMATION 96-02. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED. (Copy attached).

Chief Blankenship announced open house of the new location of the Police Department Friday, May 17, 1996.

AGENDA ITEM NO. 5 - FINANCE REPORT: Mayor Karnes yielded the floor to City Recorder/Treasurer Herb Sibley. Recorder Sibley reported the City did not have to pay any additional premium for the Blue Cross/Blue Shield insurance this year. This is a savings of approximately \$30,000. In reference to an accident involving the Fire Truck we have received a check in the amount of \$4247.50. The Fire truck has not been repaired at this time. Mr. Sibley stated we are ahead in collections, but we have over expended the budget by \$70,000, but we are still ahead by approximately \$40,000. Recorder Sibley announced a finance meeting Tuesday, May 14th, 1996 in the Mayor's Conference room.

Recorder/Treasurer Sibley reported quotes have been received to repair the roof of the Fire Department. The first quote \$4925.00 from St. Albans Roofing, one from Harris Roofing \$8950.00, and Pruitt Contracting \$6850.00. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO ACCEPT THE QUOTE OF \$4925.00 ST. ALBANS ROOFING. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AFTER DISCUSSION A VOTE WAS TAKEN AND WAS CARRIED.

AGENDA ITEM NO. 6- ANNEXATION UPDATE: Mayor Karnes yielded the floor to City Attorney Phillip Gaujot. Counselor Gaujot explained Resolution 96-03 a proposed Resolution to annex territory contiguous with the present boundaries of the City of Nitro by minor boundary adjustment. The proposed annexation is to annex the roadway from the Cross Lanes interchange out to the Storage property, and out near the City property line at the Dog Track. (Lakeview Dr) This resolution to annex Lakeview Dr. which contains 4.42 7 acres. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED COUNSELOR GAUJOT READ TITLE ONLY AND ADOPT RESOLUTION 96- THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED. (Copy attached)

Counselor Gaujot stated he has filed the applications for annexation and the commission take up the applications on Thursday, May 9, at the next County Commission meeting the Commission will file the applications and enter an order for a public hearing. A discussion followed.

Counselor Gaujot furnished Council with two copies of a "Development Agreement" one copy is a final product with no markings on it. The other one has markings on it, denoting the changes that were made after you first looked at the agreement, they are minor changes. Counselor Gaujot explained each change.

COUNCILMAN AT LARGE STEVE WEST MOVE TO APPROVE THE DEVELOPMENT AGREEMENT. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON. Counselor Gaujot stated the proposal is, if this land is annexed to the City, they want the city to waive any

B&O tax on any construction or rental business for the next seven years. By abating the B&O tax will allow the building of the development to be cheaper. After its built they anticipate leasing the space within the Shopping Center. The B & O taxes for the first 20 years of the project will have an exclusion of the first \$500,000 taxes and an 80/20 split in favor of THF thereafter. Counselor further explained the agreement stating they have agreed to pay for a firetruck and a garbage truck for the City and to consider land for a future fire station. A question and answer session followed regarding B&O & Real Estate taxes. A VOTE WAS TAKEN AND IT WAS UNANIMOUS. COUNCILMAN AT LARGE STEVE WEST MOVED TO ADOPT ORDINANCE.96- 0 AN ORDINANCE FOR APPROVAL OF TAX INCENTIVE FOR THF- CROSS LANES PROJECT ON FIRST READING , MAY 07, 1996. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE JIM HUTCHINSON. Counselor Gaujot stated the advertising and Public Hearing should be done prior to the second reading. A VOTE WAS TAKEN AND CARRIED WITH COUNCILMAN AT LARGE DEAN MILLER ABSTAINING. (Copy attached)

AGENDA ITEM NO. 7- BUSINESS & PROF. ASSOCIATION: Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman at Large Miller stated the Alumni Association has requested 21st Street between Second Avenue and Third Avenue closed on Community Center side of street, July 13, due to several events planned for that day. COUNCILMAN AT LARGE JIM HUTCHINSON MOVED TO GRANT THE REQUEST. THE MOTION WAS SECONDED AND WAS CARRIED.

AGENDA ITEM NO. 9 - CEREG: Mayor Karnes yielded the floor to Councilman at Large Steve West. Councilman at Large West stated the CEREG meetings are finished. The Nitro Area Community Forum meeting is scheduled for next Tuesday night regarding a summary of the CEREG meetings, from 5:30/7:00 p.m., everyone is invited.

AGENDA ITEM NO. 10 -WAR MEMORIAL: Mayor Karnes yielded the floor to Councilman George Atkins. Councilman Atkins stated the plans have been completed, and we will submit them for publication for bids this week. COUNCILMAN GEORGE ATKINS MOVED TO PUT THE PLANS OUT FOR BIDS. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

AGENDA ITEM NO. 11 - MAYOR'S REPORT: Mayor Karnes announced the City had received a \$10,000 grant to repair shelter #1 at Ridenour Park. This grant will be presented tomorrow (5/8) at Ridenour Lake at 1:00 p.m. Everyone is invited.

There being no further business, the meeting was adjourned.

\_\_\_\_\_  
DON KARNES, MAYOR

  
\_\_\_\_\_  
HERBERT SIBLEY, REC.



## PLANNING COMMISSION MINUTES, CITY OF NITRO

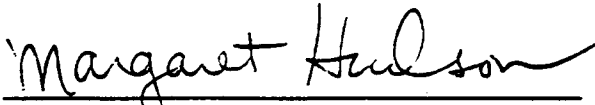
April 29, 1996

The Planning Commission of the City of Nitro met Monday, April 29, 1996, 7:00 p.m. in Room 114 of The Nitro Community Center building. Members present were Janet Martin, Jim Hutchinson, Chuck Hudson, Chuck Boggs and Margaret Hudson. The meeting was called to order by Chairperson, Margaret Hudson.

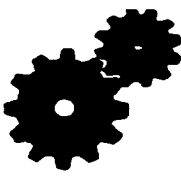
The purpose of the meeting was to conduct a Public Hearing in regard to a letter of April 1, 1996, from Mr. Dave Jones "to request the property located at 16 Layne Avenue be rezoned from R-2 to B-1 in order to build a new building for our (Toy Town Racing) business." An advertisement concerning this meeting was published in both Charleston newspapers on April 15 and April 22, 1996.

Ms. Hudson read the request as well as a petition and a letter from the Nitro Church of Christ opposing the request. Mr. Jones was present and spoke in favor of his request as did one of the area residents. Many of the other fifteen plus residents of the Layne Avenue area spoke in opposition to the request. After a period of discussion during which time it was discovered that the property at 16 Layne Avenue did not meet the lot width or area necessary for B-1, a motion by a Planning Commission member was made that "the Planning Commission deny the rezoning request." The motion was properly second. Motion carried. (Members of the Planning Commission want it noted that they decided to deny this request due to the large number of citizens of the Layne Area who were opposed to the change and to the fact that the lot did not meet more than one of the requirements for B-1 in the Zoning Ordinance for the City of Nitro, West Virginia.

The meeting was adjourned.

  
Margaret Hudson, Chairperson

Attachments: Letter of request from Dave Jones  
Ad notice  
Letter from the Nitro Church of Christ  
Petition from citizens of the affected area



## Toy Town Racing

Dave Jones - Watercraft & Go-Kart Performance • 1108 Main Avenue • Nitro, WV 25143 • Telephone (304) 722-1104 • Fax (304) 722-0438

4-1-96

Margaret Hudson  
Chairperson Planning Commission  
Nitro WV. 25143

I am writing this letter to request that the property located at 16 Layne Ave. be rezoned from R-2 to B-1 in order to build a new building for our business. We are in the process of purchasing the property from James Saffel in Florida.

We are on a very tight time schedule because summertime is our busiest time of the year. We will have to demolish the existing building and erect a new building before summer. I would appreciate the Commission giving us a answer as soon as possible.

Thank you

Dave Jones  
Owner Toy Town Racing

755-9500

# Nitro Church of Christ

Corner of Lock and Main  
20 Main Avenue  
Nitro, WV 25143  
(304) 755-5788



1

April 26, 1996

Margaret Hudson  
Planning Commission  
105 Kanawha Avenue South  
Nitro, WV 25143

Dear Miss Hudson,

There has been quite a bit of talk in the neighborhood recently concerning an individual wanting to buy the lot at 16 Layne Avenue to put in a business.

As you may or may not know, we have had considerable headaches with past adjoining businesses, using and abusing our parking lot. In fact, we have had some damage done, and have had to call city hall several times to check on abandoned vehicles left unattended during our regular worship hours.

As a group of citizens, we favor new businesses in our town, but we are surely opposed to a business moving onto a residential street, bringing more traffic to a small street where children live and play.

Please take our concerns into consideration.

Sincerely,

Ronald Tucker  
755-4503

cc: George Atkins, Councilman  
Mayor Don Karnes

## TO WHOM IT MAY CONCERN:

WE THE UNDERSIGNED ARE PROTESTING THE REZONING OF THE PROPERTY  
AT 16 LAYNE AVENUE, NITRO, W. VA. FROM R-2 TO EITHER BUSINESS  
OR COMMERCIAL.

ANY CONSIDERATION YOU CAN GIVE IN THIS MATTER WOULD BE GREATLY  
APPRECIATED.

THANK YOU,  
THE CITIZENS OF NITRO

- |  |   |
|--|---|
| 1. Orpha Willard<br>128 Main Ave.<br>Nitro, W. V. 25143  | 21. David M. Smith<br>132 Main Ave. Nitro |
| 2. Judy Williams - 16 Layne Ave                          | 22. Louise Sax<br>127 Main Ave Nitro      |
| 3. Samuel L. Williams - 18 Layne Ave                     | 23. J. M. Sax<br>122 Main Ave Nitro       |
| 4. Viola Davidson<br>134 Main Ave Nitro                  | 24. Belinda Scapel<br>14 Layne Ave. Nitro |
| 5. Marilyn Davidson<br>134 Main Ave. Nitro, W. Va.       |   |
| 6. Ruby E. Cox<br>18 1/2 Layne Ave. Nitro, W. Va.        |   |
| 7. Jeffrey G. Williams<br>17 Layne Ave. Nitro, W. Va.    |   |
| 8. Ina Thomas<br>19 Layne Ave. Nitro, W. Va.             |   |
| 9. Blanche Phillips<br>20 Layne Ave. Nitro, W. Va.       |   |
| 10. June Higginbotham<br>21 1/2 Layne Ave. Nitro, W. Va. |   |
| 11. Ronald E. Ducker<br>103 Layne Ave. Nitro, W. Va.     |   |
| 12. Percy Ann Tucker<br>103 Layne Ave. Nitro, W. Va.     |   |
| 13. Orville Wright<br>104 Layne Ave. Nitro, W. Va.       |   |
| 14. Fay L. Bates<br>101 Layne Ave. Nitro, W. Va.         |   |
| 15. Doreen M. Bates<br>101 Layne Ave Nitro.              |   |
| 16. Gerald W. Marion<br>132 1/2 Main Ave. Nitro, W. Va.  |   |
| 17. Betty J. Marion<br>132 1/2 Main Ave. Nitro, W. Va.   |   |
| 18. Angel M. Webb<br>130 Main Ave Nitro, W. Va.          |   |
| 19. Paula Reivitts<br>131 Main Ave. Nitro, W. Va.        |   |
| 20. Martha Thomas  |   |

ORDINANCE NO. 96-04

AN ORDINANCE ABANDONING AND DISCLAIMING  
ANY INTEREST OF THE CITY OF NITRO, WEST  
VIRGINIA, IN A CERTAIN STRIP OF LAND  
APPROXIMATING 30 FEET IN WIDTH, BEING  
PART OF RIVER DRIVE, AND LOCATED ON THE  
SOUTHERLY LINE OF LOTS 14 THROUGH 26 OF  
EAST CRAWFORD SECTION TWO IN THE CITY OF  
NITRO, NITRO DISTRICT, KANAWHA COUNTY, WEST VIRGINIA

WHEREAS, by map of East Crawford Section Two, as shown upon that certain plat titled, "Property Map for John M. and Anne G. Brown Being Tax Parcels 76, 77, 86.2, 89, 93, & 94 East Crawford Sec. Two in the City of Nitro, Nitro District, Kanawha County, WV, Scale: 1" = 30', prepared by Wilkinson Surveying and Engineering, Inc., dated March 31, 1995, Rev. March 28, 1996, R/W Abandoned," a copy of which is attached hereto and marked as Exhibit A, now within the city limits of the City of Nitro, there is laid down and shown part of a certain street designated River Drive, approximately 30 feet in width, and running in a easterly-westerly direction approximately 364.62 feet, and in a northerly-southerly direction approximately 410.40 feet, and containing 19,857 square feet, more or less; and

WHEREAS, some question has arisen to whether there has ever been a complete dedication of this part of River Avenue as a public street inasmuch as the City of Nitro has never accepted said street, there has never been any use of it by the general public as a street for either pedestrian or vehicular traffic, nor has there ever been any municipal order or action accepting what might be construed as an offer of dedication by the recordation of said map

of East Crawford Section Two, nor has the City of Nitro ever exercised any act of ownership or dominion and control over this strip of land by way of maintaining, repairing, or paving it; and

WHEREAS, it is the interest of the public at large, including the citizenry of the City of Nitro, to avoid any possible responsibility or liability on the part of said City to maintain, repair, or pave said strip of land in the future; and since it has never been required for public use, Council now desires to abandon any right or rights of the City of Nitro in and to said strip of land known as part of River Drive.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Nitro:

1. That this Council does hereby abandon and disclaim any interest the City of Nitro may have as a street, right of way, alleyway, or walkway for the purpose or purposes of pedestrians or vehicular traffic, that part of River Avenue consisting of a certain strip of land approximately 30 feet in width, and running in a easterly-westerly direction approximately 364.62 feet, and in a northerly-southerly direction approximately 410.40 feet, and containing 19,857 square feet, more or less, as shown upon the aforesaid map of East Crawford Section Two attached to this Ordinance as Exhibit A.

2. And further, this Council does abandon and disclaim any rights to said strip of land for use by said City of Nitro, its citizens, or the public at large, to go upon, use or claim any right or title thereto.

3. And further, this Council acknowledges that the portion of River Avenue consisting of said strip of land was never accepted by the City of Nitro as a public street.

Passed on First Reading: 4/16/96

Adopted on Second Reading: 5/7/96

Don Karnes  
DON KARNES, MAYOR  
Robert D. Sibley  
CITY RECORDER

f:\wp51\client\nitro\ordinan.2

ORDINANCE NO. 96-05

AN ORDINANCE TO PROVIDE TAX INCENTIVES FOR  
ECONOMIC DEVELOPMENT TO INDUSTRIAL AND COMMERCIAL  
DEVELOPERS, GRANTING TAX CREDITS AND/OR REBATES  
UP TO ONE HUNDRED PERCENT (100%) OF THE BUSINESS  
AND OCCUPATION TAX PAID TO THE CITY

WHEREAS, the City of Nitro has a vital interest in aggressively pursuing economic development that will bring new jobs and resources to the City for the twenty-first century; and

WHEREAS, the addition of large commercial and industrial developments that bring increased traffic will benefit existing businesses and spur additional economic opportunities; and

WHEREAS, the high land development and construction costs due to the hilly terrain, lack of public utilities, and limited access have impeded economic development in many areas of the City and in areas that could potentially become annexed to the City; and

WHEREAS, other cities in the surrounding area are offering incentives to attract new economic development, putting the City at a competitive disadvantage; and

WHEREAS, the granting of incentives to promote economic development that will provide growth, jobs, and tax revenue for the City is in the public interest;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Nitro, Kanawha and Putnam Counties, West Virginia, that Council hereby authorizes the mayor to pursue agreements with industrial and commercial developers granting tax credits of up to one-hundred percent (100%) of the Nitro business and occupation tax owed, or rebates of up to one-hundred percent (100%) of the Nitro business



and occupation tax paid, as a result of the development; provided that any such agreement contain the following provisions:


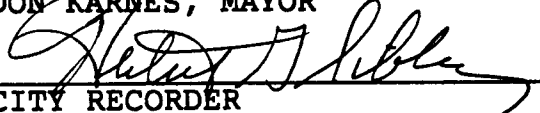
a. An agreement by the developer that the facility will provide a minimum of 50 new jobs within 12 months of the first day of occupation of the facility;

b. That Council review and approve any agreement proposed to be entered into between the City of Nitro and/or the Nitro Development Authority with any industrial and commercial developer by resolution, with said agreement being made a part of the public record.

That the mayor may enter into agreements with the Nitro Development Authority in order to carry out the purposes of this Resolution, under the same terms and conditions as set forth above.

Passed on First Reading: April 16, 1996

Adopted on Second Reading: MAY 7, 1996

  
\_\_\_\_\_  
DON KARNES, MAYOR  
  
\_\_\_\_\_  
CITY RECORDER



DON KARNES  
MAYOR

**PROCLAMATION 96-02**

**A PROCLAMATION COMMEMORATING POLICE  
WEEK MAY 12, THROUGH MAY 18, 1996**

**WHEREAS**, the Congress and President of the United States have designated May 15 as Peace Officers Memorial Day, and the week in which it falls as Police Week; and

**WHEREAS**, the members of the law enforcement agency of Nitro plan an essential role in safeguarding the rights and freedoms of the citizens of Nitro; and

**WHEREAS**, it is important that all citizens know and understand the problems, duties and responsibilities of their police department, and that members of our police department recognize their duty to serve the people by safeguarding life and property by protecting the innocent against deception and the weak against oppression or intimidation; and

**WHEREAS**, the police department of Nitro has grown to be a modern and scientific law enforcement agency which unceasingly provides a vital public service;

**NOW , THEREFORE**, I, Don Karnes, do hereby call upon all patriotic, civic, and educational organizations to observe the week of May 12, through May 18, 1996 as **Police Week**, with appropriate ceremonies in which all of our people may join in commemorating police officers, past and present, who by their faithful and dedicated service to their communities and, in so doing, have established for themselves and enviable and enduring reputation for preserving the rights and security of all citizens.

I, further call upon all citizens of Nitro to observe **Wednesday, May 15, 1996** as "**POLICE OFFICERS MEMORIAL DAY**" in honor of those peace officers who, through their courageous deeds have lost their lives or have become disabled in the performance of duty.

Passed this       day of May, 1996.

DON KARNES, MAYOR

RESOLUTION NO. 96-9

A RESOLUTION TO ANNEX TERRITORY CONTIGUOUS  
WITH THE PRESENT BOUNDARIES OF THE  
CITY OF NITRO BY MINOR BOUNDARY ADJUSTMENT

WHEREAS, the City of Nitro, a municipal corporation, by its council, wishes to apply to the Kanawha County Commission for permission to annex by minor boundary adjustment 4.427 acres of real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, West Virginia.

WHEREAS, the City Attorney, Phillip D. Gaujot, is directed to file with the Kanawha County Commission, an application to annex by minor boundary adjustment real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, as shown upon that certain metes and bounds description attached hereto and marked as Exhibit "A" and incorporated herewith; and,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Nitro, West Virginia, that the City Attorney, Phillip D. Gaujot, proceed with the application filed with the Kanawha County Commission to annex by minor boundary adjustment real estate in Kanawha County, West Virginia, adjoining and contiguous with the City of Nitro, as shown upon that certain metes and bounds description attached hereto and marked as Exhibit "A" and incorporated herewith.

Motion Made by Councilman JAMES HUTCHINSON,  
Seconded by Councilman STEVEN E. WEST to  
adopt this resolution.

Motion carried unanimously.

ADOPTED: MAY 7, 1996

  
MAYOR

  
RECORDER

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement"), made and entered into this 18<sup>th</sup> day of June, 1996, by and among the CITY OF NITRO, a State of West Virginia Municipal Corporation, (the "City"), THE CROSS LANES DEVELOPMENT LIMITED LIABILITY COMPANY, a Missouri Limited Liability Company, (the "Company") and SOLCO, INCORPORATED, a West Virginia corporation ("SOLCO"), PAR-COM ASSOCIATES, LIMITED PARTNERSHIP, a West Virginia limited partnership ("PAR-COM"), William Allan Storage, Jr. and his wife, Judy Storage by Michael Charles Storage, their attorney-in-fact, ("WAS"), Tami Wayne Storage and his wife Wendy Storage ("TWS"), Michael Charles Storage and his wife Kathy Storage ("MCS"), and Jerry Clark Storage and his wife, Hoda Storage by Michael Charles Storage their attorney-in-fact ("JCS"), as joint tenants with rights of ownership, WAS, TWS, MCS and JCS being collectively referred to as the "Storages".

WITNESSETH

WHEREAS, the Company has contracted by virtue of that certain (i) Land Purchase Option Agreement dated September, 1995, to acquire certain real property consisting of approximately 8 acres, to be annexed into the City of Nitro, Kanawha County, West Virginia, and (ii) Option and Purchase and Sale Agreement dated as of November 7, 1995 with Par-Com Associates Limited Partnership to acquire certain real property consisting of approximately 50 acres to be annexed into the City of Nitro, Kanawha County, West Virginia, and (iii) Purchase and Sale Agreement dated April 30, 1996 between Company and Storages to acquire certain real property consisting of approximately 0.397 acres to be annexed into the City of Nitro, Kanawha County, West Virginia, said real property collectively being more particularly described on Exhibit "A", attached hereto and by reference made a part hereof (the "Property"); and

WHEREAS, SOLCO and PAR-COM have agreed to permit the annexation of their property, consisting of approximately 58 acres as more particularly described in Exhibit "A-1" attached hereto and by reference made a part hereof (the "Storage Property"), to the City of Nitro in consideration of the abatement of certain business and occupation taxes as provided for in this Agreement.

WHEREAS, the Company desires to construct a community shopping center on the Property; and

WHEREAS, as part of the Development (as hereinafter defined), the Company will construct certain infrastructure improvements in accordance with the Company's development plans; and

WHEREAS, City has determined that it is essential to the economic and social welfare of City that City promote the

economic vitality of the community by assuring opportunities for development and sound and stable commercial growth; and

WHEREAS, City desires to have Company construct a retail shopping center on the Property which will help to improve the social and economic welfare of City, and that the proposed Development contemplated in this Agreement will enhance the tax base of City to the benefit of City and other governmental entities, and that the powers exercised hereunder are found to be in furtherance of a public use and essential to the public interest; and

WHEREAS, Company desires to conclude its purchase and acquisition of the Property and to construct and develop the Development thereon; and

WHEREAS, in order to make it economically feasible for Company to purchase the Property and to construct the Development, City has agreed in cooperation with the Nitro Development Authority, to reimburse Company for a portion of Companies site and off-site development costs.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Company hereby agree as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1 Definitions. For purposes of this Agreement, words and terms used in this Agreement shall have the following meanings:

"Additional Sales or Services Business and Occupation Taxes" means the amount of Business and Occupation Taxes from sales or services income on the Property received by the City during each Qualifying Year in excess of the Adjusted Base Year Business and Occupation Taxes.

"Adjusted Base Year Business and Occupation Taxes" means for the first Qualifying Year the amount of Business and Occupation Taxes received by the City for the preceding calendar year from sales or services income on the Property.

"Business and Occupation Taxes" means a privilege tax imposed on the gross sales or proceeds received within the corporate limits of the City of Nitro in the codified ordinances of the City of Nitro, and authorized by West Virginia Code 38-13-5, or such substitute taxes enacted to replace, modify or substitute for the taxes identified herein.

"Certificate of Substantial Completion" means AIA Document G-704 Certificate of Substantial Completion or comparable documents executed by the Contractor and the Company with respect to the Improvements.

"Company Share" means one hundred percent (100%) of the first Four Hundred Thousand Dollars of Business and Occupation Taxes and Eighty Percent (80%) of the Business and Occupation Taxes thereafter.

"Completion of Construction" means the completion of construction of the improvements as evidenced by a Certificate of Substantial Completion.

"Contractor" means the Contractor(s) selected by the Company for the construction of all or part of the Improvements.

"Development" means the Company's proposal to develop a retail shopping center consisting of approximately 400,000 square feet of shop space and seven (7) outparcels.

"Excusable Delay" means any and all causes beyond the control of the Company, including but not limited to acts of God, fire or other casualty, strike, lockout or other labor dispute, weather conditions, shortages or unavailability of material, labor or utilities, vandalism or laws, failure of any third party to perform obligations, orders or regulations of any Court, governmental, civilian or military authority.

"Improvements" means with respect to Sections 3.1 and 3.2 of this Agreement, the Wal-Mart Store and common area related thereto and with respect to the remainder of the Agreement, the improvements associated with the development of a community shopping center.

"Nitro Development Authority" means that Authority authorized, created and established by the City of Nitro pursuant to Chapter 7, Article 12 of the West Virginia Code, (W.Va. Code 7-12-1 et. seq.).

"Qualifying Years" means each twelve (12) month period from the date of execution of this Agreement through and including the Term of the Agreement.

"Special Allocation Fund" means the separate fund account established by the City for the deposit and disbursement of the Additional Sales or Services Business and Occupation Taxes.

"Term" means a term commencing with the full execution of the Agreement and ending after twenty (20) Qualifying Year.

Section 1.2 Construction. This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

- (a) Definitions include both singular and plural;
- (b) Pronouns include both singular and plural and cover all genders;
- (c) Headings of section herein are solely for convenience or reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof; and
- (d) All exhibits attached to this Agreement shall be and are incorporated by reference.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. In order to induce the Company to enter into this Agreement and to allow for the annexation of the property into the City, the City hereby represents and warrants to the Company as follows:

(a) Organization and Standing. The City is duly organized, validly existing and in good standing under the Constitution and laws of the State of West Virginia.

(b) Power and Authority. The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting creditor's rights as may from time to time be in effect.

(d) No Violation. Neither the execution nor the delivery of this Agreement nor the performance of the City's agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree, or other law by which the City may be bound.

(e) Governmental Consents and Approvals. Except for the Nitro Development Authority, no consent or approval by any other governmental authority is required in connection with the execution and delivery by the City of this Agreement or the performance by the City of its obligations hereunder.

Section 2.2 Representations and Warranties of the Company. In order to induce the City to enter into this Agreement, the Company represents and warrants to the City as follows:



(a) Organization. The Company is a Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of Missouri, and is duly qualified to transact business in, and in good standing under, the laws of the State of West Virginia.

(b) Power and Authority. The Company has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary actions by the Company. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Company, enforceable against the Company in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting creditor's rights as may from time to time be in effect.

(d) No Violation. Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Company is a party or by which the Company or any of its assets may be found.

(e) No Proceedings or Judgments. There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened before any court, administrative or regulatory body, or governmental agency to which the Company is a party or which will, or could, prevent the Company's performance of its obligations under this Agreement.

### ARTICLE III

#### CONSTRUCTION OF DEVELOPMENT; ACQUISITION OF RELATED EQUIPMENT; ZONING APPROVALS

Section 3.1 Agreement to Construct Improvements. Within a reasonable period of time following the Company's acquisition of the Property, the Company shall commence site work with respect to the Development and shall proceed to complete the Improvements for the Development. Contemporaneously with the commencement of such site work, the Company will pay the City the lump sum and one time amount of Twelve Thousand Dollars (\$12,000.00) to assist in deferring the cost incurred by the City for additional police. Absent any time extension by reason of an Excusable Delay, the Company shall cause the completion of construction of the Improvements within three (3) years from the time of acquisition of the Property by the Company.

Furthermore, THF will cooperate with the City in the City's efforts during the one year period following the full execution of this Agreement, to lease or finance the purchase of a fire truck and garbage disposal truck for a monthly rental or payment, being separately referred to as the "Fire Fee" and the "Garbage Fee" and collectively referred to as "Service Fees" (none of the Service Fees will include operating, maintenance or insurance costs). THF covenants and agrees during the term of this Agreement to provide a letter of credit to secure the City's Fire Fee and Garbage Fee to the extent of such annual Service Fee, provided that the letter of credit shall not exceed Four Hundred Five Thousand Dollars (\$405,000.00). The letter of credit will be for an initial term of one year and shall thereafter be renewable during the term of this Agreement provided the City is not in default hereunder and the Company is receiving the Company Share as herein defined. Upon receipt by the City of the fire truck or garbage truck, the City may bill the Development for such Fire Fee and Garbage Fee incurred by the City as set forth herein on a monthly basis and the Company will cause the Development to forthwith pay such amounts to the City. Provided that the total annual charge to the Development for the Service Fees shall not exceed Five Hundred Forty Thousand Dollars (\$540,000.00) for a period of ten years commencing with the first such Service Fee payment. Acquisition of the equipment referenced herein shall be completed by the receipt of competitive bids. The City and the Company will coordinate the final selection process.

Section 3.2 Failure to Complete Improvements. In the event a Certificate of Completion is not issued with respect to the Improvements within the time limit set forth in Section 3.1 hereof, the City's obligation to remit the sums provided for in Article IV hereof shall be suspended until such time as such Improvements are completed, on which date, the obligations under Article VI hereof shall once again commence.

Section 3.3 Zoning, Permits and Land Use. The City shall cooperate with the Company to provide zoning and annexation sufficient for the development of the Development and the uses therein. The City shall provide zoning of B-2, Central Business District; C-1, Heavy Commercial District; and 1, Light Industrial, for the development consistent with the plans for the Development of the Company. The City shall assist the Company in obtaining any and all permits, approval of this Agreement, and development plan approval necessary to proceed with the development, including but not limited to parking and street requirements, curb cuts, building permits, sign permits and any other permit or requirement of any Federal, State or Local Agency. The City covenants and agrees to cooperate with the Company with respect to the vacation of such streets, alleys and other public right-of-ways within its jurisdiction as may be necessary for development of the Development in accordance with a final site plan prepared by the Company.

ARTICLE IVABATEMENT, ALLOCATION AND PAYMENT  
OF BUSINESS AND OCCUPATION TAXES

Section 4.1 Abatement of Construction and Rental Business and Occupation Taxes. From the date of this Agreement and for seven Qualifying Years thereafter, the City agrees to abate and/or refrain from taking any action to institute any form or amount of Business or Occupation Taxes relating to any construction activities for all or any portion of the Property or Development.

During the Term of this Agreement, the City agrees to abate and/or refrain from taking any action to institute any form or amount of Business or Occupations Taxes relating to any rental or leasing activity for all or any portion of the Property or Development.

From the date of this Agreement and for seven Qualifying Years thereafter, the City agrees to abate and/or refrain from taking any action to institute any form or amount of Business or Occupation Taxes relating to any construction activities and rental or leasing activities for all or any portion of the Storage Property.

Section 4.2 Additional Sales Business and Occupation Taxes.

(a) Payment. For each Qualifying Year the City shall within two (2) business days, and as often as it receives the Additional Sales or Services Business and Occupation Taxes, remit to the Nitro Development Authority, for payment to the Company, Company's Share of the Additional Sales or Services Business and Occupation Taxes.

(b) Establishment of and Deposit into Special Allocation Fund. The City acknowledges the existence of the Special Allocation Fund. Upon receipt, and until such time as the City has paid all amounts due and owing under this Agreement, the City shall promptly deposit the Additional Sales Business or Services Business and Occupation Taxes into a separately designated account. The City agrees to pledge and apply the Additional Sales or Services Business and Occupation Taxes in the Special Allocation Fund to the payment of the amounts due hereunder, and to otherwise maintain the Special Allocation Fund in accordance with this Agreement. The City further agrees that the City shall not further encumber or pledge any portion of the Additional Sales or Services Business and Occupation Taxes during the term of this Agreement or take any actions in connection therewith inconsistent with the terms and conditions of this Agreement.

ARTICLE VDEFAULTS AND REMEDIESSection 5.2 Defaults; Rights to Cure.

(a) General. Failure or delay by either Party to timely perform any term or provision of this Agreement shall constitute a default under this Agreement. The Party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy such default and thereafter proceed with diligence to cure such default. The Party claiming such default shall give written notice of the alleged default to the Party alleged to be in default specifying the default complained of. Except as otherwise expressly herein provided and except as required to protect against immediate, irreparable harm, the Party asserting a default may not institute proceedings against the other Party until thirty (30) days after having given such notice. If such default is cured within such thirty (30) day period, the default shall not be deemed to constitute a breach of this Agreement. If the default is one which cannot reasonably be cured within the thirty (30) day cure period, and the defaulting party is exercising due diligence to cure such default, such period shall be extended for such time as is reasonably necessary for the curing of the same, so long as there is diligent proceeding to cure such default. If such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. However, a default not cured as provided above shall constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(b) Exception. The notice and thirty (30) day cure provisions above in Section 5.1(a) shall not apply to the City's obligation to pay the amounts specified in Article IV.

Section 5.2 Remedies. In addition to remedies available at law, the City in the event of a default by the Company under any of the terms and provisions of this Agreement, may institute legal action against the Company for specific performance or other appropriate equitable relief. Otherwise, the Company may prove against the City all remedies available at law or in equity.

ARTICLE VIMISCELLANEOUS PROVISIONS

Section 6.1 Entire Contract and Amendments. This Agreement (together with the Exhibits attached hereto) is the entire contract between the City and the Company relating to the subject

matter hereof, supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the City and the Company, and may not be modified or amended except by a written instrument executed by both of the Parties.

Section 6.2 Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the City and the Company and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the City or the Company, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Company. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 6.3 Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

Section 6.4 Waiver. Any Party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 6.5 Cooperation and Further Assurances. The City and the Company each covenants and agrees that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the conveying, transferring, pledging, assigning and confirming unto the City or the Company or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 6.6 Severability. If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of such section, subsection, term or provision of this Agreement or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

Section 6.7 Notices. All notices, demands, request, consents, approvals or other communications or instruments required or otherwise given under this Agreement shall be in writing and shall be executed by the party or an officer, agent

or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally or by telecommunication actually received, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows (unless another address is provided in writing):

To the Company: Michael H. Staenberg  
THF Cross Lanes Development  
Limited Liability Company  
955 Executive Parkway  
Suite 210  
St. Louis, MO 63141  
Tel: 314/878-4044  
Fax: 314/878-4004

With a copy to: Alan Bornstein  
SONNENSCHN NATH & ROSENTHAL  
One Metropolitan Square  
Suite 3000  
St. Louis, MO 63132  
Tel: 314/259-5803  
Fax: 314/259-5959

To the City: \_\_\_\_\_  
City of Nitro  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_

Section 6.8 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective authorized successors and assigns;

Section 6.9 No Joint Venture, Agency, or Partnership Created. Nothing in this Agreement nor any actions of the Parties to this Agreement shall be construed by the Parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.



**THE CROSS LANES DEVELOPMENT  
LIMITED LIABILITY COMPANY**

By: Michael H. Staenberg, Manager

**SOLCO, INCORPORATED**

By: \_\_\_\_\_

**PAR-COM ASSOCIATES LIMITED  
PARTNERSHIP**

By: \_\_\_\_\_

William Allan Storage Jr. & Judy Storage  
William Allan Storage, Jr. and his wife Judy Storage, by Michael Charles Storage, their attorney-in-fact

Tami Wayne Storage  
Tami Wayne Storage

Wendy Storage  
Wendy Storage

Michael Charles Storage  
Michael Charles Storage

\_\_\_\_\_  
Kathy Storage

Jerry Clark Storage & Hoda Storage  
Jerry Clark Storage and his wife, Hoda Storage, by Michael Charles Storage, their attorney-in-fact



**EXHIBIT A**

Those three certain Tracts as shown and described are that certain map, prepared by Triad Engineering, Inc., having Drawing No. C95153-PI and dated April 18, 1996 and consisting of the following:

**Tract 1:****Description of a 0.397 Acre Tract**

Description of a tract of land, situate in Union District, Kanawha County, West Virginia, lying southwest of Tri-State Greyhound Park Ltd. Being a part of the Storage property recorded in DB-1981, and being more particularly described as follows:

Beginning at a point, said point being a set stone, in the northeast corner of the Storage property as recorded in DB-1981. PG-92; thence from point of beginning and along a reference line, S75°-17'-53"E a distance of 2467.65 feet to a point, said point being the true point of beginning; thence, from the true point of beginning, N36°-22'-34"E, a distance of 141.57 feet to a point; thence, from said point, N52°-49'31"E, a distance of 19.16 feet to a point; thence, from said point, N36°-22'-24"E, a distance of 112.83 feet to a point; thence, S12°-30'-16"W, a distance of 298.19 feet to a point; thence N53°-40'-02"W, a distance of 126.10 feet to the true point of beginning, containing 0.397 acres, more or less.

Tract 2:

## Description of a 52.945 Acre Tract

Description of a tract of land situate in Union District, Kanawha County, West Virginia, lying southwest of Tri-State Greyhound Park Ltd. Being a part of the Storage property as recorded in DB-1981, PG-92 and including a 1.124 acre parcel as recorded in DB-2246, PG-853, and being more particularly described as follows:

Beginning at a point, said point being a set stone in the northeast corner of the Storage property as recorded in DB-1981, PG-92; thence from point of beginning and along the easterly line of said Storage property, S56°-40'-55"W a distance of 117.24 feet to an Iron Pin; thence S34°-36'-27"W a distance of 150.98 feet to an Iron Pin; thence S45°-12'-28"W a distance of 125.05 feet to an Iron Pin; thence S55°-11'-35"W a distance of 124.55 feet to an Iron Pin; thence S81°-59'-23"W a distance of 108.79 feet to an Iron Pin; thence N33°-19'-58"W a distance of 38.35 feet to an Iron Pin; thence S56°-40'-55"W a distance of 486.37 feet to an Iron Pin; thence leaving the easterly line of said Storage property, N53°-37'-38"W a distance of 152.82 feet to a point; thence S36°-22'-19"W a distance of 872.84 feet to a point; thence N53°-37'-35"W a distance of 851.75 feet to a point; thence N88°-09'-31"W a distance of 45.43 feet to a point; thence N53°-40'-02"W a distance of 4.49 feet to a point; thence N12°-30'-16"E a distance of 298.19 feet to a point; thence N36°-22'-24"E a distance of 417.65 feet to a point; thence N60°-48'-33"E a distance of 109.43 feet to a point; thence N36°-22'-23"E a distance of 1173.60 feet to a point in the northerly line of said Storage property; thence along said line S62°-38'-53"E a distance of 65.16 feet to an Iron Pin; thence S51°-28'-05"E a distance of 436.40 feet to an Iron Pin; thence N81°-06'-05"E a distance of 67.89 feet to a point; thence S51°-28'-05"E a distance of 797.41 feet to a point; thence S60°-44'-54"E a distance of 108.60 feet to an Iron Pin; thence S2°-11'-00"W a distance of 83.61 feet to the point of beginning containing 52.945 acres more or less.

Included in the above tract is an 80.00 feet easement for utilities and road along the northerly portion of tract.

Tract 3:

## Description of an 8.818 Acre Tract

Description of a tract of land situate in Union District, Kanawha County, West Virginia, lying southwest of Tri-State Greyhound Park Ltd. Being a part of the Storage property as recorded in DB-1981, PG-92 and including a 1.124 acre parcel as recorded in DB-2246, PG-853 and a 8.818 acre parcel designated as Tract 'A-21' adjoining on the northeast side, and being more particularly described as follows:

Beginning at a point, said point being a set stone in the northeast corner of the Storage property as recorded in DB-1981, PG-92; thence from point of beginning and along the line of said Storage property, N2°-11'-00"E a distance of 83.61 feet to a point, said point being an iron pin and the true point of beginning; thence from the true point of beginning along the line of said Storage property, N60°-44'-54"W a distance of 108.60 feet to a point; thence, N51°-28'-5"W a distance of 797.41 feet to a point; thence, S81°-6'-5"W a distance of 67.89 feet to an Iron Pin; thence leaving said Storage line, N31°-44'-28"E a distance of 93.89 feet to an Iron Pin in the southerly line of an 80.00' right-of-way (Lakeview Drive); thence N28°-39'-45"E a distance of 80.00 feet to an Iron Pin in the northerly line of said 80.00' right-of-way (Lakeview Drive); thence along said right-of-way S61°-20'-15"E a distance of 105.02 feet to an Iron Pin; thence leaving said right-of-way N3°-39'-02"E a distance of 326.80 feet to an Iron Pin; thence N54°-16'-51"E a distance of 100.00 feet to an Iron Pin; S13°-06'-09"E a distance of 156.04 feet to an Iron Pin; thence N78°-27'-09"E a distance of 180.23 feet to an Iron Pin in the westerly right-of-way of Tri-State Greyhound Park access road; thence along said right-of-way and with a curve to the left having a radius of 855.50 feet, a chord bearing of S22°-16'-42"E, a distance of 317.82 feet to an Iron Pin; thence continuing along said right-of-way S32°-59'-00"E a distance of 162.56 feet to a Iron Pin; thence with a curve to the left, having a radius of 855.50 feet, a chord bearing of S44°-43'-27"E, a distance of 364.79 feet to an Iron Pin; thence leaving said right-of-way of Tri-State Greyhound Park access road, S32°-07'-57"W a distance of 173.62 feet to an Iron Pin; thence S49°-00'-05"W a distance of 108.12 feet to the true point of beginning containing 8.818 acres more or less.

Included in the above tract is an 80.00 feet easement for utilities and road along the southerly portion of tract.

The "Storage Property" shall consist of the following described 184.195 acre tract excepting the three tracts described in Exhibit A.

### Description of a 184.195 Acre Tract

Description of a tract of land situate in Union District, Kanawha County, West Virginia, lying southwest of Tri-State Greyhound Park Ltd. Being a part of the Storage property as recorded in DB-1981, PG-92 and including a 1.124 acre parcel as recorded in DB-2246, PG-853 and a 8.818 acre parcel designated as Tract 'A-21' adjoining on the northeast side, and being more particularly described as follows:

Beginning at a point, said point being a set stone in the northeast corner of the Storage property as recorded in DB-1981, PG-92; thence from point of beginning and along the easterly line of said Storage property, S56°-40'-55"W a distance of 117.24 feet to an Iron Pin; thence S34°-36'-27"W a distance of 150.98 feet to an Iron Pin; thence S45°-12'-28"W a distance of 125.05 feet to an Iron Pin; thence S55°-11'-35"W a distance of 124.55 feet to an Iron Pin; thence S81°-59'-23"W a distance of 108.79 feet to an Iron Pin; thence N33°-19'-58"W a distance of 38.35 feet to an Iron Pin; thence S56°-40'-55"W a distance of 756.37 feet to a set stone; thence, S11°-21'-12"W a distance of 306.27 feet to a point; thence, S13°-54'-50"W a distance of 225.40 feet to a point; thence, S33°-46'-48"W a distance of 174.90 feet to a point; thence, S57°-2'-11"W a distance of 220.20 feet to a point; thence, S65°-38'-34"W a distance of 232.00 feet to a point; thence, N68°-48'-34"W a distance of 138.00 feet to a point; thence, N60°-36'-11"W a distance of 87.40 feet to a point; thence, N76°-29'-56"W a distance of 116.40 feet to a point; thence, N84°-16'-6"W a distance of 83.60 feet to a point; thence, N86°-4'-00"W a distance of 149.60 feet to a point; thence, N59°-26'-35"W a distance of 170.00 feet to a point; thence, N62°-3'-13"W a distance of 234.70 feet to a point; thence, S82°-49'-54"W a distance of 42.86 feet to a point; thence leaving the line of said Storage property, N41°-47'-16"E a distance of 258.34 feet to a point; thence, N48°-12'-44"W a distance of 100.00 feet to a point; thence, S85°-7'-44"W a distance of 253.44 feet to a point; thence, S88°-50'-11"W a distance of 208.71 feet to a point; thence, S1°-9'-49"E a distance of 208.71 feet to a point in the southerly line of said Storage property; thence, S88°-50'-11"W a distance of 1119.28 feet to a set stone; thence, N27°-54'-9"W a distance of 860.23 feet to a point; thence, N52°-24'-21"E a distance of 3394.00 feet to a point; thence, S36°-23'-5"E a distance of 93.40 feet to a point; thence, S46°-5'-5"E a distance of 317.50 feet to a point; thence, S50°-35'-5"E a distance of 429.00 feet to a point; thence, S62°-38'-53"E a distance of 160.90 feet to an Iron Pin; thence S51°-28'-05"E a distance of 436.40 feet to an Iron Pin; thence leaving said Storage line, N31°-44'-28"E a distance of 93.89 feet to an Iron Pin in the southerly line of an 80.00' right-of-way (Lakeview Drive); thence N28°-39'-45"E a distance of 80.00 feet to an Iron Pin in the northerly line of said 80.00' right-of-way (Lakeview Drive); thence along said right-of-way S61°-20'-15"E a distance of 105.02 feet to an Iron Pin; thence leaving said right-of-way N3°-39'-02"E a distance of 326.80 feet to an Iron Pin; thence N54°-16'-51"E a distance of 100.00 feet to an Iron Pin; thence S13°-06'-09"E a distance of 156.04 feet to an Iron Pin; thence N78°-27'-09"E a distance of 180.23 feet to an Iron Pin in the westerly right-of-way of Tri-State Greyhound Park access road; thence along said right-of-way and with a curve to the left having a radius of 855.50 feet, a chord bearing of S22°-16'-42"E, a distance of 317.82 feet to an Iron Pin; thence continuing along said right-of-way S32°-59'-00"E a distance of 162.56 feet to a Iron Pin; thence with a curve to the left, having a radius of 855.50 feet, a chord bearing of S44°-43'-27"E, a distance of 364.79 feet to an Iron Pin; thence leaving said right-of-way of Tri-State Greyhound Park access road, S32°-07'-57"W a distance of 173.62 feet to an Iron Pin; thence S49°-00'-05"W a distance of 108.12 feet to an Iron Pin; thence S2°-11'-00"W a distance of 83.61 feet to the point of beginning containing 184.195 acres more or less.

Included in the above tract is an 80.00 feet easement for utilities and road along the northerly portion of tract.

Landtech Corporation, LTD.  
P.O. Box 7604  
Charleston, WV 25313

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That we, JERRY C. STORAGE and HODA STORAGE, his wife, residents of c/o AMERIC, P.O. Box 2265, Ataba Square, Cairo, Egypt

have made, constituted and appointed and by these presents do hereby make, constitute and appoint MICHAEL C. STORAGE, a resident of P.O. Box 7004, Charleston, Kanawha County, West Virginia, our true and lawful attorney in fact, for us and in our name, place and stead and for our use and benefit, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now, or shall hereafter become due, owing or payable or belonging to us, and have, use and take all lawful ways and means in our names or otherwise for the recovery thereof, by attachments, arrests, distress or otherwise, and to compromise and agree for the same, and acquittance or other sufficient discharges for the same, for us and in our name, to make seal and deliver, to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments and accept the seizure and possession of all lands and deeds and other assurances, in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage, and hypothecate lands, tenements and hereditaments upon such terms and conditions, and under such covenants as he shall think fit. Also, to bargain, and agree for, buy, sell, mortgage, hypothecate and in every way and manner deal in and with goods, wares and merchandise, choices in action and other property in possession or in action, and to make, do, and transact all and every kind of business of whatsoever nature and kind, and also for us and in our name, and as our act and deed, to sign, seal execute, deliver and acknowledge such deed, leases, and agreements, assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter-parties, bills of lading, bills,

RECORDED  
CLERK OF THE COURT COMMISSION  
KANAWHA COUNTY VIRGINIA  
DATE/11/18/89 10:56:10  
INSTR 1  
BOOK/PAGE 1  
FORM RECD/FILE: 2.00  
51- / 951-  
10364 10364  
POWER

bonds, notes, receipts, evidences of debts, releases and satisfaction of mortgages, judgement and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that our said attorney, or his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.

This power of attorney shall not be affected or terminated by our subsequent disability or incompetence; said power of attorney to be terminated only law, when a conservator or committee may be appointed to act for or on our behalf.

WITNESS the following signatures and seals:

EGYPT  
CITY OF CAIRO  
EMBASSY OF THE UNITED  
STATES OF AMERICA

SS:

Jerry C. Storage  
JERRY C. STORAGE  
Hoda S. Storage  
HODA STORAGE

COUNTRY OF EGYPT,

TO-WIT:

The foregoing instrument was acknowledged before me this 15th day of February, 1989, by Jerry C. Storage and Hoda Storage, his wife.

Janet Petronis  
Janet Petronis  
~~Consul General~~

Consul of the United States of America

THIS INSTRUMENT PREPARED BY:

Jeremiah F. McCormick  
CALWELL, MCCORMICK & PEYTON, L.C.  
2602 First Avenue  
Nitro, West Virginia 25143

I, ALMA Y. KING, do hereby certify  
that this is a true copy from the original  
Teste: ALMA Y. KING, Clerk  
Kanawha County Commission

Date 3-3-89 By Alma Y. King

Deputy

IN WITNESS WHEREOF, we have hereunto set our hands and seals  
this the 1st day of April, 1987, POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

William A. Storage, Jr. (SEAL)  
That we, the undersigned, WILLIAM A. STORAGE, JR.  
JUDITH K. STORAGE, his wife, JUDITH K. STORAGE, Obox 387,  
Centreville, Maryland, 21617, have made, constituted and  
STATE OF Maryland,  
appointed and by these presents do hereby make, constitute and  
COUNTY OF Prince George's, to-wit:  
appoint Michael C. Storage and/or Lucille Storage, residents of  
I, Michael C. Storage, a Notary Public in and for  
650-A Cross Lanes Drive, Nitro, West Virginia 25143, our true  
the county and state aforesaid, do hereby certify that WILLIAM A.  
and lawful attorney in fact, for us and in our names and on my  
STORAGE, JR., and JUDITH K. STORAGE, his wife, whose names are  
behalf to receive and receipt for any and all sums of money or  
signed to the foregoing writing bearing date the 1st day of  
payments due or to become due to us, to deposit in our name in  
April, 1987, have each this day acknowledged the same before me  
any bank or banks any and all money collected or received by  
in my said county.  
them, to pay any and all bills, accounts, claims and demands now  
Given under my hand this the 1st day of April, 1987.  
or hereafter payable by us, to draw checks or drafts upon any and  
My commission expires April 14, 1990  
all bank accounts or deposits belonging to us, to act for us in  
any business in which we are now or have been engaged or  
interested, and generally to do and perform all matters and  
NOTARY PUBLIC  
Prepared by:  
Jeremiah F. McCormick  
Jeremiah F. McCormick  
CALWELL, MCCORMICK & PEYTON, L.C.  
2602 First Avenue, deeds, writings, assurances, and instruments  
Nitro, West Virginia 25143  
which may be requisite or proper to effectuate any contract for  
thing appertaining or belonging to us, or generally to act for  
us in all matters affecting my business or property with the same  
force and effect to all intents and purposes as though we were  
personally present and acting for ourselves, hereby attesting and  
confirming whatsoever our Attorney shall do by authority hereof.

I further direct that the power of attorney granted herein  
shall not be revoked by our incapacitation or adjudication of  
incompetence and that in the event either of the aforesaid events  
shall occur, our true and lawful attorney designated herein shall  
nevertheless be empowered to act in the manner set forth herein.

Kanawha County Commission

IN WITNESS WHEREOF, we have hereunto set our hands and seals  
this the 18<sup>th</sup> day of April, 1987.

William A. Storage, Jr. (SEAL)  
WILLIAM A. STORAGE, JR.

Judith K. Storage (SEAL)  
JUDITH K. STORAGE

STATE OF West Virginia,

COUNTY OF Putnam, to-wit:

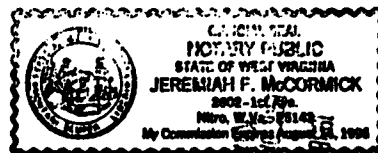
I, Jeremiah F. McCormick, a Notary Public in and for  
the county and state aforesaid, do hereby certify that WILLIAM A.  
STORAGE, JR., and JUDITH K. STORAGE, his wife, whose names are  
signed to the foregoing writing bearing date the 18<sup>th</sup> day of  
April, 1987, have each this day acknowledged the same before me  
in my said county.

Given under my hand this the 18<sup>th</sup> day of April, 1987.

My commission expires August 14, 1990.

Jeremiah F. McCormick  
NOTARY PUBLIC

Prepared by:  
Jeremiah F. McCormick  
CALWELL, MCCORMICK & PEYTON, L.C.  
2602 First Avenue  
Nitro, West Virginia 25143



RECORDED  
APR 19 PM 3:34  
THE COUNTY COMMISSIONER  
PUTNAM COUNTY, WV

This instrument was filed with the Clerk of the County  
Commission of Kanawha County, West Virginia, on  
and the same is admitted to record

Alma G. Perry Clerk  
Kanawha County Commission

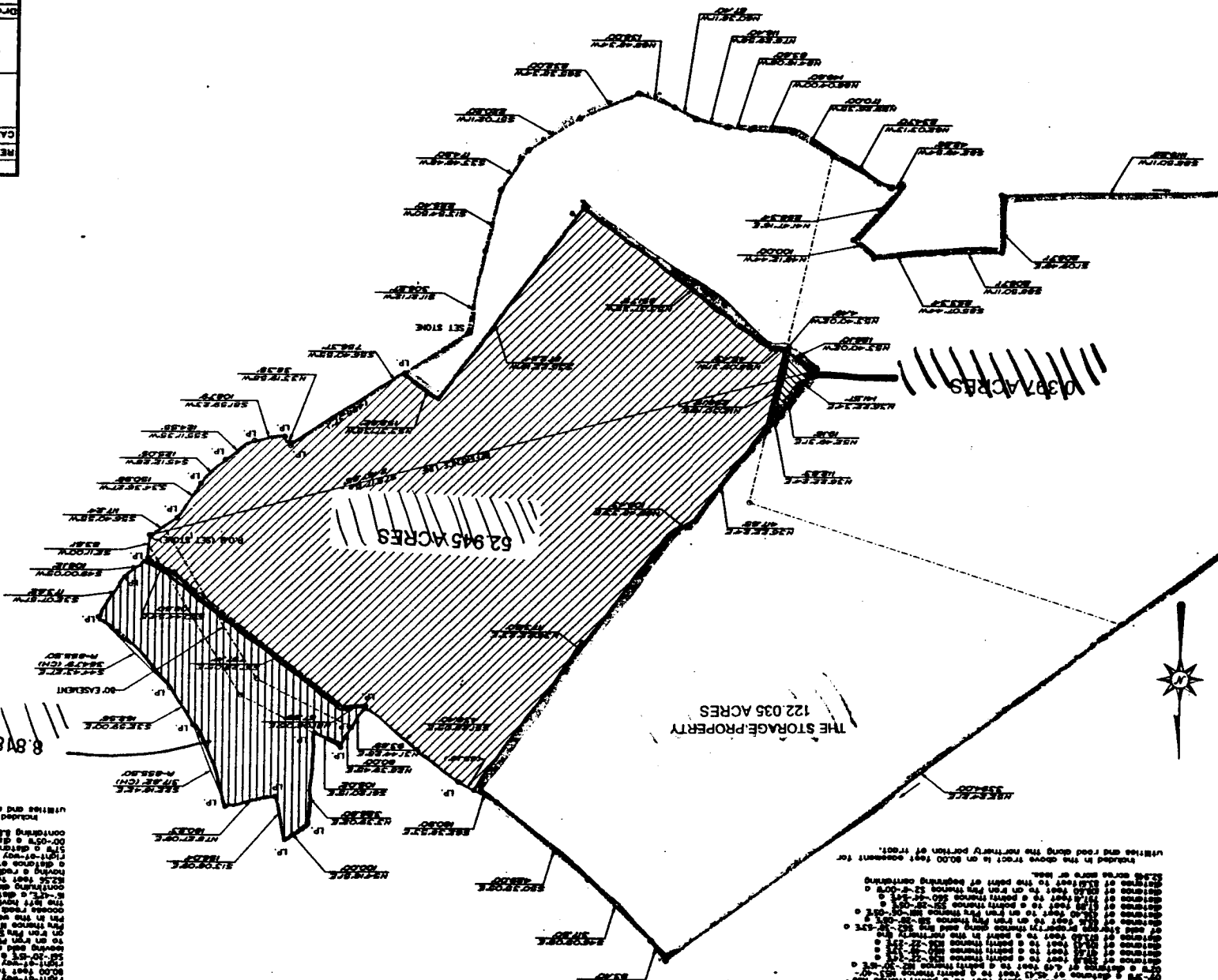
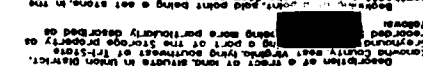
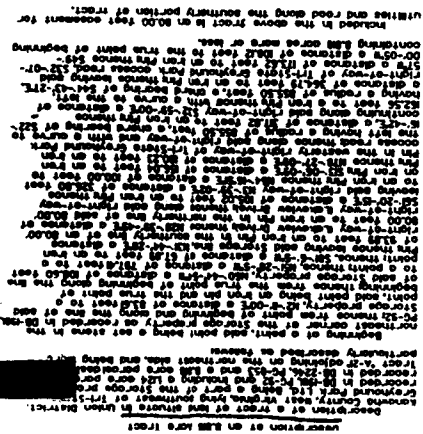
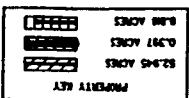


POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, WILLIAM A. STORAGE, JR., and JUDITH K. STORAGE, his wife, residents of Rt. 2, Box 387, Centreville, Maryland, 21617, have made, constituted and appointed and by these presents do hereby make, constitute and appoint Michael C. Storage and/or Lucille Storage, residents of 650-A Cross Lanes Drive, Nitro, West Virginia 25143, our true and lawful attorney in fact, for us and in our names and on my behalf to receive and receipt for any and all sums of money or payments due or to become due to us, to deposit in our name in any bank or banks any and all money collected or received by them, to pay any and all bills, accounts, claims and demands now or hereafter payable by us, to draw checks or drafts upon any and all bank accounts or deposits belonging to us, to act for us in any business in which we are now or have been engaged or interested, and generally to do and perform all matters and things, transact all business, make, execute and acknowledge all contracts orders, deeds, writings, assurances, and instruments which may be requisite or proper to effectuate any matter or thing appertaining or belonging to us, and generally to act for us in all matters affecting my business or property with the same force and effect to all intents and purposes as though we were personally present and acting for ourselves, hereby ratifying and confirming whatsoever our Attorney shall do by authority hereof.

I further direct that the power of attorney granted herein shall not be revoked by our incapacitation or adjudication of incompetence and that in the event either of the aforesaid events shall occur, our true and lawful attorney designated herein shall nevertheless be empowered to act in the manner set forth herein.



AGREEMENT

18th

This Agreement, made and entered into this 18<sup>th</sup> day of June, 1996 by and among the City of Nitro, a State of West Virginia municipal corporation, (the "City") and THF Cross Lanes Development Limited Liability Company, a Missouri limited liability company, (the "Company").

## WITNESSETH:

WHEREAS, the Company has contracted to purchase certain land consisting of approximately 58 acres which is more specifically described in that certain Development Agreement made and entered into between the City, the Company, and other parties; and

WHEREAS, the Company has represented to the City that, upon the satisfaction of four certain Conditions Precedent, the Company would convey certain real estate to the City; and

WHEREAS, the City has relied upon such representations in entering into the Development Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements described above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the City and Company hereby agree as follows:

1. Upon the satisfaction or completion of the four certain Conditions Precedent hereinafter described, then within ninety (90) days after the satisfaction of the last Condition Precedent to be satisfied, the Company will convey to the City, without cost, a parcel of land of approximately one (1) acre hereinafter referred to as the Public Service Parcel.;

2. The four Conditions Precedent which shall be satisfied before such conveyance of the Public Service Parcel are the following:

i. The aforesaid Development Agreement shall have been executed by all parties, duly adopted by the City of Nitro, and shall be in full force and effect;

ii. The Nitro Development Authority, the City and the Company shall have entered into such agreements as may be reasonably required in order to carry into effect the intent and purpose of the Development Agreement;

iii. The 58 acres herein referred to, and the other property described in the Development Agreement will have been duly annexed by the City of Nitro and the annexation approved by the Kanawha County Commission, and such order of the Kanawha County shall have become final and non-appealable;

iv. The Company has completed the purchase of the 58 acres described in the Development Agreement and has acquired title to such real estate.

3. The City will use the Public Service Parcel for non-commercial purposes including the establishment of such facilities for public services as the City may desire, including, but not limited to, a fire station, police services, emergency services and other City services;

4. The location and configuration of the Public Service Parcel will be designated by the Company with the advice and consultation of the City. The Public Service Parcel will not be a parcel that is a prime commercial or retail parcel within the 58 acres but the parcel will be located in a reasonable location for its purposes;

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed by the duly authorized officers as of the date set forth above.

CITY OF NITRO, WEST VIRGINIA

By: Don Karnes

Title: MAYOR

THF CROSS LANES DEVELOPMENT LIMITED  
LIABILITY COMPANY

By: [Signature]  
Michael H. Staenberg,  
Manager

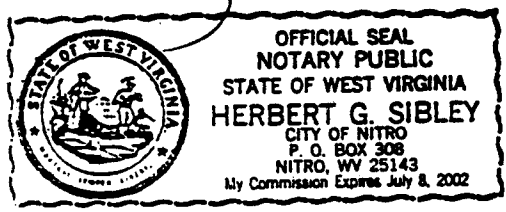
STATE OF WV

COUNTY OF Kanawha, to-wit:

The foregoing Agreement was acknowledged before me by DON KARNES of the  
City of Nitro, for and on behalf of said City of Nitro, this 19 day of JUNE, 1996.

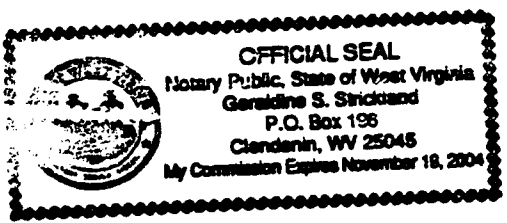
My commission expires: 7/08/2008  
[Signature]  
Notary Public

STATE OF West Virginia  
COUNTY OF Kanawha, to-wit:



The foregoing Agreement was acknowledged before me by Michael H. Staenberg,  
Manager, of THF Cross Lanes Development Limited Liability Company, for and on behalf of  
said company, this 18<sup>th</sup> day of June, 1996.

My commission expires: November 19, 2004  
[Signature]  
Notary Public



## CITY OF NITRO COUNCIL MEETING MINUTES

MAY 21, 1996

Mayor Karnes declared a quorum and called the meeting to order at 7:30 p.m. Others attending were City Recorder/Treasurer Herb Sibley, Councilmen at Large Dean Miller, Steve West, Councilmen Robert Young, Councilman George Atkins, Councilman Frank Grover, Jr. and Councilwoman Betty Boggess. Also present City Attorney Phillip Gaujot. Absent Councilman at Large Jim Hutchinson.

**AGENDA ITEM NO. 1 - APPROVAL OF MAY 07, 1996 COUNCIL MINUTES:** COUNCILMAN FRANK GROVER MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

**AGENDA ITEM NO. 2 - WEST SIDE PARKING:** Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller stated the Committee did not meet. However, there had been a discussion between Mrs. Karnes and Mrs. Goodwin. This agreement was to erect a sign of the additional parking on the school property and if the City would erect a sign directing residential parking only. If this is not agreeable, then we have to meet again. Councilman Atkins recommended a meeting of the Committee before making any recommendations. This item was put back into Committee.

**AGENDA ITEM NO. 3 - Business & Prof. Association:** Mayor Karnes yielded the floor to Councilman at Large Dean Miller. Councilman Miller stated the main topic of discussion was regarding the tax agreement with the new proposed shopping center. Mr. Miller announced parking at the Community Center had been reserved for the weekend of the Alumni reunion July 13, 1996.

**AGENDA ITEM NO. 4 - SECOND READING OF ORD 96-0 (THF PROJECT):** Mayor Karnes yielded the floor to City Attorney Phillip Gaujot. Counselor Gaujot furnished Council with a final draft of the agreement and explained the changes made. Counselor Gaujot said considering what the changes entail, I have made a legal conclusion that those changes represent a substantial change to the agreement. **The Ordinance that will be read tonight will be the first reading.** ORDINANCE 96-0 AN ORDINANCE FOR APPROVAL OF TAX INCENTIVES FOR THE THF CROSS LANES PROJECT. Counselor Gaujot read the **Ordinance 96-0 in its entirety.** This is a new ordinance. (copy attached).

COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE ORD. 96-0 ON THE FIRST READING. THE MOTION WAS SECONDED BY COUNCIL BOB

YOUNG. A lengthy discussion followed. Mr. Mann commented the question had been asked "how will the City benefit?" The City will benefit because there is no out of the pocket expenditures of any kind. Secondly the City benefits because, the projections are, because of the utility taxes, the City will get from this development, real estate and utility taxes are estimated to be \$170,000 yr. income once the property is fully developed.


Counselor Gaujot explained the taxes in detail to Council. Counselor Gaujot stated the Developer told him the best deal possible has been presented, the decision rest with Council. COUNCILMAN BOB YOUNG MOVED TO AMEND THE ORIGINAL MOTION TO INCLUDE TONIGHT'S PUBLIC HEARING AS THE PUBLIC HEARING FOR THIS ORDINANCE. THE MOTION WAS SECONDED BY COUNCILWOMAN BETTY BOGGESS. A VOTE WAS TAKEN AND WAS CARRIED WITH COUNCILMAN AT LARGE DEAN MILLER, COUNCILMAN GEORGE ATKINS AND CITY RECORDER HERB SIBLEY OPPOSING. A VOTE WAS TAKEN ON THE MAIN MOTION AND WAS CARRIED WITH COUNCILMAN AT LARGE DEAN MILLER AND COUNCILMAN GEORGE ATKINS OPPOSING.

**AGENDA ITEM NACF (NITRO AREA COMMUNITY FORUM):**

Mayor Karnes yielded the floor to Councilman at Large Steve West. Councilman West stated the Forum met last Tuesday. There is a report of new emergency plans for this area. The Kanawha/Putnam Emergency Planning Committee has developed a brochure and Flexsys is conducting a community delivery on June 8th. Councilman at Large West asked each Councilman to help distribute this literature as they canvass the neighborhood. The next meeting will be August or September.

There being no further business the meeting was adjourned.

  
DON KARNES, MAYOR

  
RECORDER, HERB SIBLEY

ORDINANCE NO. 96- 06AN ORDINANCE FOR APPROVAL OF TAX  
INCENTIVE FOR THF-CROSS LANES PROJECT

WHEREAS, an Application for annexation by minor boundary adjustment of certain territory located in Kanawha County, West Virginia, situate contiguous with the City of Nitro, commonly known as the Storage property, aka THF-Cross Lanes shopping center property, has been filed with the Kanawha County Commission and it is anticipated that, because there are no objections to said annexation by owners of property situate within the territory proposed for annexation, said Application will be approved by said Commission; and,

WHEREAS, the new THF-Cross Lanes shopping center proposed for location within the corporate limits of Nitro, West Virginia, represents the type of economic development initiative that will bring new jobs and resources to the City; and,

WHEREAS, the THF-Cross Lanes shopping center expects to employ at least 50 residents of the Nitro area; and,

WHEREAS, the addition of a shopping center within the corporate limits of Nitro will be of great convenience and advantage to the residents of the Nitro area; and,

WHEREAS, the increased traffic from the proposed shopping center will benefit existing Nitro businesses and spur additional economic opportunities; and



WHEREAS, the high land development and construction costs due to the hilly terrain, lack of public utilities, and limited access render the proposed shopping center economically unfeasible, absent the granting of economic incentives by the City; and,

WHEREAS, Ordinance No. 96-05, passed by this Council on second reading on May 7, 1996, authorizes the mayor to enter into agreements with industrial and commercial developers and with the Nitro Development Authority granting tax credits or remittances from the Nitro business and occupation tax, subject to approval by this Council; and

WHEREAS, this Council having reviewed the agreement appropriating to the Nitro Development Authority for reappropriation to THF-Cross Lanes Development Limited Liability Company a sum equal to one hundred percent (100%) of the first Four Hundred Thousand Dollars (\$400,000.00) of business and occupation taxes and eighty percent (80%) of the business and occupation taxes thereafter during the term of the agreement to last twenty (20) years and to abate and/or refrain from taking any action to institute any form or amount of business and occupation taxes relating to any construction activities for all or any portion of the property or development and for all or any portion of the Storage property for seven (7) years, and having found the granting of such economic incentives to be for a legitimate public purpose; and

WHEREAS, separate ordinances for Approval of Tax Incentive for THF-Cross Lanes Project were read for the first reading on two occasions, i.e., May 7, 1996, and May 21, 1996; and

WHEREAS, following said meetings, it became apparent that the agreement which was to be attached to the Ordinances required modifications which could be interpreted as being substantial in nature, thus, requiring an additional reading; and

WHEREAS, since the last reading of the Ordinance on May 21, 1996, it became apparent that additional modification had to be made to the agreement which is to be attached to the Ordinance, thus, necessitating another reading of this Ordinance for the first time;

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Nitro, West Virginia, that the agreement with the City of Nitro and/or the Nitro Development Authority, the THF-Cross Lanes Development Limited Liability Company and others, said agreement being attached to this Ordinance and made a part of the public record therein, is approved.

BE IT FURTHER ORDAINED that the Mayor of the City of Nitro is directed to sign said Agreement on behalf of the City of Nitro Development Authority and/or the City of Nitro.

BE IT FURTHER ORDAINED that the public hearings held on May 21, 1996, and June 4, 1996, pursuant to proper notice, shall be considered the public hearing required for this Ordinance.

Motion Made by Councilman Steven West, Seconded by Recorder Herbert

Sibley to adopt this Ordinance.


PASSED ON FIRST READING

Date: JUNE 4, 1996

ADOPTED ON SECOND READING  
after a public hearings held  
on May 21, 1996, and June 4,  
1996, at 7:00 o'clock p.m.,  
which public hearing notices  
were given by publication

Date: JUNE 18, 1996

  
CITY RECORDER

  
MAYOR

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## NITRO FIRE PENSION BOARD MEETING

MAY 13, 1996

The Nitro Fire Pension Board Meeting was called to order in the conference room at City Hall at 9:05 a.m. Present were Captain King and Firefighter Jeff Elkins. Absent were Mayor Don Karnes, Chief Steve Hardman and Captain E. W. Hedrick, II. Also present was Pansy Armstead, Secretary.

**AGENDA ITEM NO. 1 - APPROVAL OF DECEMBER 7, 1995 MEETING MINUTES:** - Captain King moved for the approval of the December 7, 1995 meeting minutes. The motion was seconded by Firefighter Elkins. vote taken and it was unanimous.

**AGENDA ITEM NO. 2 - APPROVAL OF MARCH 22, 1996 MEETING MINUTES:** - Captain King moved the minutes of March 22, 1996 be approved as written. seconded by Firefighter Elkins. Motion carried.

**AGENDA ITEM NO. 3 - CERTIFY ELECTION RESULTS:** - Firefighter Elkins moved to certify the election results of March 11, 1996. Motion seconded by Captain King. Vote taken and it was unanimous. Captain King was re-elected for 4 years and E. W. Hedrick, II to fill unexpired term for 1 year.

**AGENDA ITEM NO. 4 - OLD BUSINESS** - Captain King said he would check on the actuary study.

As a matter of record, Shawn Alderman resigned as of 4/27/96 and then submitted notice to be put on the eligibility list and returned to work May 7. (Copy of resignation and reinstatement request attached.)

**AGENDA ITEM NO. 5 - NEW BUSINESS:** - A retiree, former Chief Kenneth King, is deceased and the May 15. check issued for distribution for May, 1996 pension be void. Check voided at this time.

All money due from the State of WV has been collected. The last check was for \$9,596.80 on May 8, 1996.

There being no further business. Captain King moved the meeting be adjourned. Motion seconded by Firefighter Elkins. vote taken and it was unanimous.

  
PANSY ARMSTEAD, SECRETARY

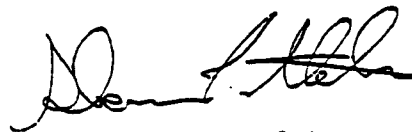
4-15-96

TO: STEVE HARDMAN

FROM: SHAWN ALDERMAN

RE: RESIGNATION

PLEASE CONSIDER THIS LETTER AS TWO WEEKS NOTICE OF MY  
TERMINATION OF EMPLOYMENT. MY LAST SHIFT WILL BE FRIDAY, APRIL  
26TH.

A handwritten signature in cursive script, appearing to read "Shawn Alderman".

4-15-96

# Nitro Fire Department

NITRO, WEST VIRGINIA 25143

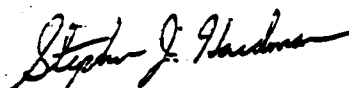
April 15, 1996

Mayor Don Karnes  
City of Nitro

Dear Don:

The resignation of Shawn Alderman will leave a vacancy within the Fire Department. I am requesting you to contact the Firefighters Civil Service Board and request the names of candidates to be considered for hiring. As you are aware, this will put the Department in a greater overtime situation than we currently have, if I can be of any help in this process please let me know.

Professionally Yours



Stephen J. Hardman  
Chief  
Nitro Fire Department

5-5-96

TO: HONORABLE DON KARNES, MAYOR  
CITY OF NITRO

FROM: SHAWN L. ALDERMAN, FIREFIGHTER

RE: REAPPOINTMENT TO LIST OF ELIGIBILITY

MAYOR KARNES,

ONE SHORT WEEK AGO I LEFT THE CITY OF NITRO FIRE DEPARTMENT TO SEEK EMPLOYMENT WITH THE CITY OF CHARLESTON. I MUST SAY THAT I LEFT BEHIND MUCH MORE THAN JUST A JOB. I HAVE DEFINATELY MADE A MISTAKE IN MY DECISION TO LEAVE. AT THIS TIME I AM ASKING YOU TO PLEASE REINSTATE MY NAME TO THE LIST OF ELIGIBLE CANDIDATES FOR THE POSITION OF FIREFIGHTER.

I HAVE LIVED IN NITRO SINCE MY ORIGINAL APPOINTMENT AND WISH TO CONTINUE TO LIVE AND WORK WITH THE MANY FRIENDS I HAVE MADE IN THE LAST SIX AND ONE HALF YEARS. I HOPE VERY MUCH TO BE ABLE TO FINISH MY CAREER AS A NITRO FIREFIGHTER AND TO RAISE MY FAMILY IN THIS TOWN THAT HAS GIVEN SO MUCH TO ME. SHOULD YOU HAVE ANY QUESTIONS FOR ME, I CAN BE CONTACTED AT 755-5829. THANK YOU.

SINCERELY YOURS,



SHAWN L. ALDERMAN

CC: STEPHEN HARDMAN, FIRE CHIEF  
HARRY K. MILLER, NITRO FIREMAN'S CIVIL SERVICE COMMISSION

**CITY OF NITRO COUNCIL MEETING MINUTES****JUNE 04, 1996**

Mayor Karnes declared a quorum and called the meeting to order at 8:15 p.m. Others attending: City Attorney Phillip Gaujot, City Recorder/Treasurer Herb Sibley, Councilmen at Large Steve West, Dean Miller, Jim Hutchinson, Councilmen George Atkins, Frank Grover, Jr., Robert Young and Councilwoman Betty Boggess.

**AGENDA ITEM NO. 1 - APPROVAL OF MAY 21, 1996 COUNCIL**

**MINUTES:** COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN JIM HUTCHINSON AND WAS CARRIED.

**AGENDA ITEM NO. 2 - PUBLIC HEARING THE MINUTES:** COUNCILMAN ROBERT YOUNG MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED. (Copy Attached)

**AGENDA ITEM NO. 3 - ORD 96-0 THE PROJECT:** Mayor Karnes yielded the floor to City Attorney Phillip Gaujot. Counselor Gaujot explained to Council, due to minor changes in the Agreement, there has been another redraft of the agreement. One of the changes is the amount they have agreed to pay toward a garbage truck and fire truck. The amount is more so I concluded that represented a minor change. Another change of wording or rewording to be consistent with the intent having to do with the abating and the rebating of the B&O taxes. Counselor Gaujot furnished Council with a copy of the latest agreement and further explained this change. Counselor Gaujot said he had prepared a new Ordinance. He stated his recommendation to Council was to consider this the first reading of the ordinance. COUNCILMAN AT LARGE STEVE WEST



MOVED COUNSELOR GAUJOT READ THE NEW ORD 96-0 IN ITS ENTIRETY  
FOR APPROVAL ON THE FIRST READING. THE MOTION WAS SECONDED BY  
CITY RECORDER HERB SIBLEY . After a question and answer session A VOTE  
WAS TAKEN AND WAS CARRIED WITH COUNCILWOMAN BETTY BOGGESS,  
COUNCILMAN GEORGE ATKINS AND COUNCILMAN AT LARGE DEAN  
MILLER OPPOSING. (Copy Attached)

**AGENDA ITEM NO. 4 - WAR MEMORIAL:** No report.

**AGENDA ITEM NO. 5 - BUSINESS & PROFESSIONAL ASSN:** No report.

**AGENDA ITEM NO. 6 - FINANCE REPORT:** Mayor Karnes yielded the  
floor to City Recorder Herb Sibley. Mr. Sibley stated the collections were \$80,000 more  
than expenditures and he said the budget will also have to be amended.

There being no further business, the meeting was adjourned.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, REC.

## PUBLIC HEARING MAY 21, 1996

The Public Hearing was called to order by Mayor Don Karnes at the Community Center, at 7:00 p.m. May 21, 1996. Those attending were; City Attorney Phillip Gaujot, City Recorder/Treasurer Herb Sibley, Councilmen at Large Dean Miller, Steve West, Councilmen George Atkins, Robert Young, Frank Grover, Jr. and Councilwoman Betty Boggess, and several businessmen and city residents. Absent Councilman at Large Jim Hutchinson.

**CROSS LANES PROJECT.** Mayor Karnes stated the purpose of this meeting is to get public input regarding ORD. 96-0 AN ORDINANCE FOR APPROVAL OF TAX INCENTIVE FOR THF-CROSS LANES PROJECT.

Mayor Karnes yielded the floor to City Attorney Phillip Gaujot. Counselor Gaujot stated several weeks ago we (City of Nitro) were approached by THF Realty Company pertaining to proposed development of approximately two hundred acres of land located behind Lowes of Cross Lanes, commonly known as the Storage property. This is when we first became aware of the Developers contemplating a commercial area (mall) and asked if the City of Nitro would be interested in the annexation of the property. Council has for a number of years considered annexing this property for economical purposes. This fit perfectly in the plan we had discussed for a number of years regarding annexation. We started listening to them, they made certain proposals, we countered with certain proposals, and finally the latest draft has been prepared and copies are presently being run and will be furnished to Council. Counselor Gaujot yielded the floor to Martin Glasser, Attorney.

Attorney Glasser stated that basically the concept here is the City and the Developers have to cooperate to develop a difficult piece of land. He commented there is not much more flat land in the State of West Virginia that is unused as well as the City of Nitro. The development cost here is enormous, for example, just to move the utility lines, electric, water and gas lines is approximately one million, four. Those cost don't help in sales, they don't help in generating rent, those are cost the developer has to incur if he is going to locate on this particular site. The total development anticipated out there is approximately 29 million dollars. Due to the difficult task of developing this area, the Developer has come to the City to see if they can accomplish this together. We know this is the first step. This agreement basically provides the first \$400,000 of B&O taxes will be returned to the Developers to help defray the up front cost. Over the period of the agreement there will be some sharing on a 80/20 basis. The Developer will be spending all his money up front and will take all the risk. The City incurs no liability and take no risk but will simply remit this portion of the B & O tax when received. The City is not pledging its own revenue from other resources or pledging to pay this from other funds. This is a dedication of B&O taxes that arise from the project itself. In addition to that, the City Council and the Mayor realize that there is going to be cost incurred from City by doing this, particularly in respect to fire service, police and municipal service. As a result the Developer has agreed to do three things, (1) as soon as he starts construction, he must

write a check to the City for \$12,000 to help pay for police protection. (2) to provide a fire truck. (3) and a garbage truck to the City by lease agreement. This is basically the outline of the agreement.

Mr. Glasser introduced Howard Mann and yielded the floor. Mr. Mann a representative of the Developer stated the reason they came to Nitro was this particular project will require moving yards of utility lines and relocating them. In order to accomplish this we need a public or private partnership. The context of the development agreement we discussed with the City of Nitro. In the discussion we had the City was interested in annexing land beyond our development so there is approximately 187 acres of land that will be annexed into Nitro. Mr. Mann showed aerial photo of the area explaining in detail. Mr. Mann stated they hope to break ground in November of this year and opening the first store in early 1997.

Mayor Karnes asked if anyone would like to speak for the record.

Councilman at Large Dean Miller stated he was very interested in the project and he would like to see the project go in. However, I do not think we are getting a fair shake as far as the B & O taxes are concerned. What we had to look at before the first vote, they would get a half million dollars of the first B & O, apparently, it has been modified. On every one million dollars that we take in, we get \$40,000. The Developer will get \$32,000 of that. How are we going to furnish all of the services on \$8000? Councilman at Large Miller stated they saw the contract only 15 minutes before the Council Meeting.

Mayor Karnes stated he would respond to that by saying Dean Miller was exposed to that contract Wednesday or Thursday prior to the Tuesday council meeting. Also the figures he stated are wrong, the taxes are not \$40,000 on a million dollars.

Larry Angell commented he did not think anyone in the room was opposed to economical growth, that's what it's all about, that is what we want for our City. We do not have any of the details, how do we know if it is a good deal or not. We are talking about incentives for the Developers because of infrastructure cost. What is the infrastructure cost? What are we giving up? What is the estimated revenue? If we can equate what they are going to make and what we are giving up, we could decide if it is a good deal. We don't have any facts. There are positive effects and negative effects.

A question and answer session followed, a hearing is scheduled for May 30, at 5:00 p.m. before the County Commission. After much input, the hearing was adjourned.

  
DON KARNES, MAYOR

  
HERB SIBLEY, REC

ORDINANCE NO. 96- 06AN ORDINANCE FOR APPROVAL OF TAX  
INCENTIVE FOR THF-CROSS LANES PROJECT

WHEREAS, an Application for annexation by minor boundary adjustment of certain territory located in Kanawha County, West Virginia, situate contiguous with the City of Nitro, commonly known as the Storage property, aka THF-Cross Lanes shopping center property, has been filed with the Kanawha County Commission and it is anticipated that, because there are no objections to said annexation by owners of property situate within the territory proposed for annexation, said Application will be approved by said Commission; and,

WHEREAS, the new THF-Cross Lanes shopping center proposed for location within the corporate limits of Nitro, West Virginia, represents the type of economic development initiative that will bring new jobs and resources to the City; and,

WHEREAS, the THF-Cross Lanes shopping center expects to employ at least 50 residents of the Nitro area; and,

WHEREAS, the addition of a shopping center within the corporate limits of Nitro will be of great convenience and advantage to the residents of the Nitro area; and,

WHEREAS, the increased traffic from the proposed shopping center will benefit existing Nitro businesses and spur additional economic opportunities; and

WHEREAS, the high land development and construction costs due to the hilly terrain, lack of public utilities, and limited access render the proposed shopping center economically unfeasible, absent the granting of economic incentives by the City; and,

WHEREAS, Ordinance No. 96-05, passed by this Council on second reading on May 7, 1996, authorizes the mayor to enter into agreements with industrial and commercial developers and with the Nitro Development Authority granting tax credits or remittances from the Nitro business and occupation tax, subject to approval by this Council; and

WHEREAS, this Council having reviewed the agreement appropriating to the Nitro Development Authority for reappropriation to THF-Cross Lanes Development Limited Liability Company a sum equal to one hundred percent (100%) of the first Four Hundred Thousand Dollars (\$400,000.00) of business and occupation taxes and eighty percent (80%) of the business and occupation taxes thereafter during the term of the agreement to last twenty (20) years and to abate and/or refrain from taking any action to institute any form or amount of business and occupation taxes relating to any construction activities for all or any portion of the property or development and for all or any portion of the Storage property for seven (7) years, and having found the granting of such economic incentives to be for a legitimate public purpose; and

WHEREAS, separate ordinances for Approval of Tax Incentive for THF-Cross Lanes Project were read for the first reading on two occasions, i.e., May 7, 1996, and May 21, 1996; and

WHEREAS, following said meetings, it became apparent that the agreement which was to be attached to the Ordinances required modifications which could be interpreted as being substantial in nature, thus, requiring an additional reading; and

WHEREAS, since the last reading of the Ordinance on May 21, 1996, it became apparent that additional modification had to be made to the agreement which is to be attached to the Ordinance, thus, necessitating another reading of this Ordinance for the first time;

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Nitro, West Virginia, that the agreement with the City of Nitro and/or the Nitro Development Authority, the THF-Cross Lanes Development Limited Liability Company and others, said agreement being attached to this Ordinance and made a part of the public record therein, is approved.

BE IT FURTHER ORDAINED that the Mayor of the City of Nitro is directed to sign said Agreement on behalf of the City of Nitro Development Authority and/or the City of Nitro.

BE IT FURTHER ORDAINED that the public hearings held on May 21, 1996, and June 4, 1996, pursuant to proper notice, shall be considered the public hearing required for this Ordinance.

Motion Made by Councilman Steven West, Seconded by Recorder Herbert

Sibley to adopt this Ordinance.


PASSED ON FIRST READING

Date: JUNE 4, 1996

ADOPTED ON SECOND READING  
after a public hearings held  
on May 21, 1996, and June 4,  
1996, at 7:00 o'clock p.m.,  
which public hearing notices  
were given by publication

Date: JUNE 18, 1996

  
CITY RECORDER

  
MAYOR

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IN RE:

CITY OF NITRO  
COMMISSION HEARING

Transcript of proceedings had or testimony  
adduced before the City of Nitro Commission on the <sup>18</sup>~~17~~th day  
of June, 1996, at the City of Nitro Annex, Nitro, Kanawha  
County, West Virginia, commencing at 7:30 p.m. and  
concluding at 9:45 p.m., pursuant to notice given to all  
interested parties.

BEFORE: DON KARNES, Mayor  
HERB SIBLEY, Recorder/Treasurer  
STEVEN E. WEST, Councilman At Large  
DEAN MILLER, Councilman At Large  
BETTY JO BOGGESE, Councilman At Large  
JAMES HUTCHINSON, Councilman At Large  
ROBERT YOUNG, Councilman At Large  
FRANK GROVER, JR., Councilman At Large

APPEARANCES: PHILLIP D. GAUJOT, City Attorney  
  
MARTIN GLASSER, Attorney at Law  
Lewis, Friedberg, Glasser, Casey & Rollins  
Post Office Box 1746  
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representing THF Realty

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1           MAYOR KARNES:   Welcome to the Nitro community  
2 center. It's about 7:30. I declare a quorum. I call the  
3 meeting to order in regular session. First item on the  
4 agenda is the approval of the June 18th, 1996, minutes for  
5 a regular council meeting. Everything is in order.

6           MR. GROVER:       You've got the wrong date.

7           MAYOR KARNES:   I'm sorry, I have the wrong date,  
8 June 3rd.

9           MR. GROVER:       4th.

10          MAYOR KARNES:   First meeting of June, is that  
11 correct? Motion's in order. Motion by Bob Young.

12          MR. YOUNG:        Yeah.

13          MR. WEST:         I second it.

14          MAYOR KARNES:   Motion seconded by Councilman  
15 West.

16          MR. KARNES:       Is there any question or  
17 discussion on the motion? The chair hearing none, all in  
18 favor, raise your right hand. Those opposed. The vote  
19 being unanimous, it's so ordered. Item two is the approval  
20 of the public hearing minutes of June the 4th, public  
21 hearing to do with the THF Cross Lanes project. A motion  
22 is in order.

23          MR. YOUNG:        I'll make that motion be made a

1 matter of record that we connect to these minutes, is that  
2 correct?

3 MR. KARNES: Motion by Councilman Young to  
4 attach these minutes and make it a part of this proceeding  
5 this evening. Is there a second?

6 MR. WEST: Second.

7 MAYOR KARNES: Second by Councilman West. Is  
8 there question or discussion?

9 MR. MILLER: Yes, sir. You state that I made  
10 a statement -- you state that my mathematics are incorrect.  
11 Please prove that to be true.

12 MAYOR KARNES: Well. You said the \$400,000 the  
13 City would receive 20 percent which would be \$80,000 and  
14 that THF would receive \$320,000.

15 MR. MILLER: Where do you have proof of that,  
16 sir?

17 MAYOR KARNES: On the tape if you want to hear  
18 it. We can recess --

19 MR. MILLER: What I stated was --

20 MAYOR KARNES: Do you want to amend these  
21 minutes?

22 MR. MILLER: Yes, I'd like to.

23 MAYOR KARNES: Make your motion.

1                   MR. MILLER:        I make a motion that you strike,  
2                   however, his mathematics are incorrect.

3                   MAYOR KARNES:    Do I have a second on the motion?  
4                   The motion dies for lack of a second. All in favor of the  
5                   main motion, raise your right hand. Those opposed.  
6                   Councilman Miller opposed.

7                   MAYOR KARNES:    There being the majority voting  
8                   in the affirmative, it's so ordered. In a lot of our  
9                   finance committee meetings as of February, January,  
10                  February, March, there was a lot of discussion about pay  
11                  raises for employees for fiscal year '96, '97. However,  
12                  nowhere other than council committee reports does that show  
13                  -- it does not show with the minutes, so I put this on the  
14                  agenda to make sure that the employees did get their raise  
15                  that they had coming and the raise that council has  
16                  recommended has put into the budget. I think what's in the  
17                  budget and we can ask our treasurer, but I believe there's  
18                  5 percent, so I would like a motion to amend the record.  
19                  Go ahead, Mr. West.

20                  MR. WEST:         I'd like to move that we accept  
21                  the finance committee's recommendation for a 5 percent  
22                  across-the-board raise for all full-time City employees.

23                  MR. YOUNG:        I'll second that, Steve.

1           MAYOR KARNES:    Motion by Councilman West, second  
2    by Councilman Young.  Any questions or discussion?  All in  
3    favor of the motion, raise your right hand.  Those opposed.  
4    The vote being unanimous, it's so ordered.  Every year we  
5    have to go into the final budget adjustments at the end of  
6    the fiscal year, and I'm going to turn the mike over to our  
7    City recorder and treasurer Mr. Sibley.

8           MR. SIBLEY:       As the Mayor says, we have to  
9    make adjustments to be in compliance with the State law and  
10   the Tax Department.  We have to be within the 5 percent of  
11   budget.  We have collected more money than we have  
12   expended, and it requires that we make a \$20,000 adjustment  
13   in the following categories.  In revenue, we're increasing  
14   by \$80,000.  We're decreasing income from the dog track by  
15   \$40,000.  We're increasing court costs and fees by \$15,000,  
16   decreasing municipal service fees by \$35,000, netting out  
17   to \$20,000.  Our expenses will increase Workmen's  
18   Compensation by \$15,000, increase police wages by \$40,000,  
19   increase the police maintenance and repair by \$6,000,  
20   increase police crime victims by \$8,000, increase the  
21   firemen department's supplies by \$5,000, increase the  
22   public works auto supplies by \$25,000, increase the public  
23   works equipment repair \$6,000, decrease the public works

1 asphalt and sand by \$15,000, decrease the public works  
2 street paving by \$40,000, decrease the public works lab by  
3 \$30,000.00 and the net decrease -- the net increase is a  
4 \$20,000, making it balance and I would ask for a motion  
5 that it be accepted. It has to be sent to the State Tax  
6 Department by month's end.

7 MR. HUTCHINSON: I so move.

8 MR. GROVER: I second the vote.

9 MAYOR KARNES: Thank you. Motion by Councilman  
10 Hutchinson and second by Councilman Grover to accept the  
11 report to make the necessary adjustments as per our  
12 discussion. Is there a question or discussion?

13 MR. MILLER: Yes, sir, I'd like to ask a  
14 question concerning why if we had followed the purchasing  
15 procedures and so on as required by law would we be in this  
16 position today? Number one, the law requires that a  
17 requisition be submitted to the recorder or the purchasing  
18 agent and that he review it and see whether or not this is  
19 in the budget. If this had been done, we would not be over  
20 running the budget as we are now as we have in so many  
21 areas, such as automotive supplies \$25,000. I think that  
22 we need stricter enforcement of the purchasing procedures  
23 so that this does not happen in the future.

1           MAYOR KARNES:   The other side of the equation is  
2   that council make more accurate guestimates in the  
3   beginning of the fiscal year and these same situations  
4   would not exist is my only comment. Is there any other  
5   comment or motion or any question? All in favor, raise  
6   your right hand. Those opposed. Councilman Miller  
7   abstains. Majority voting in favor. It's so ordered.

8           Next item on the agenda is an ordinance for  
9   approval of tax incentives for the Cross Lanes project. I  
10   would like, if I could, to turn it over to our City  
11   attorney and he can tell us a little bit why did the County  
12   Commission is relating --

13          MR. GAUJOT:       Thank you, Mayor. As the council  
14   knows, we went to the Putnam County Commission yesterday on  
15   our application to annex a section of I-64 beginning at the  
16   Cross Lanes interchange extending in an eastbound direction  
17   to the Nitro boundary line in the vicinity of 40th Street.

18          You should know that the Putnam County  
19   Commission received us very well. It was a good meeting.  
20   There were -- there was one objector at the meeting. It  
21   was the gentleman that was, I forget his name at the  
22   moment, but he was with Bode Finn. This is south of the  
23   dog track area. He objected to the annexation. I can't

## Proceedings

1 recall exactly. Mayor, you might be able to help me. I  
2 can't remember what his objection was, except that he  
3 didn't want any type of annexation to interfere with the  
4 annexation of or the incorporation of the potential Cross  
5 Lanes, Town at Cross Lanes. I considered his objection to  
6 be weak. I believe the County Commission did, also.

7 At the conclusion of the meeting, I  
8 detected from the County Commission that they were  
9 concerned that we wanted to incorporate I-64 so we could  
10 have a speed trap. I assured the Commission that there's  
11 never been any discussion by council as a whole or any  
12 council member, absolutely no discussion that I've been  
13 privy to whereby that was even discussed. I think the  
14 County Commission was responsive to my explanation and --  
15 but I did notice a concern about the Cross Lanes  
16 incorporation, so knowing that we were going to be  
17 presenting applications today before the Kanawha County  
18 Commission, after inquiring with the Mayor, I suggested to  
19 the County Commission of Putnam County that they not sign  
20 the proposed order that I had prepared annexing the strip  
21 of ground until we found out what happened in Kanawha  
22 County because there really is no reason for the City of  
23 Nitro to have this strip of I-64 if it doesn't really meet

1 anywhere.

2                   So the way we left it, the Putnam County  
3 Commission took the application for annexation under  
4 advisement and they're waiting for my return call to advise  
5 them what's going on in Putnam County and Kanawha County.  
6 This morning we presented four applications for annexation  
7 to the City of Nitro with regard to the four separate  
8 tracts of land located in Kanawha County.

9                   The first application for annexation was  
10 the one acre, a little less than one acre of ground known  
11 as one of the Fike properties. We thought previously back  
12 when we incorporated the Fike, we got -- it was less than  
13 an acre that was not incorporated. It's the area that's  
14 the combined sewer system plant. If you recall, that's  
15 been done away with and a whole new system is in place, and  
16 also that's part of the land that's being cleaned presently  
17 by the Environment Protection Agency. I tend to recall  
18 somebody told me that there's going to be roughly ten  
19 million dollars spent or more to clean up that acre of  
20 ground, all of which the City of Nitro, of course, will  
21 benefit by B & O taxes from the contractor who does that  
22 work, but at any rate, we presented the application today  
23 for annexation to that site. Of course, there are no



1 objections and the County Commissioner ordered that the  
2 tract of land be annexed to the City of Nitro. They didn't  
3 actually sign the order, but it's my understanding that the  
4 motion was made and seconded and passed that that tract of  
5 land be annexed to the City of Nitro.

6                   Following that procedure, we moved then  
7 with the annexation of I-64 beginning at 40th Street and  
8 extending in an easterly direction to the Cross Lanes  
9 interchange including the Cross Lanes interchange, and our  
10 application to annex Lakeview Drive which extends from the  
11 interchange of Cross Lanes up to the proposed storage  
12 property, the 184 acre storage property, and the  
13 application for the 184 storage property, though. Those  
14 were the three applications that the Commission concerned  
15 itself with today.

16                   I can report to this council that virtually  
17 all of the objections, with the exception of a very minor  
18 objection, had to do with the incorporation of I-64 and  
19 Lakeview Drive. There were a number of objectors. None of  
20 them objected -- well, there was one objector that stated  
21 that he was part owner of Lakeview Drive. That's a legal  
22 interpretation, which I am of the opinion he's not an owner  
23 but still there is a -- he's making a claim for part

1 ownership of Lakeview Drive, but all of the other objectors  
2 came from people that lived at Cross Lanes, people who  
3 lived on Lakeview Drive that did not want Lakeview Drive  
4 and I-64 in the City of Nitro primarily because if Cross  
5 Lanes ever incorporated, then by annexing I-64 at Lakeview  
6 Drive, that would, in essence, foreclose the new  
7 municipality of Cross Lanes from reaching across the  
8 highway and including some of the existing businesses that  
9 are out there as a tax base for the City of Cross Lanes.

10 I can report to you that virtually 99  
11 percent of the objection had to do with the highways.  
12 Noting that that was the primary objection and also noting  
13 that the County Commission was concerned with that, it was  
14 quite obvious that they weren't turning it down but they  
15 had many questions about it, and after consulting with the  
16 Mayor, it was my recommendation to the Mayor and it's my  
17 recommendation to council tonight and I so stated to the  
18 County Commission today, that I would make this  
19 recommendation to council.

20 My recommendation to council because  
21 there's a certain element of people in Cross Lanes that  
22 perceives this as an opportunity for Nitro to sort of  
23 shoving our way, our corporate way if you will, against

## Proceedings

1 their potential incorporation, that there is a perception  
2 that we're doing something that's not right.

3 I believe that both objections made by  
4 those residents in Cross Lanes are valid objections, and I  
5 think their objections in my personal opinion to bear a  
6 greater weight than our need to have I-64 and Lakeview  
7 Drive literally within the corporate limits of Nitro. It's  
8 not necessary. In fact, there are many municipalities in  
9 the State of West Virginia where City service providers,  
10 police, fire, and what all, have to leave municipal area,  
11 go into the county area, to get back into the municipal  
12 area. In fact there's areas in West Virginia where those  
13 type of services have to leave an incorporated areas,  
14 actually go into another incorporated area to get back into  
15 the original incorporated area. It's just -- it's that way  
16 because the way are roads happen to be at the time of the  
17 incorporation of the various municipalities.

18 So based upon their objections and because  
19 I believe and I believe council, or the Mayor anyway, that  
20 their objections and their reasons outweigh our needs or  
21 our reason for our needs, so it's my recommendation to this  
22 council tonight that we withdraw our applications for  
23 annexation in Putnam County and Kanawha County with regard

1 to incorporating I-64 in Putnam County, Kanawha County and  
2 Lakeview Drive.

3 So I believe, Mayor, it would be  
4 appropriate to -- for someone to make that motion and then  
5 hear a discussion on it.

6 MR. MILLER: May I ask a question first,  
7 counselor? Do you know of any move at this time of an  
8 attempt to incorporate Cross Lanes?

9 MR. GAUJOT: No, I don't. All I know is  
10 hearsay and I've spoken with one gentleman that -- well,  
11 I've spoken with a couple of gentlemen that were involved  
12 in the last incorporation attempt. It's my understanding  
13 based upon those conversations, that there is no movement  
14 now, but I heard comments today from others who said that  
15 there was a movement, so I don't know how strong the  
16 movement is. I don't know if they want incorporation or  
17 not. I have an opinion if you want it but it doesn't have  
18 much weight, though, I'll confess.

19 MR. MILLER: There was movement several years  
20 ago, to my understanding, at the time the dog track came  
21 into the City to incorporate Cross Lanes but failed.

22 MR. GAUJOT: That's correct.

23 MR. MILLER: What makes you think it would be

1 any different today?

2 MR. GAUJOT: I don't hold out hopes, Mr.  
3 Miller, but you've got to admit that maybe five years from  
4 now, I guess, the mood could change and there could be a  
5 movement to incorporate if they want to incorporate, but  
6 it's not really critical to the project at hand, and it's  
7 for that reason that I'm recommending that we withdraw the  
8 application annexation.

9 If sometime in the future, you feel that  
10 it's necessary. It looks like there's not going to be a  
11 town or city by the name of Cross Lanes, that we can come  
12 back and the City can come back and do it again.

13 MR. MILLER: One more thing. Then who will  
14 keep Lakeview Drive in repair?

15 MR. GAUJOT: The owner. Even if it came into  
16 the City --

17 MR. SIBLEY: He's not doing too good a job  
18 right now.

19 MR. GAUJOT: You're talking about a project  
20 that's a multi-million dollar project that's going in there  
21 that will want to maintain the road, I believe, Herb, and  
22 if it's not maintained by them, then shame on them because  
23 they're going to lose a lot of money.

1           MR. MILLER:       If someone claimed that they  
2 actually owned it, how can we proceed to even annex it?  
3 How could they even -- the developer even --

4           MR. GAUJOT:       Anybody can say anything, Mr.  
5 Miller, but I have to make -- I have to give an opinion  
6 whether I think what they say has legal ramifications, and  
7 then I so advise council. I didn't say anything today. I  
8 thought that the person that was claiming ownership  
9 admitted that he didn't have a deed, there was no deed made  
10 to him, but he was still claiming ownership.

11                           I'll submit to you that the County  
12 Commission didn't think they had any standing. At least  
13 that was my opinion based on the questions they were asking  
14 and the statements they were making in opposition to his  
15 statement.

16           MR. MILLER:       Is this the one who claimed that  
17 a landowner -- that there was an agreement by the  
18 landowners out there that this road was turned over to  
19 them?

20           MR. GAUJOT:       Yes, but there was no deed on  
21 record, Mr. Miller. I can give you -- I can say I'm giving  
22 you this building here. That doesn't mean you own the  
23 building just because I say you have it.

## Proceedings

1 MR. MILLER: Did they not maintain it for five  
2 years?

3 MR. GAUJOT: I don't know anything about that.  
4 I don't know who's maintaining the road and really I don't  
5 care.

6 MAYOR KARNES: I guess if it's agreeable to  
7 council at least to move the withdrawal of those three  
8 petitions from the court, a motion is in order.

9 MR. SIBLEY: I make the motion then that we  
10 follow counselor's advice and withdraw our petition to both  
11 commissions.

12 MR. YOUNG: I'll second that.

13 MAYOR KARNES: Motion by City recorder, second  
14 by Councilman Young to withdraw those three petitions, one  
15 from Putnam County and two from Kanawha County. Any  
16 further discussion on the budget; question on the motion?  
17 All in favor raise your right hand. Those opposed. It's  
18 unanimous. It's so ordered.

19 MR. GAUJOT: With that action, Mayor, I  
20 believe now it's in order to consider the second reading of  
21 the orders pertaining to the agreement and we need a  
22 motion.

23 MR. MILLER: I make a motion that we adjourn.

1           MAYOR KARNES:    There is a motion to adjourn. Do  
2 I hear a second? Sounds to me the motion dies for like of  
3 a second. Is there a motion for a second reading?

4           MR. WEST:        I move the approval of the  
5 ordinance for the approval of tax incentives for the THF  
6 Cross Lanes project. I think that's why these people and  
7 Mr. Mann are here.

8           MR. YOUNG:       I'll second that.

9           MAYOR KARNES:   Motion by Councilman West, second  
10 by Councilman Young, a second reading and we'll ask our  
11 counselor to read the ordinance into --

12           MR. GAUJOT:     An ordinance for approval of tax  
13 incentive for the THF Cross Lanes project; whereas, an  
14 application for annexation by minor boundary adjustment of  
15 certain territory located in Kanawha County, West Virginia,  
16 situate contiguous with the City of Nitro, commonly known  
17 as the storage property, also knows as the THF Cross Lanes  
18 shopping center property, has been filed with the County  
19 Commission, Kanawha County Commission and it is anticipated  
20 that, because there are no objections to said annexation by  
21 owners of property situate within the territory proposed  
22 for annexation, said application will be approved by said  
23 Commission; and,



## Proceedings

1                   Whereas, the new THF Cross Lanes shopping  
2 center proposed for location within the corporate limits  
3 of Nitro, West Virginia represents the type of economic  
4 development initiative that will bring new jobs and  
5 resources to the City, and,

6                   Whereas, the THF Cross Lanes shopping  
7 center expects to employ at least fifty residents of Nitro  
8 area, and,

9                   Whereas, the addition of a shopping center  
10 within the corporate limits of Nitro will be of great  
11 convenience and advantage to the residents of the Nitro  
12 area, and,

13                   Whereas, the increased traffic from the  
14 proposed shopping center will benefit existing Nitro  
15 business and spur additional economic opportunities; and,

16                   Whereas, the high land development and  
17 construction costs due to the hilly terrain, lack of public  
18 utilities, and limited access render the proposed shopping  
19 center economically unfeasible, absent the granting of  
20 economic incentives by the City; and,

21                   Whereas, Ordinance No. 96-05 passed by this  
22 council on second reading on May 7, 1996, authorizes the  
23 mayor to enter into agreements with industrial and

1 commercial developers and with the Nitro Development  
2 Authority granting tax credits or remittances from the  
3 Nitro business and occupation tax, subject to the approval  
4 by this council; and,

5               Whereas, this council having reviewed the  
6 agreement appropriating to the Nitro Development Authority  
7 for reappropriation to the THF Cross Lanes Development  
8 Limited Liability Company a sum equal to 100 percent of the  
9 first \$400,000 of business and occupation taxes and 80  
10 percent of the business and occupation taxes thereafter  
11 during the term of the agreement to last twenty years and  
12 to abate and/or refrain from taking any action to institute  
13 any form or amount of business and occupation taxes  
14 relating to any construction activities for all or any  
15 portion of the property or development and for all or any  
16 portion of the storage property for seven years, and having  
17 found the granting of such economic incentives to be for a  
18 legitimate public purpose; and,

19               Whereas, separate ordinances for approval  
20 of tax incentives for the THF Cross Lanes project were read  
21 for the first reading on two occasions, May 7, 1996 and May  
22 21, 1996; and,

23               Whereas, following said meetings, it became

## Proceedings

1     apparent that the agreement which was to be attached to the  
2     ordinances required modifications which could be  
3     interpreted as being substantial in nature, thus requiring  
4     an additional reading; and,

5                 Whereas, since the last reading of the  
6     ordinance on May 21st, 1996, it became apparent that  
7     additional modification had to be made to the agreement  
8     which is to be attached to the ordinance, thus  
9     necessitating another reading of this ordinance for the  
10    first time.

11                Now, therefore, be it ordained by the  
12    council of the City of Nitro, West Virginia, that the  
13    agreement with the City of Nitro and/or the Nitro  
14    Development Authority, the THF Cross Lanes Development  
15    Limited Liability Company and others, said agreement being  
16    attached to this ordinance and made a part of the public  
17    record there, is approved. Be it further ordained that the  
18    Mayor of the City of Nitro is directed to sign said  
19    agreement on behalf of the City of Nitro Development  
20    Authority and/or the City of Nitro.

21                Be it further ordained that the public  
22    hearings held on May 21, 1996 and June 4, 1996, pursuant to  
23    proper notice, shall be considered the public hearing

1 required for this ordinance.

2 Motion made by Councilman Steven West,  
3 seconded by recorder Herbert Sibley to adopt this  
4 ordinance. Passed on first reading on June 4, 1996.

5 Mayor, at this time it would be appropriate  
6 to entertain discussion by council and, of course, the  
7 public that this be made.

8 MAYOR KARNES: Why don't at this point I ask  
9 council any discussion or question any council member has;  
10 anyone?

11 MR. SIBLEY: There was a transposition on the  
12 ordinance number. I don't think that matters necessarily.

13 MAYOR KARNES: What he's saying is when you read  
14 the orders, you read the ordinance 95-06. It should have  
15 read, 96-05.

16 MR. GAUJOT: Oh, okay.

17 MR. MILLER: My question is concerning the  
18 fact that this isn't all the ordinance. That's merely a  
19 part of the contract. It has to be attached to it and  
20 becomes part of it.

21 MR. GAUJOT: Mr. Mayor, I can do that if  
22 everybody wants to sit here and let me read through how  
23 many pages, thirty pages roughly, or what would be

1 appropriate, Mayor, I thought that I was doing this to  
2 facilitate. Someone can move to dispense the reading of  
3 the ordinance and read the title only, or if you want, I  
4 can read the contract as Mr. Miller has stated. The  
5 contract is part of the ordinance and I can read it if you  
6 want to.

7 MR. MILLER: I wish you to do so.

8 MR. GAUJOT: It would be appropriate, though,  
9 if council wishes to move to dispense the reading of the  
10 ordinance and read the title only.

11 MR. WEST: I move that we dispense with the  
12 reading of the entire ordinance and read the title only.

13 MR. SIBLEY: I second it.

14 MR. MILLER: My question is, if anybody  
15 objects, do you not have to read it; is that the law?

16 MR. GAUJOT: No, sir, you can take a vote on  
17 it. It's just like any other vote. If somebody moves to  
18 dispense the reading and there could be a vote taken and  
19 dispense the reading and read the title only.

20 MAYOR KARNES: Motion to read the title only by  
21 Councilman West, second by City recorder Herb Sibley. Any  
22 question on the motion? All in favor, raise your right  
23 hand. Those opposed. Councilman Miller opposing. The

1 majority in favor. Motion to read the title only passed  
2 and so ordered.

3 MR. GAUJOT: An ordinance for approval of tax  
4 incentive for the THF Cross Lanes project.

5 MAYOR KARNES: Any other question?

6 MR. MILLER: Yes, sir, I move that motion be  
7 laid on the table for the following reasons, due to the  
8 fact last week we had met together and then separately with  
9 the representatives of the THF Cross Lanes Limited  
10 Liability Company, a course of action which I feel violates  
11 the sunshine law. I move to lay on the table the proposed  
12 ordinance for approval of the tax incentive to THF Cross  
13 Lanes project.

14 MAYOR KARNES: Is there a second? Chair hearing  
15 none, motion to lay on the table failed. Other discussion?

16 MR. MILLER: Yes, sir, I have some proposed  
17 amendments to the contract because in the past week we were  
18 able to compare Clarksburg's agreement with the same  
19 company and the one with the Nitro. There is a vast  
20 difference between the two contracts. One I would point  
21 out is the fact that, number one, Nitro must pay THF or  
22 repay \$400,000 of the first taxes that are collected. At  
23 Clarksburg, the office of the City gets theirs first and

## Proceedings

1 then THF comes in for their part.

2 I think that that is fair and I think that  
3 THF has taken advantage of all of us by the fact that they  
4 are requiring their money up front rather than the City  
5 getting their money up front.

6 There are several amendments that I would  
7 -- I suggest. Of course, I tried to meet with the  
8 developer again. There's a lot of land, dirt that's going  
9 to be moved out there, and the City of Nitro has some areas  
10 that are in bad need of land or fill. Up behind my house  
11 there is six acres that is listed as a toxic dump. EPA has  
12 said that if there was three foot of dirt put on this, then  
13 that would become usable property again. I tried to get  
14 this agreement, but I could not. Also, in the Gum Street  
15 area is a swamp area that has been a problem to the City  
16 for a long, long time which needs landfill and there is  
17 going to be a lot of dirt there and I certainly think that  
18 --

19 MAYOR KARNES: Councilman, if you want to amend  
20 the motion, amend it but don't give us all this stuff about  
21 what can and can't be done.

22 MR. MILLER: Sir, I have the floor.

23 MAYOR KARNES: Well --

1 MR. MILLER: I have the floor.

2 MAYOR KARNES: This is out of order.

3 MR. MILLER: No, it's not out of order.

4 MAYOR KARNES: Yes, it is out of order.

5 MR. MILLER: No, it's not.

6 MAYOR KARNES: If you want to make a motion to  
7 amend the agreement, make the motion to amend it but if you  
8 tell us all these war stories about the landfill behind  
9 your house, obviously to me you don't know what you're  
10 talking about. It's not part of this agreement. Anyway,  
11 if you want to make a motion to amend, make the motion.  
12 Your discussion is out of order.

13 MR. MILLER: There's several things that --

14 MAYOR KARNES: Make the motion to amend.

15 MR. MILLER: Okay, I make a motion that the --  
16 to be included in the contract is a provision to put three  
17 foot of dirt on what is commonly known as the Smith Street  
18 landfill which is now considered a toxic landfill. Now a  
19 motion -- you probably don't realize, but that's a fact and  
20 I make a motion that this landfill be filled with three  
21 foot of dirt on this property.

22 MR. GROVER: Question.

23 MAYOR KARNES: Do I have a second on the motion



1 first? Motion dies for lack of a second. Councilman  
2 Grover has a question.

3 MR. GROVER: I thought that we were told that  
4 we could not put dirt on top of the land by the DNR because  
5 this is going to cause what was below it to ooze out. I  
6 thought it was basically said we can't put dirt on it by  
7 the DNR or the EPA or whoever. Thank you.

8 MAYOR KARNES: Councilman is correct that that  
9 is a statement from the DEP and the EPA. That has nothing  
10 to do with this agreement. We're way off base with this.  
11 If we want to amend the agreement, then we can amend the  
12 agreement, but to haul dirt all over the City doesn't have  
13 anything to do with this agreement.

14 MR. MILLER: I want to make another amendment.  
15 I would like to submit six pages of amendments that I would  
16 like to be considered in this. Amongst them is many  
17 changes I feel that are necessary. For instance, the  
18 contractor licensing is not properly identified in the  
19 agreement. It should be that all contractors will be  
20 licensed according to the law and that all contractors  
21 would be required to obtain licenses from the City which is  
22 not in the agreement.

23 MR. GAUJOT: That's already the law. That's

1 already the law of the City. That doesn't have to be in  
2 the agreement. That's already law and any contractor who  
3 comes into the City must have a license and he must pay  
4 B & O taxes, but, of course, this agreement goes to  
5 B & O taxes but still must have licenses. This agreement  
6 has nothing to do with proof of license.

7 MR. MILLER: Doesn't the agreement also --  
8 Does not this agreement nullify our laws by one of the  
9 paragraphs in it requiring that if the agreement disagrees  
10 with our ordinances, that the agreement takes precedence  
11 over this?

12 MR. GAUJOT: Councilman, there is no  
13 agreement. There's nothing in that agreement that says  
14 that the contractors that will work on the projects do not  
15 have to prove that are registered contractors. There's  
16 nothing in that agreement. Our law subsequent -- our law  
17 set apart from that agreement states that any contractor  
18 doing business in the City must register with the City and  
19 pay a fee for license to do business.

20 MR. MILLER: I only have one more thing, but  
21 it's a lost cause.

22 MR. YOUNG: Give up then.

23 MR. MILLER: Sir, I don't have to give up. I

## Proceedings

1 can say exactly how I feel.

2 MR. YOUNG: All you're doing is dragging your  
3 feet.

4 MR. MILLER: I feel very strongly and I assume  
5 that most of you recognize that. I bring to the attention  
6 that there was a petition filed today with 429 signatures  
7 from Nitro citizens asking for a referendum of this  
8 contract, and I see nobody addressing it. Why are we  
9 ignoring the fact that this petition was filed?

10 MR. GAUJOT: Councilman Miller, it's not -- I  
11 think it's just premature. I think the lawyer that's  
12 responsible for the petition is here tonight and I just  
13 assumed that he would speak to his petition. That's why I  
14 haven't mentioned it. I was waiting for him to speak to  
15 it, but it's my understanding that there is a petition  
16 that's been signed, as Councilman Miller states, asking  
17 that this issue go to a vote, and I suppose someone from  
18 the audience will speak to it.

19 MR. MILLER: The reason why I ask because I  
20 was told from the audience -- that no one from the audience  
21 would be permitted to speak.

22 MR. GAUJOT: Councilman Miller has just  
23 stated that he didn't realize that folks in the audience

1 would be able to speak and I think anyone is entitled to  
2 speak as long as it's something new. You've already had  
3 two public meetings, and I think anybody can speak to  
4 something that's new because it may have some bearing on  
5 your decision making, so I would encourage council and  
6 Mayor to listen to any new comments that may help this  
7 council decide on which way to vote tonight. I would  
8 recommend to council that you restrict it to something new  
9 and, of course, the petition is something new.

10 MAYOR KARNES: Anything else from council at  
11 this time? Is there anyone in the audience that would like  
12 to speak? Identify yourself.

13 MR. MCCUNE: Yes, my name is Jim McCune with  
14 the law firm of King, Allen & Guthrie. Mr. Gaujot just  
15 said that there's a lawyer responsible for the petition.  
16 It's not a lawyer. There's 425 people in Nitro who signed  
17 this thing and the petition is self-explanatory. What  
18 these people are saying is they don't think they're getting  
19 a good deal. They think that this petition, that this  
20 contract is getting railroaded through.

21 You know, I believe Mr. Gaujot may be able  
22 to speak to this, but I think one of the County  
23 commissioners said what's the rush today, and what's what I

1 said the last time, what is the rush, and negotiations  
2 began on this contract in February and I would ask you how  
3 many of you saw the Clarksburg agreement before you thought  
4 this was a good deal.

5 The Clarksburg agreement is diametrically  
6 opposed to what they are giving you. Why can't they give  
7 you the same thing that the Clarksburg agreement gets? You  
8 know, the sense I'm getting from talking to people in the  
9 City, they're not opposed to the development; they're just  
10 opposed to develop under these circumstances because this  
11 is a bad deal and the Clarksburg agreement is clear  
12 evidence of that. So the petition speaks for itself.

13 Everyone who signed that had the  
14 opportunity to read it. Over 10 percent of the registered  
15 voters in the City signed that petition and asked for a  
16 referendum, and I believe under the law of the State and  
17 under your charters that you adopted chapter eight of the  
18 code that you have a duty to submit this to a ballot -- to  
19 an election and with that I'll sit down.

20 MAYOR KARNES: Counselor.

21 MR. GAUJOT: Mr. Mayor, I'll be brief. First  
22 of all, with regard to the referendum and the code section  
23 that counsel for the petitioners quotes in his petition or

1 in its position and pointed out to you that I've read that,  
2 I've had an opportunity to read it, and I don't think it's  
3 applicable at all to the vote you're about ready to take.  
4 I think it's a mechanism for the public, if you will, the  
5 public at large, to bring about an ordinance. It's the  
6 initiative of the public at large to bring about an  
7 ordinance, and it's represented to be by the counselor, by  
8 the counselor who just spoke, that our charter accepted  
9 that code provision in the charter -- accepted that code  
10 provision as part of the charter. I've had an opportunity  
11 to review the charter briefly. I'm not saying it's not  
12 there but I didn't see where it was incorporated into that  
13 code section.

14 Now here's a lawyer that stands up before  
15 you and tells you that this is a bad deal and he tells you  
16 it's a bad deal based upon another agreement that he read.  
17 He hasn't been involved one minute of negotiations. He  
18 hasn't had one minute of discussion whereby the developer  
19 says, "This is it. This is the best we can give Nitro.  
20 Take it or we're going somewhere else." He hasn't heard  
21 that. I have, and as I stated to you at the last council  
22 meeting, maybe I didn't get all there was to get, but I can  
23 assure you, assure you this, that I gave it my best effort

1 and I was convinced that we didn't take what was offered,  
2 that the project was not going to go.

3 Now, I had been raised, not raised, but  
4 I've lived in the Nitro area for a long time. I don't live  
5 here now, but I've lived in the area a long time. Coached  
6 midget league football with Frank over there. Know a lot  
7 of people here at Nitro. I'm going to leave Nitro. This  
8 doesn't mean anything to me, but I tell you one thing, Mr.  
9 Miller, I didn't want to walk away from those negotiations  
10 knowing that I was the one responsible for THF hitting the  
11 road and leaving the area and Nitro thinking about the  
12 approximately thirty-one million dollars that it could have  
13 had. This matter is properly before you for you to make  
14 that decision.

15 Now, if you can convince THF to a better  
16 deal, I'm all for it. I hope you can. I will suck it up  
17 and I'll say I didn't do a very good job, but in my  
18 opinion, when you compare Clarksburg and this project,  
19 you're comparing apples and oranges. Obviously, if you  
20 have a flat piece of ground, I'm not suggesting that  
21 Clarksburg is flat, but if you have a flat piece of ground,  
22 you've got to admit that the infrastructure costs, the cost  
23 of preparing that land for construction, is a little bit

1 less than if you got mountains there that have to be moved  
2 and flatten them.

3 When you look at the parts, and, Mr.  
4 Miller, I looked at the Clarksburg agreement, I talked to  
5 the lawyers in Clarksburg for a long -- and I talked to  
6 them two months ago, and it was my conclusion and I  
7 represented this to council when I first brought this to  
8 the fore back when we first started talking about that  
9 there was a deal in Clarksburg, there was a deal in South  
10 Charleston and Charleston. In my opinion they were all  
11 different.

12 MR. MILLER: Sir, one thing I really don't  
13 understand. Phil, I just don't understand. I don't  
14 understand why you as our legal representative who is  
15 supposed to advise us whether we're doing things illegally  
16 or legally are in the negotiations to begin with.

17 MR. GAUJOT: First of all, it's not just me in  
18 negotiations. It's --

19 MR. MILLER: I thought the Mayor --

20 MR. GAUJOT: And any council member and it's  
21 my understanding that THF developers met with council  
22 people individually and it's my understanding that you even  
23 negotiated and it's not just me negotiating. It's the



1 entire City and that's the purpose of sitting down with  
2 these people and hearing what they have to say and for you  
3 to make counter offers.

4 Now what you-all said, what you-all were  
5 agreeable to, I don't know because I wasn't privy to those  
6 conversations.

7 MR. MILLER: Maybe I misunderstand but I  
8 always thought that the purpose of legal advice was just  
9 that. It was not the purpose of negotiations.

10 MR. GAUJOT: Lawyers negotiate all the time,  
11 Mr. Miller; that's part of our job is to negotiate.

12 MR. MILLER: Is that part of your contract, to  
13 negotiate?

14 MR. GAUJOT: It's part of my understanding.  
15 My job is to help the City the best I can and I've done  
16 that and I've helped as best I know how.

17 MR. MCCUNE: I'd say for the record this is  
18 not an addition. This is a referendum. There's a  
19 distinction there. Ten percent of the voters that say we  
20 want this ordinance. This is a referendum, a proposed  
21 ordinance is on the table, and the statute reads that 10  
22 percent of the voters can put a proposed ordinance to the  
23 vote of the municipal voters. This is not an addition and

1 I believe it's the amendment of 1947 that adopts chapter  
2 eight in the charter.

3 MR. GAUJOT: There was another thing I meant  
4 to mention. We have a list of names. They may or may not  
5 be residents of Nitro. There's no authenticity to the  
6 document that has been presented. We don't know if they're  
7 residents, we don't know if more than one person signed,  
8 but there's been no justification that the petition as  
9 presented is correct.

10 MAYOR KARNES: Do we have someone else. Would  
11 you state your name?

12 MS. REEVES: Good evening, my name is Kathleen  
13 Reeves and I am a resident of Nitro. I've heard a lot of  
14 reasons why the City of Nitro should not annex the property  
15 for development of a shopping mall. I feel it's time to  
16 give some reasons why we should annex. First, we've lived  
17 here for twenty-six years, and I can still drive through  
18 Nitro and see the same things I saw twenty-six years ago.  
19 I realize some of those places I see are local businesses  
20 that have probably been here much longer than that, and I  
21 think they will continue to prosper, but I don't see any  
22 other businesses waiting in line to set up shop in our  
23 town. I wonder why.

1                   Second, people talk about Wal-Mart like  
2 Wal-Mart is trying to get something for nothing. The way I  
3 understand it, all Wal-Mart wants to do is lease space from  
4 the developer. They will be paying the City of Nitro the  
5 required B & O taxes. The City will in turn rebate that  
6 money back to the developer over a period of years. A lot  
7 of people think that this money is being taken away from  
8 the citizens of Nitro. I ask you, how can you have  
9 something taken away from you when you didn't have it in  
10 the first place? Given time, the City of Nitro will  
11 eventually realize an income from this property. Wouldn't  
12 it be better to get something later than nothing forever?  
13 I think it would be.

14                   Third, you cannot progress as a city if  
15 you're not willing to take same risks. Some people may not  
16 the changes. They may want Nitro to stay just as it is.  
17 Well, I say let's do something about it and annex this  
18 property so we can eventually do something with the new  
19 income we will be getting to make our city more appealing  
20 not only to current Nitro residents, but also to future  
21 residents.

22                   Fourth, I was born and raised in Cleveland  
23 but moved here from Chicago. For many years Cleveland was

1 known as the "Mistake by the Lake." Well, I'm here to tell  
2 you that the mistake by the lake no longer exists because  
3 the city government and the people of Cleveland finally got  
4 a good attitude about their city and were not afraid to say  
5 let's start doing something to our city, something that we  
6 can really be proud of, and, boy, did they do something.

7 All of that happened because they were  
8 willing to take the chances. That's what we need to do,  
9 take the chance. Annex the property, get the mall built,  
10 be patient and all good things will come to us in due time.  
11 We need to improve our image here in Nitro, and this will  
12 help us do it.

13 Finally, I would like to ask all council  
14 members to give very serious thought to your decision  
15 before you vote. Think of Nitro's future, leave the past  
16 in the past and let's move forward. Thank you.

17 MAYOR KARNES: Thank you.

18 MR. MONTGOMERY: My name is John Montgomery, and  
19 I'm here to express some of my concerns as well as to speak  
20 to the referendum petition which was submitted. Mr. Gaujot  
21 has stated that we don't know if all the people who signed  
22 that are proper qualified voters. Does that mean we go  
23 ahead and approve this ordinance. I say no, we can't do

## Proceedings

1 that. The first thing you have to do is to find out  
2 whether or not the petition is valid and only after that  
3 point in time can you then take the next course of action.  
4 If that course of action is in fact a referendum, that is  
5 what you do. If there are not on that referendum petition  
6 a minimum of 10 percent of qualified voters or residents of  
7 Nitro, then you can proceed with the ordinance as you  
8 appear to be intent on doing anyway, but I caution you you  
9 cannot ignore that petition. There are 425 names. It took  
10 approximately 300 or 370 names, I believe. That means that  
11 there are approximately 55 additional names on there.

12 Now for a petition that had only started  
13 being run yesterday morning, less than forty-eight hours  
14 ago, I would say that there is apparently a large number of  
15 people in this city who do not like this agreement. Can  
16 you ignore that? I say no. I see Councilman Young says  
17 yes. I don't know why, but you should not ignore it.  
18 You're ignoring the people who have elected you to  
19 represent them and if they're not being represented  
20 (applause)

21 Next, in looking at the developers have  
22 projected for their costs on this revenue to the City, I  
23 look at this because this has to be partially the basis for

1 this ordinance and this has to be partially the basis for  
2 the people who are signing that petition. In year one, it  
3 says there will be from the B & O labor tax which will have  
4 two million dollars in sales, two million dollars in sales  
5 and the annexed property in year one which will bring  
6 \$40,000 in taxes. What is to be constructed? One gigantic  
7 bar and that's the first thing that doesn't make sense.

8 Additionally, it said that the utility tax,  
9 there will be \$1,700,000 of annual sales, which will bring  
10 \$30,000 in taxes. Where is this coming from? It appears  
11 to me that some of this is what's called blue sky. It's  
12 nice and pretty but there's no substance to it. The people  
13 who signed this petition have very great concerns. They  
14 don't understand why this money has to be paid out for this  
15 developer to come in and build a shopping center which will  
16 then be selling us goods and taking money out of the  
17 pockets of the retailers who are currently in the city.  
18 They don't understand it. I don't understand it.

19 I ask seriously consider your vote on this.  
20 Yes, there appears to be a large number who have made up  
21 their minds. I would wish that you had not because what  
22 you have right now is the future of Nitro. Yes, and is  
23 that future going to be located in one shopping center out

## Proceedings

1 by the interstate and everything else being laid asunder.  
2 Is that what we're voting for? I say, yes, that's exactly  
3 what we're voting for.

4 I suggest that you carefully consider this  
5 because everything that you do tonight on this ordinance if  
6 you vote it up and say, "Yes, we are going with it," all  
7 business goes to the shopping center. The rest of Nitro  
8 insofar as merchants might as well start closing up the  
9 doors and what happens when that takes place. All of a  
10 sudden the prices at the shopping center go up and you have  
11 a monopoly. I mean it's rather easy to look at. Whether  
12 that is going to happen, I'm not positive. I am of the  
13 understanding that other places where Wal-Mart has opened  
14 their super stores, Oak Hill being one, that is what  
15 happened. The downtown pretty well shut down and the  
16 prices went up. Who's there to compete with them?

17 Consider your vote but most of all lay the  
18 motion on the table until such time as that petition is  
19 verified or found to be in -- be in default. You can't go  
20 ahead and vote this is in now if that petition is valid.  
21 Thank you.

22 MAYOR KARNES: Is there anyone else who wants to  
23 speak?

1           MR. WITHROW:     My name is Jim Withrow. I'm with  
2     the Putnam County Planning Commission. I was involved with  
3     the Toyota plant as it was coming into Buffalo. There is  
4     people there now that do not want Toyota in Buffalo. They  
5     like Buffalo the way it is and we all do, but they also  
6     want their children to stay there and work. We can't have  
7     both. Things have to change. It always has and always  
8     will. Life has to change and business has to change.

9                         Several years ago a mall proposed a site.  
10    Now it's called the St. Albans Mall. We lost that.  
11    Huntington wouldn't let the interstate, didn't want the  
12    interstate coming through I-64 years ago, did not want the  
13    interstate coming through. Charleston did. It brought the  
14    mall, who won? Nitro will be one of a handful of towns in  
15    West Virginia with two exits. That's something to think  
16    about. We'll have two exits. We'll have the Nitro exit  
17    and the Cross Lanes exit. That will be to your benefit. I  
18    think that's something to really think about.

19                        Plus nobody has yet touched on the 120  
20    acres yet to be developed. To my understanding, there's a  
21    120 acres after the Wal-Mart and all to be developed that  
22    the B & O tax will come from. Granted we are giving Wal-  
23    Mart, or the City is giving Wal-Mart a lot back, but it's



1 like an investment. They're investing money up front and  
 2 the City will get the biggest return in twenty years.  
 3 That's not a bad return in business for that kind of money,  
 4 but I think we do need to think about it, and we are going  
 5 to have to change our way of thinking and our way of doing  
 6 business. It's got to change or as they say, Mississippi  
 7 is going to start saying, "Thank God for West Virginia."  
 8 It's that simple. Thank you.

9 MAYOR KARNES: State your name.

10 MS. PHILLIPS: My name is Debra Phillips. I'm  
 11 Executive Director of the Putnam County Development  
 12 Authority. I'm here at the request of a couple of members  
 13 of council to respond to some of the economic impacts to  
 14 the proposed development and I'm not here to discuss the  
 15 content of negotiations or the contract, legalities of any  
 16 of the comments earlier at this meeting, previous public  
 17 meetings.

18 In reviewing the extent of offer that has  
 19 been negotiated by the City of Nitro and the impact on what  
 20 businesses, let me tell you this that Nitro is not  
 21 stagnant. Nitro is moving. This town is moving and  
 22 growing and it's growing along the interstate just like  
 23 this entire state is growing throughout the four lanes,

1 whether it's Huntington, Charleston, Summersville or  
2 Hurricane. We have to be able to adapt as business people  
3 and members of councils and government that represent the  
4 people of this area, whether it's the county, civil or the  
5 state.

6                   You have a very difficult decision to make,  
7 and I am very glad that I am not in your seats tonight  
8 because it's all -- it's all very difficult, but we are  
9 looking at things to change. Hurricane has made its  
10 adjustments. Whether it wants this development or not, I  
11 cannot say, but I will tell you at the request of the  
12 Putnam County Commission, if this town turns this proposal  
13 down, Putnam County to the west will be looking at the same  
14 type of development and possibly similar discussion.

15                   I think you have a very difficult decision,  
16 but I think your town, again, has changed and I commend  
17 anyone with your courage to oppose and support this, but I  
18 think we need to grow and continue from what we have to be  
19 a partnership with the businesses in the community and the  
20 developer. The cost of a cubic yard to move this dirt is  
21 close \$350 a cubic yard and, believe me, this is a very  
22 expensive proposition.

23                   Again, let me state that we are appearing

## Proceedings

44

1 at the request of the Commission, but I will discuss with  
2 the developers any possibility on I-64 but that we are not  
3 here to take this project from you. We will only discuss  
4 it if the council says no.

5 MAYOR KARNES: I would like to ask Marty who is  
6 legal counsel for the developer give us a wrap-up of where  
7 we are.

8 MR. GLASSER: Your Honor, I'd be happy to but  
9 before I kind of go through the development agreement, the  
10 documents and kind of make sure that everything is -- one  
11 more time. I would like to respond to this petition and  
12 the suggestions that there is some kind of rush to  
13 conclusion on the part of the developer as Mr. McCune said.

14 We have been at this with you folks since  
15 late January, or early February. This is June. That is  
16 not a rush. Rather than talking to the rushed conclusion  
17 or some devious plan here that we have to get this  
18 finished, let me rather talk about the tactics of waiting  
19 till the last minute to present a so-called petition that's  
20 not certified. There's no proof of the residences and as  
21 far as I know, based on the charter that I saw and I looked  
22 at the same thing as Phil, there simply is no adoption of  
23 that statute and I do not believe that that statute is

1 incumbent on this council to act.

2 Perhaps if that petition had been presented  
3 some weeks ago with certified signatures, maybe it would  
4 have been considered, but I don't understand the desire of  
5 a lot of people to just let's get past one more meeting  
6 without documenting. We have acted in good faith with you  
7 folks as you have with us. Dealt with your counsel in good  
8 faith as he has with us. We have been through a process  
9 together that has lasted some several months. As a result  
10 of that process, we have a deal that we can live with it.  
11 You have a deal that you could have lived with and now  
12 there are a lot of people who say, "We can negotiate  
13 something better." Well, frankly, they can't. The  
14 comparison to Clarksburg is apples and oranges. It's a  
15 different deal and I'm not going to sit here and analyze  
16 each detail of the Clarksburg deal and end up debating  
17 whether that is the same or not.

18 The fact of the matter is it was a totally  
19 different situation and it is not the deal that we would  
20 find acceptable here. The fact of the matter is, and I  
21 want to come back to the beginning point, the fact of the  
22 matter is that it is the developer that spends its money on  
23 this project. The City of Nitro is not being asked to put

1 up one red cent.

2 If we are wrong in our judgments about how  
3 good the shopping center will be -- it's true the City will  
4 not get as much as we might project, but we're getting a  
5 lot less. The fact of the matter is that all the risks  
6 belong to the developer.

7 Now having said that, perhaps I can go  
8 through the items that I think appropriate. I told you the  
9 last time that you were here that when it came time to  
10 execute, I would provide council with signed documents  
11 stating that we would provide them one acre of property. I  
12 tender at this point in time two signed copies of the one  
13 acre agreement that you-all had reviewed before. It's the  
14 same document. It is now signed by the developer awaiting  
15 your signature. I also -- and by the way I have a couple  
16 of unsigned copies that I'd be happy to provide for your-  
17 alls review.

18 I also indicated to you that we would be  
19 here with the signed copies ready to go forward on the  
20 Nitro Development Authority agreement and that is an  
21 agreement with the Nitro Development Authority as approved  
22 by the Mayor executing on your behalf whenever this  
23 ordinance is adopted. I will now tender to you your copies

## Proceedings

47

1 of that. It being my intent to deliver to council all  
2 those things that we represented that we would present.

3 Finally, well, not finally, but next, I  
4 will tender two copies of the development agreement that  
5 you reviewed at the last meeting. They're also signed by  
6 the developers and, finally, again for your review, so that  
7 we're all talking about the same thing, there have been  
8 some misconceptions throughout this deal and what I'd like  
9 to do is review some points to try to make sure those  
10 misconceptions don't exist any longer or at least there is  
11 no reason for them to exist and therefore I'd like to pass  
12 out among you maps of this area which mark each of the  
13 separate properties, the storage property and the SoCo  
14 property and what will become the shopping center.

15 Now you-all have seen these agreements  
16 before. They're all the same. The map is the same. It's  
17 just colored so that it's perhaps a little more  
18 understandable, and I would then like to take the  
19 opportunity to just review this overall.

20 First let me address what we're talking  
21 about when we talk about the property. The property is the  
22 184 acre tract. It's adjacent to Lowe's that exists now.  
23 As you know, what is adjacent to the Lowe's is a hillside

1 shopping center. As noted, the total property consists of  
2 184 acres, storage property is 122 acres which will be the  
3 later development, or at least not as fast as ours, and  
4 that would be substantially residential and perhaps a  
5 portion light industrial, and the shopping center complex  
6 will be approximately 60 acres.

7 Let me review for a minute the terms,  
8 although they were recited in the ordinance. The City for  
9 seven years agrees to abate the B & O construction taxes on  
10 the shopping center which is the 60 acres. The City for  
11 seven years will not create B & O taxes on construction,  
12 leasing or rentals on the storage property, the 122 acres.  
13 During the twenty year agreement, the City will not  
14 institute B & O taxes on rental or leasing income on  
15 shopping center. During the same twenty years, the first  
16 \$400,000 of B & O taxes collected by the City from sales in  
17 the shopping center will go to the Nitro Development  
18 Authority and that will be paid over to the developer to  
19 compensate for developing costs. All B & O taxes above  
20 those \$400,000 per year will be split on an 80/20 basis  
21 between the developer and the City.

22 What the City gives in exchange for that  
23 is, number one, no risk; number two, a one-time payment of

## Proceedings

48

1 and it is that hill or mountain as you might call it that  
2 creates an extraordinary cost making this land usable. We  
3 will have to level that mountain. We will have to make and  
4 move the major power lines that run across it. We will  
5 have to move an eight-inch gas line. The estimated cost  
6 for that is nine to eleven million dollars.

7 The plan for this property calls for  
8 460,000 square feet of shopping and that is in the area  
9 that is cross-hatched. There's two areas. One up at the  
10 top in blue, 8.8 acres 52.94 acres and the little .397  
11 acres. That will be the shopping center and it will be  
12 there that one will find the retail space, and at the  
13 crescent -- in the seven outlots, hopefully, there will be  
14 restaurants.

15 We hope to have and are negotiating with  
16 people to put in a theater complex and a couple of  
17 restaurants. At least insofar as the theaters are  
18 concerned, I don't believe that's available within the City  
19 of Nitro or in the immediate area right now. We are  
20 negotiating with a variety of retail stores including Wal-  
21 Mart but there is no lease commitment at this point.

22 We anticipate that the facility when fully  
23 built out will employ over six hundred people at that



## Proceedings

50

1     \$12,000; number three, a garbage truck and fire truck and,  
2     number four, and most importantly perhaps, the income  
3     beginning in the first year from the real estate and  
4     utility taxes, the liquor taxes and the light and that tax  
5     increasing every year and then beginning this year the B &  
6     O taxes, and we have gone the entire time here without  
7     noting again that those projections, and these are  
8     reasonable projections that we use on the centers that we  
9     work on all over the country I am told in one light,  
10    particularly on a line, particularly on an item here, but  
11    the fact of this matter is that a reasonable anticipation  
12    of income is that over the next thirty years, the developer  
13    will receive something in the neighborhood of eleven  
14    million dollars and the City of Nitro thirty million  
15    dollars. I would suspect that the City of Nitro would put  
16    that thirty million dollars to pretty good use.

17                    Now there are -- and I don't think I  
18    mentioned the one acre. I should include that. Finally,  
19    let me talk about a couple of misconceptions. We have  
20    continued to read in the newspaper and various media that  
21    Wal-Mart is not going to pay taxes. That simply is not the  
22    transaction. You know that. When your neighbors say that  
23    to you, I hope you point out to them that is not this

## Proceedings

51

1 transaction.

2           The tax benefits go to the developer and  
3 compensate for the money that the developer is going to lay  
4 out in the beginning. This isn't a situation where the  
5 developer spends a little bit every year and gets it back  
6 from the City. The developer is going to put it all out up  
7 front and bets his money that all this works out the way he  
8 plans it to be. He's an experienced developer and he has  
9 reason to believe that's correct. He's spending his money,  
10 not the City of Nitro's money.

11           So therefore no retail store in that  
12 development is going to avoid paying B & O taxes or pay a  
13 lesser B & O tax than any other facility or store in the  
14 City of Nitro, so that all retail footage, I'm sorry, all  
15 retail stores, whether in downtown Nitro or at that  
16 shopping center, will be on the same footing.

17           Again, I have to note that the City simply  
18 doesn't incur any obligation. There's also been a couple  
19 of comments at the last meeting, I haven't heard them  
20 today, but let me take an opportunity to address. There  
21 was some concern about the sewage treatment, what we are  
22 going to do about our sewage runoff and so forth. Let me  
23 address that. First of all, everyone should appreciate

1 that we are not asking the City for any other governmental  
2 authority to exempt us from any laws that apply to any  
3 other developer in terms of building requirements, code  
4 requirements, sewage treatment, whatever. We will comply  
5 with all those laws and there's nothing in this agreement  
6 that says we don't have to, but we do have arrangements  
7 made for sewage. We have a letter from the Union Public  
8 Service District that says that through December, 1996 if  
9 we have begun our development, they are reserving 86,000  
10 gallons a day for our use and that is adequate service to  
11 the facility.

12 Now, finally, let me just conclude with one  
13 more comment about the need to move forward. We have  
14 negotiated in good faith. We have not attempted to  
15 negotiate a better deal some place else. We have not come  
16 to you and said, "Well, St. Albans will give us this," or  
17 another city will give us something else. We have  
18 maintained that this is where we wanted to be. This is  
19 where we would like to be, and we kept those transactions  
20 open and above board with you and at all times be willing  
21 to meet with any City councilman to address any question  
22 that was raised.

23 We are in the process of having bids coming

## Proceedings

53

1 in on, or at least pretty firm estimates, on earth moving,  
2 various costs. We are in contact with potential tenants.  
3 We have been talking to them. We cannot say to them,  
4 "Well, never mind. We really can't do this right now."  
5 We've been talking to these people from January, since  
6 January 1. It is time for us to conclude on these folks,  
7 as it is time to conclude with you.

8 There is not a better deal around the  
9 corner. There is no point in waiting to see if another  
10 deal can be made because it cannot. Thank you.

11 MR. SIBLEY: My name is Herb Sibley. My daddy  
12 came to Nitro August 8th, 1927. Ms. Reeves says she's been  
13 here twenty-six years and I was one and a half years old  
14 when I came here and I've been here -- I'm about 73 years  
15 old. I've seen Nitro grow from cinder streets and cinder  
16 sidewalks, board sidewalks, little creeks running around  
17 flooding every spring, small business struggling to survive  
18 and growing, plants growing, Monsanto Chemical Company,  
19 Roche Laboratories, my dad help start, American Viscose, a  
20 tremendously large corporation, FMC, a lot of other  
21 businesses in Nitro.

22 Today Nitro has been in a depression and  
23 has been for the last twenty years. We need to grow and

## Proceedings

54

1 the only way we can grow is by moving and not by sitting  
2 and waiting for it to happen, and I think this is an  
3 opportunity for Nitro to move and I believe we should now.

4 MR. WEST: I don't know if you realize this  
5 or not but every day except for Tuesday people drive from  
6 many miles away to Nitro to give money to the City of  
7 Nitro. I'm talking about the dog track. People from Ohio,  
8 Kentucky, Virginia spend hours on the road just to come out  
9 to TriState and give Nitro -- I checked this afternoon and  
10 I notice Mr. Bett was here but I don't see him now. Since  
11 they were incorporated in the last annexation, practically  
12 handed over to Nitro almost two million dollars and I don't  
13 think very many people in Nitro contribute to the dog  
14 track.

15 The other thing I wanted to say because I  
16 see Russ is here. Rusty, I want to tell you publicly that  
17 I appreciate your statement that you would put no pressure  
18 on any councilman on this vote. I'd like to tell you that  
19 I appreciate it. I know we disagree. We probably will  
20 disagree again, but I do appreciate the fact that you said  
21 that you knew being on the council was tough and you were  
22 going not to put any pressure and I appreciate it.

23 MR. MANN: My name is Howard Mann and I'm a

1 representative of THF. Mr. Mayor and council, city  
2 attorney, since the beginning of the process that brought  
3 us to this evening, you have made yourself available to  
4 myself, to the community, to our counsel. On many  
5 occasions, I have asked you to sit down individually with  
6 me. I've asked for you to discuss with me in an open forum  
7 hearing to listen to my proposal on the behalf of THF to  
8 invest thirty million dollars in your community.

9           During that time, I requested and provided  
10 information to everyone for your input as to what would  
11 make a good economic development agreement work and there's  
12 been substantial negotiations, out in public meetings with  
13 the City attorney and the Mayor. I know that there has  
14 been input from each and every one of you, positive and  
15 negative. There has been a great deal of discussion and  
16 comments with regard to the development agreement that we  
17 received and taken into account as best we can each and  
18 every comment, even those of Mr. Miller.

19           Tonight you have a very difficult job.  
20 Since we've been working together for six months, you now  
21 have to make a decision and politically that must be the  
22 most difficult thing in the world to do because competition  
23 as recently the mayor of Los Angeles said to take a stand,

1 they put themselves in harm's way. Then you tonight need  
2 to make a decision.

3 Before I go into a couple of comments,  
4 there's a couple of comments of my personal feelings of  
5 what has going on. I'd like to personally thank each and  
6 every one of you for the time and effort and energy,  
7 consideration that you have done and the stress that's been  
8 involved with what has transpired.

9 There's now an opportunity for the City of  
10 Nitro to enable a thirty million dollar development to take  
11 place in the City of Nitro, create hundreds of construction  
12 jobs and permanent jobs. Create an annual cash flow that  
13 we have shown you what our projections are and receive over  
14 a thirty year period tens of millions of dollars, all with  
15 no risk to the City.

16 We've negotiated together in good faith for  
17 many months to create a favorable economic development for  
18 the City of Nitro which, in fact, becomes a partnership  
19 between the community of Nitro and the developer for many  
20 years to come.

21 Consider what happens if this agreement is  
22 not approved this evening. A window of opportunity could  
23 be created for another municipality, or other property

## Proceedings

57

1 owner, to encourage this development to take place at  
2 another location. The impact of this development being  
3 located along, or this development located on the 64  
4 corridor outside the City of Nitro, in my opinion would  
5 have a major negative economic consequence to the City and  
6 some of those reasons are as follows. You will continue to  
7 have to have flight of B & O taxes that are not necessarily  
8 limited to B & O sales tax, B & O liquor tax, construction  
9 tax, retail tax, occupancy tax, real estate taxes and/or  
10 utility taxes. Rather than establish an economic base of  
11 revenue by adopting this development, agreement this  
12 evening the location of a competitor shopping center  
13 outside the City of Nitro could erode the system of revenue  
14 that Nitro now currently enjoys. Actually a loss of  
15 revenues that the City currently enjoys and will find hard  
16 to replace.

17 There will be no opportunity to grow  
18 revenues if the developer is located outside of the --  
19 outside of the City on the 120 acres that you negotiate to  
20 be included in this development agreement that is currently  
21 marked storages.

22 The development agreement will enhance the  
23 revenues generated from the dog track which will be



1 additional revenues to the City of Nitro. The development  
2 agreement does not, if it's not approved, the City will not  
3 receive a fire truck or a garbage truck that you have  
4 indicated is needed irrespective of this development. The  
5 City will not receive one acre of land that will be  
6 dedicated for public use. Lakeview Drive requires  
7 substantial improvements at an estimated cost, depending  
8 upon the nature of what happens in our development of  
9 anywhere from \$500,000 to \$850,000 that will not be done.

10 THF has worked with the neighbors and the  
11 City of Nitro, the County Commission, the West Virginia  
12 Department of Transportation trying to incorporate some of  
13 their suggestions that are costly to the development  
14 agreement that sits before you this evening.

15 I respectfully request for your approval of  
16 the development agreement tonight. Passing the  
17 responsibility on to another council will not benefit the  
18 economics to this City at all, but mostly it could greatly  
19 jeopardize the opportunity now sitting before the City of  
20 Nitro.

21 THF is prepared to risk thirty million  
22 dollars and invest in the community of Nitro now. I  
23 believe it's appropriate for you as City council members to

1 concur with the proposed development agreement as well as  
2 the economic future of your community which you have so  
3 diligently invested your time, effort, and energy as a  
4 council member to bring this point to a conclusion this  
5 evening.

6 This is a wonderful opportunity to  
7 establish an economic base, cash flow, that heretofore has  
8 not been available to the City. Thank you again for your  
9 serious consideration and hopefully your approval of our  
10 request this evening. Thank you.

11 MS. FISH: My name is Margaret Fish and I am  
12 disappointed that you are not paying more heed to the  
13 signatures on that petition. I personally went out and got  
14 some of those signatures and I went to your neighborhood,  
15 Mr. Grover, your neighborhood, Mr. Young, and your  
16 neighborhood, Mr. Karnes, and of all the doors I knocked  
17 on, only two people declined to sign their signature. One  
18 was a little old lady who said she never put her signature  
19 to anything and another one was a man who said no thank  
20 you. He obviously didn't want to do it.

21 I just think your sole obligation here, you  
22 know, these people are nice and I know they think they are  
23 doing the best job, the best that they can for Nitro, but

## Proceedings

1 your sole obligation is to the people who voted you into  
2 office and they are constituents and I think you really  
3 need to pay attention to those signatures, because, you  
4 know, of the few doors that we knocked on, and I knocked on  
5 three different areas, the response was overwhelming.

6 MAYOR KARNES: Counselor, the documents that THF  
7 provided us, have you had a chance to review those and find  
8 them in order?

9 MR. GAUJOT: Mr. Mayor, I've seen the  
10 documents except the signed documents, and I want to make  
11 sure they are signed.

12 MAYOR KARNES: Councilman Miller, do you have  
13 any questions.

14 MR. MILLER: Yes. Mr. Mann, I've talked to  
15 you many times and you've always been a gentleman and I  
16 appreciate that. The one question that I have for you or  
17 Mr. Glasser is the fact that you have repeatedly stated  
18 that this has been negotiated since January. Please tell  
19 me with whom have you negotiated?

20 MR. MANN: I negotiated with the Mayor, the  
21 City attorney, and each and every one of the council  
22 members.

23 MAYOR KARNES: Are the signed documents in

1 order?

2 MR. GAUJOT: The development agreement has  
3 been signed by the developer. The storages need to sign  
4 yet so does SoCo and --

5 MAYOR KARNES: Does council have any other  
6 question or comment?

7 MR. WEST: Would you remind them that every  
8 position, every council member who voted for this was re-  
9 elected.

10 MAYOR KARNES: Would you like to restate that  
11 through the microphone?

12 MR. WEST: I'd like say in regard to the  
13 petition, every councilman who voted for this development  
14 agreement and ran was re-elected.

15 MR. MILLER: That's not true. Right here --  
16 Mr. Adkins was re-elected and he did not vote for it.

17 MAYOR KARNES: Council have any other comments?  
18 I just want to make a statement and then I'm going to ask  
19 for a roll call vote. I had reviewed this and mentioned to  
20 a couple of people, if the Toyota plant came to Nitro and  
21 we had to build a bridge and they say it costs thirty  
22 million dollars to build a bridge and we'll be here. The  
23 City of Nitro don't have thirty million dollars and they

1 say, "If you'll build that bridge and pay for it, we'll pay  
2 you back in taxes over time." But since Nitro don't have  
3 the thirty million dollars and Toyota is well financed if  
4 we ask Toyota to build a bridge and use future revenues  
5 from the profits to retire that debt, that's exactly what  
6 we are doing here.

7 I'm in favor of the project, obviously, and  
8 I've asked council to support me in this effort and I hope  
9 that they will. I'm going to ask for a roll call vote and  
10 I'll give each an opportunity if they want to make  
11 comments, to make comments at that time, and I would like  
12 to start with Councilman Grover.

13 MR. GROVER: I've got a comment, too. My  
14 name is Frank Grover, Councilman Ward 4, I represent Ward  
15 4. I don't know about the petition whether it's  
16 legitimate, legal, right or wrong but I do know about the  
17 citizens of Ward 4. The citizens of Ward 4 and Councilman  
18 Grover vote for the project.

19 MR. YOUNG: I represent Ward 1 and I don't  
20 know where this lady got those sixty votes that said she  
21 didn't want it. I haven't been able to find but one and  
22 after I talked to them, that mind was changed. No one has  
23 called me. I don't know where she got it. I'm for it.

1 MR. HUTCHINSON: I'm Jim Hutchinson, Councilman At  
2 large and I'm for this project.

3 MS. BOGGESS: I'm Betty Boggess from Ward 2  
4 and, I'm sorry, I have to abstain.

5 MR. MILLER: I'm Dean Miller and as many of  
6 you know, I've opposed this from the very beginning. I  
7 wish that I could vote for it because Nitro must grow if  
8 we're going to progress, but I'm sorry, it's not a good  
9 agreement and I vote against it.

10 MR. WEST: Any time you negotiate there are  
11 many questions that need to be answered. I still have one,  
12 Howard. I was told this afternoon that Sam Walton's  
13 daughter played a big role in this and I had read several  
14 years ago that Sam Walton had no children. Would you  
15 straighten me out?

16 MR. MANN: Well, I can't speak for Sam  
17 Walton. I'll represent Sam Walton -- no one in the Walton  
18 family has anything to do with this development agreement.

19 MR. WEST: I'm Steve West, Counselor At  
20 Large, Councilman At Large. I felt like a counselor after  
21 talking with Phil and Marty all the time. Phil even paid  
22 me a compliment and told me I'd make a good lawyer. I  
23 guess it was a compliment. I'm voting for it.

1 MR. SIBLEY: My name is Herb Sibley and I'm  
2 City recorder for the City of Nitro. In 1989 I lost my job  
3 for lack of work, one year from retirement. My son had to  
4 drop out of college with one year to go. He was forced to  
5 go to Florida to get a job as a teacher, couldn't get  
6 employment here. I vote for this for progress for Nitro.

7 MAYOR KARNES: This is one of those where I feel  
8 a need to vote. So far we've got one, two, three, four,  
9 five yes's, one no, one abstention. I vote for the project  
10 wholeheartedly. We have a line item on the agenda, Mayor's  
11 report, and I'm not going to say very much this evening,  
12 because I know you didn't come here to hear this, but I  
13 just want to say I've been here eight years. I've enjoyed  
14 working with the council most of the time. I could have  
15 been passive, done nothing, probably been criticized that I  
16 could probably had been here as long as I wanted to stay  
17 here. It's not my nature. I'm not passive. I want to see  
18 it happening. I caused it to happen. If there's nothing  
19 going on, we need to cause something to happen. I've done  
20 that since I've been here. I've enjoyed my time here, and I  
21 thank my friends and my colleagues for their support during  
22 my time here, and I feel that I leave office with Nitro on  
23 the move and much better than it was eight years ago.

1 I encourage the new administration to whole  
2 steady and continue to move forward. Thank you very much  
3 and I think council, some members may want to speak.

4 MR. GAUJOT: Mayor Karnes, as City attorney,  
5 I'd like to say to you that it's been a pleasure working  
6 with you for the last eight years. I have concluded in my  
7 mind that you are a very progressive mayor and you make  
8 things happen. This council, I think, you have been a  
9 wonderful council. Council Miller, it seems like you and I  
10 sometimes disagree but I understand you are the backbone of  
11 democracy, and you are one to stand by your convictions no  
12 matter what and I pay you all the respect you're entitled  
13 to because you have been one good councilman and you other  
14 people, Frank Grover, all of you, I need to mention Betty,  
15 you-all have been wonderful, and I appreciate the  
16 opportunity to work with you and I think it's been fun.

17 MR. WEST: I'm going to make this real  
18 brief. Don, since Clinton has been president, I've heard a  
19 lot of talk about this has never happened before. I don't  
20 believe any other mayor has ever lost and done away with  
21 and got Wal-mart and got beat.

22 MAYOR KARNES: Does any other councilman wish to  
23 say anything?



1 MR. MILLER: I'll make it very, very brief.  
2 I, too have enjoyed being your councilman. I have stood by  
3 my convictions. I think everybody here will agree that I  
4 have done that. I have not given in when I have thought  
5 you was wrong. I'm not saying that it's always right, but  
6 I always stood by it because I believe in what's best for  
7 Nitro. Thank you very much.

8 MAYOR KARNES: One last comment before we  
9 adjourn. If it hadn't been for this administration, this  
10 meeting would be somewhere else. Thank you very much and  
11 we're adjourned.

12 (WHEREUPON, the Commission meeting was  
13 adjourned.)

Don Karnes  
Herb J. Hilkey  
Recorder

## REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF WEST VIRGINIA, to wit:

I, Nancy McNealy, Certified Court Reporter and Notary Public, in and for the State of West Virginia, hereby certify to the best of my skill and ability, a true and accurate transcript of the proceedings had in the above-aforementioned caption hereof.

Given under my hand this 26th day of June, 1996.

My commission expires May 15, 2002.

\_\_\_\_\_  
Seal

  
\_\_\_\_\_  
Certified Court Reporter

**REQUEST FOR REVISION TO APPROVED BUDGET**  
(§ 11-8-26a)

Person To Contact Regarding  
Budget Revision

City of Nitro

GOVERNMENTAL ENTITY

Ralph Allison

20th Street & First Avenue

STREET OR P. O. BOX

Ph 776-5988

Nitro  
CITY

WV 25143

ZIP CODE

RECEIPTS: (net each acct.)

ACCOUNT NUMBER	ACCOUNT CATEGORY	APPROVED AMOUNT	DEBIT (INCREASE)	CREDIT (DECREASE)	REVISED AMOUNT
332	B & O Tax	740,000	80,000		820,000
399	Dog Track	120,000		40,000	80,000
347	Court Costs	15,000	15,000		30,000
367	Municipal Ser	486,220		35,000	451,220

NET INCREASE/(DECREASE) 20,000

EXPENDITURES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT CATEGORY	APPROVED AMOUNT	DEBIT (DECREASE)	CREDIT (INCREASE)	REVISED AMOUNT
3	Contractual	48,500	15,000		63,500
5	Personal Ser	379,996	40,000		419,996
455	Commodities	40,700	14,000		54,700
500	Commodities	32,200	5,000		37,200
576	Commodities	103,100		24,000	79,100
576	Capital Outlay	40,000		30,000	10,000

NET INCREASE/(DECREASE) (20,000)

**DEPARTMENT OF TAX AND REVENUE USE ONLY**

POSTED BY  
FOR THE STATE TAX COMMISSIONER BY:  
DIRECTOR - CHIEF INSPECTOR DIVISION

*[Signature]*  
AUTHORIZED SIGNATURE  
FOR GOVERNING BODY

6/18/96  
ENTITY APPROVAL DATE

**COUNTIES ONLY**

TRANSFERS TO THE GENERAL FUND FROM SPECIAL FUNDS  
CREATED PURSUANT TO WEST VIRGINIA CODE § 7-1-9, MUST  
BE ACCOMPANIED BY PRIOR WRITTEN APPROVAL FROM THE  
STATE TAX COMMISSIONER

EAS: SUBMIT WHITE AND YELLOW COPIES TO  
DEPARTMENT OF TAX AND REVENUE, RETAIN PINK  
COPY AS RECORD OF SUBMISSION.

KANAWHA COUNTY, WEST VIRGINIA  
CITY OF NITRO  
TUESDAY, JUNE 11, 1996

- 1 Registered Voters - TOTAL
- 2 Ballots Cast - TOTAL
- 3 Percent of Registered Voters
- 4 DON KARNES
- 5 DEAN MILLER
- 6 LARRY M. ANGELL, II
- 7 RUSTY CASTO
- 8 WILLIAM "Bill" GIBSON
- 9 WRITE-IN

- 10 HERB SIBLEY
- 11 WRITE-IN
- FOR COUNCIL MEMBER AT LARGE
- Vote For Not More Than 3
- 12 STEVEN E. WEST
- 13 VERNON C. MILLS
- 14 RICHARD SAVILLA, II
- 15 LAWRENCE R. HILL
- 16 GREG PATTON
- 17 MICHAEL SHREWSBURY
- 18 ROBERT R. "Bob" MATTOX

- 19 WRITE-IN
- FOR COUNCIL MEMBER - WARD 1
- 20 ROBERT D. YOUNG
- 21 JAMES L. "Smokey" STOVER
- 22 WRITE-IN
- FOR COUNCIL MEMBER - WARD 2
- 23 DAVID R. MILLER
- 24 BETTY JO BOGGESS
- 25 WRITE-IN

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
WOMENS CLUB	352	151	42.90	80	15	21	33	1	0	117	0	50	12	76	39	51	20	65	4	94	35	0	.	.
WOMENS CLUB	377	229	60.74	74	12	51	82	1	0	178	0	83	26	108	46	93	67	87	6	.	.	.	130	71
ELEMENTARY SCHOOL	526	263	50.00	86	34	22	113	3	0	197	0	114	64	88	53	76	60	114	6	.	.	.	126	105
ELEMENTARY SCHOOL	503	249	49.50	60	49	41	91	3	0	183	1	81	64	67	66	55	115	130	5	.	.	.	.	.
STEEL WORKERS OF AMER.	482	275	57.05	71	43	64	96	0	0	198	2	71	64	105	55	71	102	114	3	.	.	.	.	.
REE HILLS COMMUNITY CENTER	805	362	44.97	121	79	54	98	6	0	259	3	114	56	124	83	91	102	231	4	.	.	.	.	.
W COUNTY PRECINCTS	600	271	45.17	66	31	60	105	4	0	201	2	81	33	152	51	96	87	95	7	82	134	6	.	.
	3,645	1,800	49.38	558	263	313	618	18	0	1,333	8	594	319	720	393	533	553	836	35	176	169	6	256	176

FOR COUNCIL MEMBER - WARD 3		
CHUCK BOGGS	98	21.17
GEORGE L. ATKINS	153	33.05
JOHN H. CALDWELL	81	17.49
R. TIMOTHY HARRISON	127	27.43
WRITE-IN	4	0.86
FOR COUNCIL MEMBER - WARD 4		
FRANK GROVER, JR.	168	97.11
WRITE-IN	5	2.89



WE THE COUNCIL OF THE CITY OF NITRO CERTIFY THAT A CANVASS OF VOTES IN THE NITRO MUNICIPAL ELECTION HELD JUNE 11, 1996, WAS CONDUCTED IN A PROPER MANNER ACCORDING TO LAW AT THE VOTERS' REGISTRATION OFFICE, CHARLESTON, WV AND NO CHANGE IN THE RESULTS OF SAID ELECTION WAS NOTED IN THE FINAL TOTALS.

COPIES OF MEMBERS PRESENT AND FINAL TOTALS ARE ATTACHED IN EXHIBITS.

James E. Hutchinson  
Betty Jo Boggers  
Hein E. Hunt  
Sean Miller

Don Karnes MAYOR  
Notatic Skelley  
Frank Shaver Jr.  
Phil Libby Reader

## PUBLIC HEARING JUNE 4, 1996

The Public Hearing was called to order by Mayor Don Karnes at 7:00 p.m. at the Kathy Mattea Auditorium June 4, 1996. Those attending were City Attorney Phillip Gaujot, City Recorder/Treasurer Herbert Sibley, Councilman at Large Steve West, Councilman at Large Dean Miller, Councilman at Large James Hutchinson, Councilman Robert Young, Councilwoman Betty Jo Boggess, Councilman George Atkins and Councilman Frank Grover, Jr. Also attending several Businessmen and Citizens.

Mayor Karnes stated the purpose of this meeting is to gather public in put regarding the **Cross Lanes Project (THF REALTY)**. Mayor Karnes instructed each speaker to come the microphone and state your name for the record.

**Mr. James McHugh** stated he represented a group of concerned citizens opposing the Cross Lanes Project. He questioned the rush, WV Code 8-13-5 which concerns third party rebate, did we get the best deal, no two way contract, does it require major change or a new ordinance and should we table this.

**Debra**, second speaker, why is there no tax breaks to the city business.

**Dean Miller**, stated he felt it was a bad agreement, however his mathematics were incorrect.

**L. Angell**, what are the infrastructure cost, and when would tax benefits begin.

**Carol**, speaker 5, concerned about community development, additional jobs, tax advantages, completion as promised by developer, mathematics on salaries.

**Marty Fish**, concerned about traffic problems, crime, effect on property values.

**William Thomas**, Construction Trade Union, indicated lower wages paid by Developers at St. Clairsville and Southridge.

**John Montgomery**, Citizen of Nitro, questioned the contract at section 6.2 and indicated that section 6.3 was illegal regarding B & O tax, the abatement of B&O on construction was illegal, fraud by use of Nitro Development Authority for payment too THF was prevalent. The Storage Property, Code 11-8-26 forbids the obligation of future revenue, the letter of credit for purchase of vehicles is illegal. Small businesses should received B&O credits like THF. Nitro Development Authority is a conflict of interest. Who is THF?

**Oshel Craigo**, Businessman of Nitro, indicated why not give a fair deal to the local businesses.

**Brenda Tyler**, Citizen, why not delay the decision?

Al Summers, Mall Developer stated we do not ask for help. There are unfair rules and taxes. The location is bad for this development.


In answer to the above comments, Martin Glasser, THF Attorney made several statements and showed exhibits of estimated income to the City and there would be no B&O relief for tenants.

Howard Mann, Project Manager THF, explained the payment to the Developer was to recover extraordinary costs that will made due to the difficult terrain for the development.

Several other speakers were Bob Brick, concerned about sewage, Harvey Peyton asking where would the sewage go, Michael Lopez, Lakeview resident, expressed his concerns.

Additional time spent reviewing maps, overviews, cost estimates, revenue estimates. The meeting was then adjourned to Council Meeting after a brief recess.

  
DON KARNES, MAYOR

  
HERBERT SIBLEY, RECORDER

## CITY OF NITRO COUNCIL MEETING MINUTES

JULY 02, 1996

Mayor Rusty Casto declared a quorum and called the meeting to order at 7:30 p.m. Others attending, City Attorney Phillip Gaujot, City Recorder/Treasurer Herb Sibley, Councilman at Large Robert Mattox, Councilman at Large Richard Savilla, Councilman at Large Steve West, Councilman Robert Young, Councilman David Miller, Councilman George Atkins and Councilman Frank Grover, Jr.

Prior to the Council Meeting, Councilmen David Miller and Bob Young took the oath of office. Mayor "Rusty" Casto performed the swearing in ceremony.

Mayor Casto called for a moment of silence in memory of Mrs. Rhett.

**AGENDA ITEM NO. 1 - INVOCATION:** Councilman at Large Robert Mattox gave the Invocation.

Mayor Casto said he had to leave early to attend viewing of a friend at area funeral home. entertained a motion to move the Mayor's report (Agenda Item 6) to Agenda Item 1-A. CITY REC/TREAS HERB SIBLEY MOVED TO MAKE THE MAYOR'S REPORT THE FIRST ITEM OF BUSINESS. THE MOTION WAS SECONDED AND WAS CARRIED.

Mayor Casto reported his first two days were very busy. Many folks have visited and he said "that is the way I like it". Also he announced a Dept. Head Meeting next Monday morning, July 8, 1996. All of Council and the Public are cordially invited to attend. Mayor Casto stated he expects complete honesty from Council and all Employees, I do not like "yes" people. This being a short week with the observance of the July 4th holiday, we will wait until next week to get down to City business.

Also Mayor Casto said he will bring back the "Citizen of the Month" project. July's Citizen of the month is **Judge Knapp**. This announcement will be made the first of each month.

**AGENDA ITEM NO. 2 - APPROVAL OF JUNE 18, 1996 MINUTES:** COUNCILMAN AT LARGE STEVE WEST MOVED TO ACCEPT THE JUNE 18, 1996 COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED WITH COUNCILMAN GEORGE ATKINS ABSTAINING.



**AGENDA ITEM NO. 3 - PLANNING COMMISSION MINUTES:** COUNCILMAN FRANK GROVER MOVED TO MAKE THE PLANNING COMMISSION MINUTES A PART OF JULY 02, 1996 COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED. (Copy Attached)

**AGENDA ITEM NO. 4 - FINANCE REPORT:** Mayor Casto stated as Mayor he has asked Herbert Sibley to continue as Treasurer and he has accepted. Mayor Casto yielded the floor to Rec/Treas. Herbert Sibley. Recorder Sibley announced he will be on vacation the next week or so. Mr. Sibley stated the financial statement for tonight meeting will have to be delayed, due to a problem with the computer we were unable to run a copy. I will present the statement at the next meeting.

Recorder/Treasurer Herb Sibley requested approval of signatures for the Huntington National Bank due to the change of administration. Signatures are Mayor Rusty Casto, Recorder Herbert Sibley, and Office Manager Pansy Armstead. All except one account must have two signatures

COUNCILMAN ROBERT YOUNG MOVED TO ACCEPT SIGNATURES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE ROBERT MATTOX AND WAS CARRIED.

**AGENDA ITEM NO. 5- BUSINESS & PROF ASSN REPORT:** Mayor Casto yielded the floor to Dean Miller, spokesman for the Association. Mr. Miller extended an invitation to all council members to attend these meetings scheduled the same morning of the regular scheduled council meetings 8:30 a.m. at Gino's. The Association desires a close relationship with the City. Topics of discussion were the alumni meeting, July 13th, in a prior meeting Council agreed to block off 1/2 of 21st Street to accommodate parking. Also we are considering a pool party for the young people in town prior to pool closing.

Mayor Casto yielded the floor to Recreation Director Jay Long. Mr. Long stated for the past four years, after the 4th of July, we reduce the pool pass rates by one half. Mr. Long recommended to Council to continue with this practice. COUNCILMAN GEORGE ATKINS MOVED TO APPROVE THE REDUCTION OF THE POOL PASS RATES. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED. Director Long recommended a back to school week of free swimming. COUNCILMAN AT LARGE STEVE WEST MOVED TO GRANT THE WEEK OF FREE SWIMMING FROM AUGUST 19 THRU AUGUST 25TH. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE BOB MATTOX AND WAS CARRIED.

Recreation Director Jay Long announced the Ninth Annual Independence Day Celebration, Saturday July 6th at 4:15 p.m. and invited Council and their families to come out and enjoy the day. We have free swimming starting at 11:00 a.m., 4:15 the Nitro Honor Guard will present the flags. The Lads Four will sing the National Anthem, 4:30 with the help of Council we will be serving free hot-dogs, potato chips, drinks and

watermelon. Gospel Trio, Jazz Band, Steadfast Band and at 10:00 p.m. the fireworks Display.

### **COUNCILMEN COMMENT'S**

**Councilman Grover** mentioned the vandalism at Ridenour Lake last night between the hours of 6:00 p.m. and 6:00 a.m. this morning. Councilman Grover stated he wanted to make the new Council aware of this situation. Also Councilman Grover stated the speed bump on 21st Street has been removed, so the problem may get worse, Councilman Grover said there should be an opening and closing time, enforced by the Police Department. Discussion followed regarding night fishing and locking the gate. Estimation of damage is approximately \$200.00. COUNCILMAN ROBERT YOUNG MOVED TO GIVE MAYOR CASTO AUTHORITY TO OFFER A REWARD UP TO \$1000 UPON CONVICTION. THE MOTION WAS SECONDED BY COUNCILMAN RICHARD SAVILLA. AFTER MUCH DISCUSSION A VOTE WAS TAKEN AND PASSED.

Councilman Grover stated the problem regarding cats (pets) needs to be addressed. Councilman Grover will check on an ordinance and report to Council.

**Councilman Atkins** stated regarding vandalism at City Park, they continued to break in the doors. Councilman Atkins recommended installing steel doors instead of the wooden doors. Also Councilman Atkins stated the City seemed interested forming a "Neighborhood Watch Program".

**Councilman Miller** stated his biggest complaint was doing something about keeping the storm sewer cleaned out. Also getting the grass cleaned up downtown. Councilman Miller commented he feels the manpower should be redirected.

**Councilman Young** stated it is in the budget to get a one ton, four wheel drive, snow blade and snow scraper. Can we get the bids in and get started? Treasurer Sibley said the answer to this is yes. Gene Williams has the specs on this.

Councilman Young said there is a tree that needs to be cut down on 40th Street. Some discussion of who owns the tree.

**Councilman West** yielded the floor to City Attorney Gaujot regarding the annexation. Counselor Gaujot stated the Council approved an Ordinance for the second reading allowing the Mayor to enter into an agreement with THF Partnership. Last Thursday was the time we were to return to the County Commission and it was our understanding that the County Commission was to enter a decision on the annexation part. Counselor Gaujot explained the annexation to the new members of Council. Commissioner Bloom moved to enter an order to let the annexation take place. The other Commissioner Shores would not second the motion because he said he felt the City of Nitro should have another public meeting to consider the agreement.

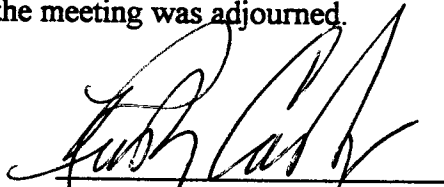
Counselor Gaujot stated he did not feel Commissioner Shores has the authority to do this. Now we must figure out the best way to do this. It is my understanding Mr. Shores wants to open the meeting up to both Cross Lanes and Nitro. We need Commissioner Shores vote. We can either follow his order and have a public hearing or you can bring a law suit. A lengthy discussion followed.

COUNCILMAN AT LARGE STEVE WEST MOVED TO HAVE A SPECIAL COUNCIL MEETING TUESDAY, JULY 9, 1996 AT 7:30 TO DISCUSS THE ANNEXATION. WITH AN INVITATION TO THE COUNTY COMMISSIONERS. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.

**Councilman Savilla** stated the issue of an Advisory Committee, which would assign a Councilman to each department in the City might be helpful in making better communications between the departments. Also he said the lack of communication causes a lot of problems. Councilman Savilla said he would like a motion to this effect.

**Councilman Mattox** called for adjournment.

There being no further business, the meeting was adjourned.

  
"RUSTY" CASTO, MAYOR  
RECORDER HERBERT SIBLEY

## PLANNING COMMISSION MINUTES, CITY OF NITRO

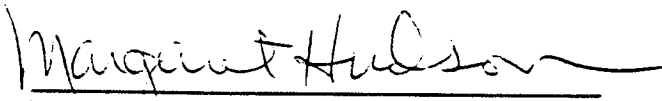
June 5, 1996

The Planning Commission of the City of Nitro met Monday, June 5, 1996, 7:00 p.m. in Room 114 of The Nitro Community Center building. Members present were Dr. Guy Cassell, Janet Martin, Jim Hutchinson, Chuck Hudson, and Margaret Hudson. The meeting was called to order by Chairperson, Margaret Hudson.

The first item of business considered was a request from Mark Sanders to fill in his recently acquired property between the alley and Bank Street on 22nd Street next to the building now occupied by H&R Block in order to create more parking spaces. After discussion between Commission members, Bob Sergent and Mark Sanders during which time it was established that the fill would be according to city specifications and that a 60-inch handicapped accessible sidewalk would be constructed (possibly closer to 22nd Street than the present sidewalk), A motion was made by Dr. Cassell to "the fill and construction of additional parking spots be permitted." The motion was second by Jim Hutchinson. Motion carried.

The second item was a request to approve Section II of the Asbury Estates Subdivision (Section I was previously approved [for Jim Burgess]). This subdivision is located across Asbury Road from Carriage Way. Bob Sergent said all utilities will be in place before anything is set up, all planning meets all city subdivision requirements and that the plans have been approved by the city engineers (Dunn Engineering). Jim Hutchinson moved that "we accept Section II of the Asbury Estates Subdivision." Chuck Hudson second the motion. Motion carried.

The next meeting was scheduled for August 5. Since there was no additional business, the meeting was adjourned.

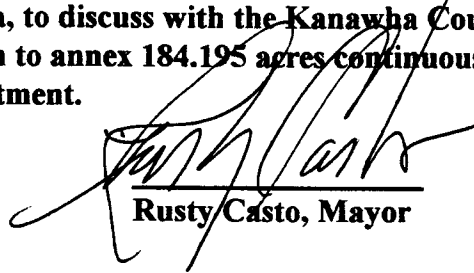
  
Margaret Hudson, Chairperson

## IN THE CITY OF NITRO, WEST VIRGINIA

## WARRANT

TO: ALL COUNCIL MEMBERS

Notice is hereby given that a Special Council Meeting will be held at 7:30 o'clock p.m., Tuesday, July 9, 1996, at Council Chambers, City Hall, Nitro, Kanawha County, West Virginia, to discuss with the Kanawha County Commission matters pertaining to application to annex 184.195 acres continuous to the City of Nitro my minor boundary adjustment.



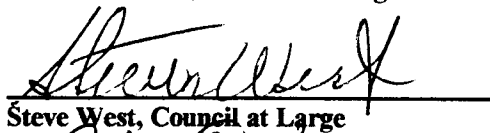
Rusty Casto, Mayor



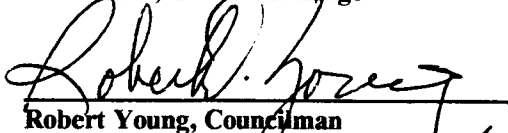
Robert Mattox, Council at Large



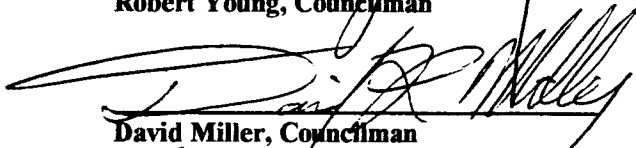
Richard Savilla, Council at Large



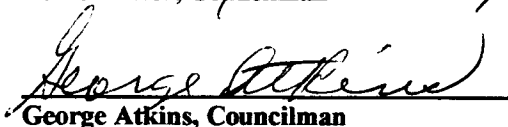
Steve West, Council at Large



Robert Young, Councilman



David Miller, Councilman



George Atkins, Councilman



Frank Grover, Jr., Councilman

**SPECIAL COUNCIL MEETING**

**JULY 09, 1996**

Mayor Casto called the special meeting to order at 7:30 p.m. in the Council Chambers at City Hall. Those attending, City Attorney Phillip Gaujot, Councilmen at Large Robert Mattox, Richard Savilla, Steve West, Councilmen Frank Grover, George Atkins and Robert Young. Also attending Kanawha County Commissioners, President Hoppy Shores, Commissioner Kent Carper, Mr. Howard Mann, THF Representative, Martin Glasser, Attorney and several city residents.

**INVOCATION: Councilman at Large Robert Mattox**

**AGENDA: Discussion with the Kanawha County Commission matters pertaining to application to annex 184.195 acres contiguous to the City of Nitro by minor boundary adjustment.**

Mayor Casto said he would give each Councilman an opportunity to speak giving their opinion regarding the Ordinance. Mayor Casto stated on June 18, 1996 the ordinance was passed by the Council. It was then sent to County Commission for approval. The fact is Ordinance 96-06 is on the books, to be removed from the books, it would require a vote from four members of this council along with my vote to remove it. Mayor Casto stated as Mayor he has no authority to change the order, this would have to be done by Council. Mayor Casto yielded the floor to City Attorney Phillip Gaujot to comment regarding this issue.

Counselor Gaujot stated he would like to recap what has transpired so far and an Ordinance 96-06 was passed allowing Mayor Karnes to enter into an agreement with THF. That ordinance passed after a public meeting was called according to code. There were several public meetings due to changes in the agreement that could have been interpreted as being substantial. Therefore, upon my advice Council re-read for the first reading on several occasions. Ultimately that ordinance passed allowing Mayor Karnes to enter into the agreement with THF. My understanding is, that agreement has been signed by Mayor Karnes in behalf of the City. Another separate item, a resolution was passed authorizing City Attorney Gaujot to file an application with The County Commission on behalf of the City, asking County Commission to annex 184 plus acres contiguous with the City of Nitro, situated over by the dog track. This application was filed, and pursuant to filing of that application and pursuant to state code a notice of a public hearing

before the County Commission was published in the newspaper. This hearing was open to public to speak. Mayor Casto stated the point he was making is when the ordinance was passed on June 18, it was then on the books.

President Shores commented one of their concerns was the road at Lakeview Drive. Commissioner Shores said he was under the impression the City of Nitro was going to take that road over, is that correct? Counselor Gaujot stated when the application to annex the 184 plus acres, there were three other applications for annexation. One application was for a portion of I-64 Putnam Co. from Nitro Interchange off of Rt. 25 out to 40th Street. Second application was to annex I-64 off of 40th Street to Cross Lanes Interchange, including that Interchange. Third application for annexation of Lakeview Dr. extending from Cross Lanes intersection up to the 184 acres. The vast majority of the opposition to the annexation came from the people living in Cross Lanes, Lakeview Drive and one property owner living across the road from the 184 acre tract. Their primary objection was this would prohibit the imaginary city of Cross Lanes from incorporating and taking in possibly those businesses across the highway that may want to go with Cross Lanes. This was a strong objection. One lady objecting that this would increase traffic up Lakeview Dr., this representing by far the vast majority of objection. To get over that hurdle, this was reported back to Council through Mayor Karnes, a vote was taken to withdraw our application of I-64 both in Putnam and Kanawha Counties and to withdraw our application of Lakeview Drive. Council's conclusion was, we do not need those roads in our City and it would virtually do away with 99 percent of the objection in the Cross Lanes area because now they do not have a barrier between this imaginary City of Cross Lanes and the prospective businesses. That is why we withdrew our applications, except for the annexation of the 184 plus acres. The last meeting of the County Commission, President Shores suggested we have another meeting. I confess I was unsure of the purpose of it all. I sort of got the impression that there was a concern by part of the Commission that maybe the City might want to reconsider the agreement entered into with THF. I reported this at the last regular meeting of Council. Based on my report, this body thought it would be a good idea to invite the Commissioners here. President Shores said the problem we had is, that road is sort of an orphan road, when you pull off the road, which is already in bad shape. President Shores stated our main purpose in this development is to make the area a better place to live and raise children. We have no objection to these people and their development. It is a sensitive problem with the traffic and that road which is an orphan road belonging to the property owners there. If the City takes over the roads that eliminates us from a big problem. The State Road will take the road over, if it is brought up to their specifications. That was one of the problems and the other problem is of sewerage. Due to amount of property taken in maybe this could possibly be hooked on to the City of Nitro and also pickup some houses along the way that are not being served.

Counselor Gaujot said, if we annex the roadway, that doesn't mean we own the roadway. That means simply we are taking the roadway into the City Limits. President Shores stated the owners will give the roads up. Counselor Gaujot stated the Developer had planned to upgrade and service the roads.

Howard Mann, Representative of THF stated they had a number of meetings with Department of Transportation and we have the specifications under which are necessary to up grade the road and we are currently working with our own Traffic Engineer to provide a set of drawings.

Martin Glasser Attorney for THF, said fixing the road has been something the company had planned to do all along. He said the money is in the budget, it is planned.

Counselor Gaujot said the sewerage issue is controlled by the Public Service Commission and they will make a decision whether or not the project goes or not. Councilman at Large West stated he talked with the Nitro General Manager Connie Stephens and she said they would love to have that area in the system. Because of the current sewer upgrading, we are laying new pipes around the City and will be increasing the capacity of the treatment plant.

President Shores stated "if we can agree that we're going to upgrade the roads, then I have no problems with it." The Commission is expected to vote on the proposal Thursday.

Mayor Casto opened the floor to all Council Members to voice their opinions and yielded the floor to the public to express their feelings on this issue.

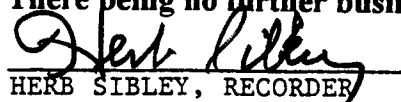
Each Councilman expressed his opinion regarding the annexation, all were supportive of Ord. 96-06.

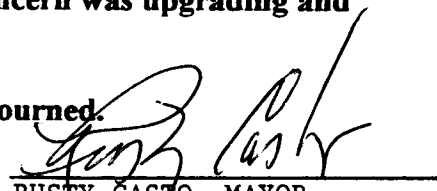
Dean Miller said he could not support the annexation. He said the way Council dealt with a petition requesting a referendum on the issue was something he could not overlook. Council said the petition was delivered too late to be considered and was not properly certified.

Chief Steve Hardman said the City must look toward the future. Lets stop thinking about today and think about what we're going to leave behind for our grand kids.

Each citizen was given time to speak. Majority of concern was upgrading and maintaining the roads.

There being no further business, the meeting was adjourned.

  
HERB SIBLEY, RECORDER

  
RUSTY CASTO, MAYOR



# **CITY OF NITRO COUNCIL MEETING MINUTES**

**JULY 16, 1996**

Mayor Casto declared a quorum and called the meeting to order at 7:30 p.m. Others attending: City Attorney Phillip Gaujot, City Recorder/Treasurer Herb Sibley, Councilmen at Large Robert Mattox, Richard Savilla, Steven West, Councilmen Robert Young, David Miller, George Atkins and Frank Grover, Jr., and several Nitro Citizens.

Minutes of the Council Meeting July 16, 1996 were written from notes by Recorder Herb Sibley due to malfunction of recorder.

**AGENDA ITEM NO. 1 - INVOCATION:** Given by Ivan Meadows.

Mayor Casto introduced and commended Cheryl Wintz Withrow on her organization of the NHS Alumni Association Reunion and her father, Bill Wintz on the 60th reunion.

**AGENDA ITEM NO. 2 - APPROVAL OF JULY 02, 1996 MINUTES:** COUNCILMAN BOB YOUNG MOVED TO APPROVE THE SPECIAL COUNCIL MEETING MINUTES AND THE JULY 02, 1996 COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.

**AGENDA ITEM NO. 3 - CAT ORDINANCE:** This item was put in committee with Councilman Frank Grover, Jr. Chairman, Councilmen Bob Mattox and Richard Savilla. Recommendations for next Council meeting.

**AGENDA ITEM NO. 4 - 1ST READING SANITARY BD ORD:** An Ordinance regarding issuing a bond issue of \$4,900,000 to repair and upgrade Sanitary Sewers/ Treatment Plant was read and passed on 1st reading. Kapok to Boundary Street presentation by Attorney Jim Withrow. A question and answer session follow. **COUNCILMAN STEVE WEST MOVED TO APPROVE ORDINANCE 96-07 ON 1ST READING. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS.** The second reading will be August 6th, 1996 followed by public hearing (Copy Attached)

**AGENDA ITEM NO. 5 - 2-HOUR PARKING REMOVED:** COUNCILMAN BOB YOUNG MOVED TO REMOVE THE TWO HOUR PARKING ON 20TH STREET, ACROSS FROM CITY HALL. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.

**AGENDA ITEM NO. 6 - FINANCE REPORT:** City Recorder / Treasurer Herbert Sibley gave a brief report for Fiscal Year 6/30/96. Mr. Sibley stated several line items were over expended. However, adjustment made and sent to State Tax Dept. Revenue for year, \$2,574,949. Expenses \$2,584,880, Budget \$2,550,120. Additional revenue accrued for B & O tax, April, May and June 1996 less collections for July 1995 was \$45,447 increase making total revenue \$2,620,396 verses expenses 2,584,880.

**AGENDA ITEM NO. 7 - BUSINESS & PROF GROUP REPORT:** Dean Miller reported the Christmas Parade is scheduled for December 7, 1996 at 6:00 p.m. Also, Mr. Miller expressed desire for

21st Street to be kept clean. Mayor Casto stated two City employees are assigned to keeping up this street. Mr. Miller stated the drops have been installed on the poles for the Christmas Lights.

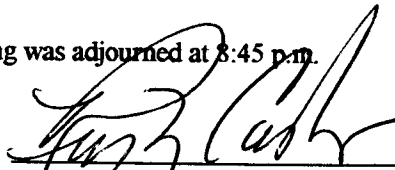
**AGENDA ITEM NO. 8 - PLANNING COMMISSION APPOINTMENTS:** Mayor Casto announced the new appointments for the Planning Commission. They are as follows: Dr. Charles Byrd, Margaret Hudson, Kermit Thompson, Jim Hutchinson, Janet Martin, Chuck Hudson, Dr. Guy Cassell, Greg Patton and Council nominee David Miller.

**AGENDA ITEM NO. 9 - MAYOR'S REPORT:** Mayor Casto discussed Cantrell property. Agreements being resolved and plan moving forward with Council approval continuing Grandfather zoning. **COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE CANTRELL MOVE. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR.**


Attorney Gaujot requested permission to move forward on Artel Property Agreements, COUNCIL APPROVED THIS REQUEST.

Various comments by individual Councilman regarding present and future actions by Council and/or City Government.

There being no further business, the meeting was adjourned at 8:45 p.m.



RUSTY CASTO, MAYOR



RECORDER HERBERT SIBLEY

## CITY OF NITRO

## ORDINANCE 96-07

AN ORDINANCE AMENDING AND SUPPLEMENTING AN ORDINANCE ENTITLED "ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND BETTERMENT TO THE PUBLIC SEWERAGE SYSTEM FACILITIES OF THE CITY OF NITRO AND THE FINANCING CERTAIN PRELIMINARY COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$373,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 1995 A, AND THE FINANCING TEMPORARILY OF CERTAIN COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$150,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 1995 B; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO THE SERIES 1995 A BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO" BY AUTHORIZING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND BETTERMENT TO THE PUBLIC SEWERAGE SYSTEM FACILITIES OF THE CITY OF NITRO AND THE FINANCING CERTAIN COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,900,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 A, PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO THE SERIES 1996 A 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 NITRO:

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 adopted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Nitro (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Kanawha and Putnam Counties of said State.

**CITY OF NITRO COUNCIL MEETING MINUTES**

**AUGUST 06, 1996**

Mayor Casto declared a quorum and called the meeting to order at 7:30 p.m. Others attending: City Attorney Phillip Gaujot, City Recorder/Treasurer Herbert Sibley, Councilmen at Large Robert Mattox, Richard Savilla, Steve West, Councilmen Robert Young, David Miller, & Frank Grover, Jr. Absent due to illness Councilman George Atkins.

**AGENDA ITEM NO. 1 - INVOCATION:** Given by Councilman at Large Robert Mattox.

**AGENDA ITEM NO. 2 - CONGRATULATIONS:** Mayor Casto extended congratulations to Councilman and Mrs. David Miller on the birth of their son, Luke Isaac, 7lbs & 11 oz.

**PINNING OF BADGES CITY OF NITRO POLICE DEPT:**

Mayor Casto said it is with great pride that I swear in our new Chief and two new Sergeants for the City of Nitro Police Department. Chief Gregory D. Winter's badge was pinned by his wife Melanie. Sergeant Michael Chatterton's badge pinned by Mayor Rusty Casto. Sergeant Jack A. Jordan's badge was pinned by his son Charlton. Mayor Casto stated he was proud of the Police Department and planned to work closely with them the next four years.

**AGENDA ITEM NO. 3- CITIZEN OF THE MONTH:** Mayor Casto announced Yolanda Perkins as **Citizen of the Month** presented by her nephew Max Lemma.. Mayor Casto said Mrs. Perkins donated the flag that is now flying over City Hall. Also he said she had been an upstanding citizen for many years. Mrs. Perkins said it was just wonderful being here and in all the years I have lived here this is the first time I have been invited to Council. I think it is a great honor.

**AGENDA ITEM NO. 4 - APPROVAL OF JULY 16, 1996 MINUTES:**  
COUNCILMAN AT LARGE BOB MATTOX MOVED TO APPROVE THE JULY 16, 1996 MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN DAVID MILLER AND WAS CARRIED.

**AGENDA ITEM NO. 5 -MEETING EPA/SHELL OIL:** Mayor Casto informed Council that Shell Oil has requested use of Council Chambers for a meeting with EPA regarding the Fike Artel Site August 29, at 7:00 p.m. This is an open public meeting. There were no objections.

**AGENDA ITEM NO. 6 - NITRO DEVELOPMENT AUTHORITY:** Mayor Casto explained briefly a concern of the Nitro Development Authority. Some board members have asked to be relieved of the responsibility of managing the building. Counselor Gaujot said the Nitro Development Authority is responsible for the management of the building. The NDA is an arm of the City and as that department was formed by the City, it can also be dissolved by the City. After much discussion, COUNCILMAN AT LARGE STEVE WEST MOVED MAYOR CASTO APPOINT AN ADVISORY COMMITTEE BETWEEN NITRO DEVELOPMENT AUTHORITY AND THE CITY OF NITRO. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.

**AGENDA ITEM NO. 7 - LIGHTS CITY PARK BASKETBALL CT.** Mayor Casto stated that for some time the basketball court lights have been out at the park and he said he felt they need to be replaced for the youth of the City to be able to participate in various ball leagues. Mayor Casto yielded the floor to Rec/Treas Herb Sibley regarding funding for this expenditure. Mr. Sibley stated that Recreation Director Jay Long has acquired a few verbal bids. These bids were \$6500, \$7500, \$7150 and \$8550. Mr. Sibley stated he has permission to use interest from Community Service money that we have in a separate account. This is being reinvested to increase interest return. Some of this money was appropriated for the Memorial Park. COUNCILMAN FRANK GROVER, JR., MOVED TO ADVERTISE FOR BIDS FOR CITY PARK LIGHTS WITH THE OPTION TO ACCEPT OR REJECT ANY OR ALL BIDS. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE ROBERT MATTOX AND WAS CARRIED.

**AGENDA ITEM NO. 8- GREATER KAN CO FOUNDATION /FD:** Mayor Casto explained to Council that approximately 10 years ago, he had raised \$5000 and put in a fund to let earnings help local good causes. Over the years some of the interest earned was donated to different purposes. The balance including interest \$5,085.87 was deposited in the Greater Kan Foundation FD. July 22, 1996. Interest on this money will be spent as follows, 25 percent to the Nitro Woman's Club, 12.5 percent to the Nitro Elementary School, 12.5 to Rock Branch Elementary School, 25 percent to Nitro Public Library and 25 percent to support charitable or educational projects to be determined by the Mayor of Nitro. Money can be contributed to the Nitro Fund in care of the Greater Kanawha Valley Foundations. A question and answer session followed.

**AGENDA ITEM NO. 9 - CAT ORDINANCE COMM REPORT:** Mayor Casto yielded the floor to Councilman Frank Grover, Jr., Councilman Grover stated the committee met prior to the Council Meeting and he said the ordinance we presently have will need to be changed so it will legally apply to cats and other animals. The committee will meet with the City Attorney on this issue.

**AGENDA ITEM NO. 10 - 2ND READING OF SANITARY BD ORD 96-07:** An Ordinance regarding issuing a bond issue of \$4,900.000 to repair and upgrade Sanitary Sewers/Treatment Plant. Mayor Casto yielded the floor to Attorney Jim Withrow to

explain the ordinance. A question and answer session followed. **COUNCILMAN AT LARGE STEVE WEST MOVED MAYOR CASTO READ TITLE ONLY AND ADOPT ORD. 96-07 ON SECOND READING. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND CARRIED.** Copy attached.

**COUNCILMAN STEVE WEST MOVED TO HOLD A PUBLIC HEARING AUGUST 20TH, 1996 AT 7:00 P.M. REGARDING ORD. 96-07. THE MOTION WAS SECONDED AND WAS CARRIED.**

**AGENDA ITEM NO. 11 - CARRIAGE WAY STREETS:** Mayor Casto stated Carriage Way has requested the City of Nitro take ownership of the streets. After some discussion regarding ownership and condition of roads **COUNCILMAN ROBERT YOUNG MOVED MAYOR CASTO APPOINT COMMITTEE TO MAKE RECOMMENDATIONS REGARDING THIS ISSUE. THE MOTION WAS SECONDED BY COUNCILMAN RICHARD SAVILLA AND WAS CARRIED.**

**AGENDA ITEM NO. 12- BUSINESS & PROFESSIONAL ASSC.** Mayor Casto yielded the floor to Spokesman Dean Miller. Mr. Miller reported the Association would like to work closely with the City. Also Mr. Miller commended Mayor Casto on the improvement of the upkeep of 21st Street. The Association will be sponsoring a free pool party, August 19, 1996 6-8 p.m., no age limit. The Christmas Parade, is scheduled for December 07, 1996 at 6:00 p.m. Mr. Miller said there has been some discussion regarding the Nitro Bungalow on Library Lot. Maybe a fund drive to restore this building or abandon project.

**AGENDA ITEM NO. 13 - FINANCE REPORT:** Mayor Casto yielded the floor to City Recorder/Treasurer Herbert Sibley. Mr. Sibley stated all council has a copy of the July statement, which is the first month of the fiscal year. Recorder Sibley said he had not had time to analyze the statement and would announce a Finance Meeting soon and go over the statement. The B & O taxes in July have been slow coming in, but in August the first four days the collections were up and quarterly estimate met. For some reason, the State Department turned our budget adjustments down. Mr. Sibley has an appointment with Ms. Stanley to resolve this.

Recorder/Treasurer Herb Sibley stated funds are now available to lease purchase the snow plow. Bid specs have been obtained and purchase advertising will be made immediately.

**CITY RECORDER SIBLEY MOVED TO ADVERTISE FOR BIDS FOR SNOW REMOVAL EQUIPMENT. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED.**

Mr. Sibley stated we have not received any bids regarding the Memorial Park. Also, Mr. Sibley said the Military leave of all employees needs to be researched and recommendation made regarding this issue. Councilman at Large West commended Chief Winter in scheduling the duty shifts to allow officers to do Military duty on their days off.

This saves the City a lot of money. Chief Winter said he checked with State Labor Board and they advised they had no regulations. They referred Chief Winter to the Veterans Affairs at the Capitol. They said it was an option of City whether to make up the difference in pay. Chief Winter stated he was working on the overtime involved and had contacted the local Federal Labor Board, who will furnish an explanation of the law, at our request. A three day drill, it does create overtime. Another problem is the officers will sometime volunteer for a week or so of duty. Some discussion followed.

Mr. Sibley stated he wanted to make Council aware that due to the absence of an employee in a key position for an extended time (due to terminal illness of family member) he has hired an employee to work as a floater and as his assistant. The cost will be absorbed in reductions in other payroll line items.

The second thing in regard to the Communication Department, in a Finance Meeting, Chief Blankenship requested the minimum wage be increased to \$6.50/hr. However, a 5 percent across the board was approved by Council for all employees. The intent was not to give across the board increases to that particular department, just raise starting salary to attract qualified individuals.

**COUNCILMAN AT LARGE STEVE WEST MOVED TO ENTER IN EXECUTIVE SESSION AT THE END OF REGULAR COUNCIL MEETING. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED.**

**AGENDA ITEM NO. 14 - CANTRELL UPDATE:** Mayor Casto thanked Council for allowing the trailer to be moved in, which will give the Cantrells a better place to live and also made most of the neighbors happy. The donations are approximately \$1800.00. Counselor Gaujot commended Mayor Casto for moving so quickly in cleaning up the Cantrell property.

**AGENDA ITEM NO. 15. MAYOR'S REPORT:** Mayor Casto announced that he and Recorder Sibley will be attending a Municipal League Conference in Wheeling August 8 and 9th, 1996.

Also Mayor Casto said he had invited a landscaper down to look at four different areas of the City that need to be spruced up. He will be looking at the Memorial Site.

Mayor Casto mentioned if the City is going to keep the City Pool going, the Council is going have to make some serious decisions.

Mayor Casto apologized for the lengthy agenda but felt Council needed to be aware of all items.

**AGENDA ITEM NO. 16 - COUNCILMEN'S COMMENTS:**

Councilman Frank Grover, stated we need to explain to the citizens what is going on with the Sanitary Board. There will be many ditches dug and possibly some inconvenience. A news release was suggested.

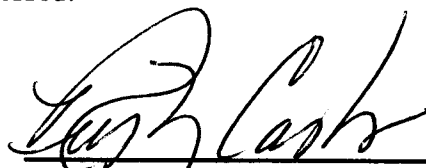
Councilman David Miller, stated there is property on 11th street that needs to be either cleaned up or condemned. Since this in my ward, I want to see that it is done. Also the drainage problem up in that area is still there. It needs to be taken care of immediately. It is affecting Third Avenue.

Councilman Bob Young, requested a new sign at Brookhaven. Also there is a blocked drain pipe in the area. It must be cleaned out.

Councilman at Large Steve West, suggested a sign at newly annexed area. Also Councilman West stated Counselor Gaujot just gave him the orders of annexation he received from County Commission finalizing the plans of annexation from Fike Artel and THF Realty. **COUNCILMAN AT LARGE STEVE WEST MOVED TO MAKE THESE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE ROBERT MATTOX AND WAS CARRIED.** (Copy attached).

Councilman Robert Mattox, stated there is a problem area behind privacy fence located at the corner of Beech. This needs to be addressed.

Meeting adjourned at 9:30 p.m.

  
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RUSTY CASTO, MAYOR

  
\_\_\_\_\_  
HERBERT SIBLEY, RECORDER



## IN THE COUNTY COMMISSION OF KANAWHA COUNTY, WEST VIRGINIA

UPON APPLICATION FOR  
ANNEXATION OF LAND INTO  
THE CITY OF NITRO BY  
MINOR BOUNDARY ADJUSTMENT

ORDER

On the 9th day of May, 1996, came the applicant, City of Nitro, a municipal corporation, in Kanawha and Putnam Counties, West Virginia, by Phillip D. Gaujot, its counsel, and tendered and asked leave to file its Application for Annexation and to give Notice that it had filed its application herein for an Order changing the boundary of the City of Nitro, and that a hearing on the question of such change of boundary would be held on this day and, it appearing to the Commission that said notice was duly published in the Charleston Gazette and Charleston Daily Mail, newspapers of general circulation in said City of Nitro and in the territory sought to be annexed, once a week for two successive weeks, beginning on the 29th day of May, 1996, and ending on the 12th day of June, 1996, as shown by the certificates of the Charleston Newspaper, and was duly and prominently posted at five public places within the area sought to be annexed, as shown by the return thereon, it is ORDERED that said Notice, together with said Certificates of Publication and Return of Posting be, and the same are filed herein.

Thereupon, the applicant moved the Commission for the adjustment of the boundary of said City of Nitro to embrace and annex a certain area of land described by metes and bounds as follows:

## DESCRIPTION OF A 184.195 ACRE TRACT

Description of a tract of land situate in Union District, Kanawha County, West Virginia, to be annexed into the existing corporation limits of the

RECORDED  
BOOK/PAGE : 2391- / 210-  
KANAWHA COUNTY, WV  
DATE/TIME RECORDED 07/12/1996 10:52:15:00  
INST #: 496099 TYPE: DEED  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUE: .00

City of Nitro by minor boundary adjustment. Said area lying southwest of Tri-State Greyhound Park Ltd. Being a part of the Storage property as recorded in DB-1981, PG-92 and including a 1.124 acre parcel as recorded in DB-2246, PG-853 and a 8.818 acre parcel designated as Tract "A-21" adjoining on the northeast side, and being more particularly described as follows:

BEGINNING at a point, said point being a set stone in the northeast corner of the Storage property as recorded in DB-1981, PG-92; thence from point of beginning and along the easterly line of said Storage property, S.  $56^{\circ} 40' 55''$  W. a distance of 117.24 feet to an Iron Pin; thence S.  $34^{\circ} 36' 27''$  W. a distance of 150.98 feet to an Iron Pin; thence S.  $45^{\circ} 12' 28''$  W. a distance of 125.05 feet to an Iron Pin; thence S.  $55^{\circ} 11' 35''$  W. a distance of 124.55 feet to an Iron Pin; thence S.  $81^{\circ} 59' 23''$  W. a distance of 108.79 feet to an Iron Pin; thence N.  $33^{\circ} 19' 58''$  W. a distance of 38.35 feet to an Iron Pin; thence S.  $56^{\circ} 40' 55''$  W. a distance of 756.37 feet to a set stone; thence S.  $11^{\circ} 21' 12''$  W. a distance of 306.27 feet to a point; thence S.  $13^{\circ} 54' 50''$  W. a distance of 225.40 feet to a point; thence S.  $33^{\circ} 46' 48''$  a distance of 174.90 feet to a point; thence S.  $57^{\circ} 2' 11''$  W. a distance of 220.20 feet to a point; thence S.  $65^{\circ} 38' 34''$  W. a distance of 232.00 feet to a point; thence N.  $68^{\circ} 48' 34''$  W. a distance of 138.00 feet to a point; thence N.  $60^{\circ} 36' 11''$  W. a distance of 87.40 feet to a point; thence N.  $76^{\circ} 29' 56''$  W. a distance of 116.40 feet to a point; thence N.  $84^{\circ} 16' 6''$  W. a distance of 83.60 feet to a point; thence N.  $86^{\circ} 4' 00''$  W. a distance of 149.60 feet to a point; thence N.  $59^{\circ} 26' 35''$  W. a distance of 170.00 feet to a point; thence N.  $62^{\circ} 3' 13''$  W. a distance of 234.70 feet to a point; thence S.  $82^{\circ} 49' 54''$  W. a distance of 42.86 feet to a point; thence, leaving the line of said Storage property N.  $41^{\circ} 47' 16''$  E. a distance of 258.34' to a point; thence N.  $48^{\circ} 12' 44''$  W. a distance of 100.00 feet to a point; thence S.  $85^{\circ} 7' 44''$  W. a distance of 253.44 feet to a point; thence S.  $88^{\circ} 50' 11''$  W. a distance of 208.71 feet to a point; thence S.  $1^{\circ} 9' 49''$  E. a distance of 208.71 feet to a point in the southerly line of said Storage property; thence S.  $88^{\circ} 50' 11''$  W. a distance of 119.28 feet to a set stone; thence N.  $27^{\circ} 54' 9''$  W. a distance of 860.23 feet to a point; thence N.  $52^{\circ} 24' 21''$  E. a distance of 3394.00 feet to a point; thence S.  $36^{\circ} 23' 5''$  E. a distance of 93.40 feet to a point; thence S.  $46^{\circ} 5' 5''$  E. a distance of 317.50 feet to a point; thence S.  $50^{\circ} 35' 5''$  E. a distance of 429.00 feet to a point; thence S.  $62^{\circ} 38' 53''$  E. a distance of 160.90 feet to an existing Iron Pin; thence S.  $51^{\circ} 28' 05''$  E. a distance of 436.40 feet to an Iron Pin; thence leaving said Storage line, N.  $31^{\circ} 44' 28''$  E. a distance of 93.89 feet to an Iron Pin in the southerly line of an 80.00' right-of-way (Lakeview Drive); thence N.  $28^{\circ} 39' 45''$  E. a distance of 80.00 feet to an Iron Pin in the northerly line of said 80.00' right-of-way (Lakeview Drive); thence along said right-of-

way S. 61° 20' 15" E. a distance of 105.02 feet to an Iron Pin; thence leaving said right-of-way N. 3° 39' 02" E. a distance of 326.80 feet to an Iron Pin; thence N. 54° 16' 51" E. a distance of 100.00 feet to an Iron Pin; thence S. 13° 06' 09" E. a distance of 156.04 feet to an Iron Pin; thence N. 78° 27' 09" E. a distance of 180.23 feet to an Iron Pin in the westerly right-of-way of Tri-State Greyhound Park access road; thence along said right-of-way and with a curve to the left having a radius of 855.50 feet, a chord bearing of S. 22° 16' 42" E., a distance of 317.82 feet to an Iron Pin; thence continuing along said right-of-way S. 32° 59' 00" E. a distance of 162.56 feet to an Iron Pin; thence with a curve to the left, having a radius of 855.50 feet, a chord bearing of S. 44° 43' 27" E. a distance of 364.79 feet to an Iron Pin; thence leaving said right-of-way of Tri-State Greyhound Park access road S. 32° 07' 57" W. a distance of 173.62 feet to an Iron Pin; thence S. 49° 00' 05" W. a distance of 108.12 feet to an Iron Pin; thence S. 2° 11' 00" W. a distance of 83.61 feet to the point of beginning, containing 184.195 acres more or less.

Included in the above tract is an 80.00 feet easement for utilities and road along the northerly portion of tract.

And it appearing to the Commission from the response to the hearing held concerning the question of adjustment of the corporate boundary of the City of Nitro, that the freeholders in the area to be annexed are not substantially opposed to the proposed boundary change, and the Commission being of opinion that the applicant is entitled to the relief prayed for in its Application, it is, therefore, ADJUDGED, ORDERED and DECREED that the boundary of the City of Nitro be, and is hereby, changed to embrace and annex the territory hereinabove described.

It is further ORDERED that the Clerk of the Commission be, and is hereby, directed to deliver to the Council of the City of Nitro, a certified copy of this Order as soon as practicable.

ENTER this 11th day of July, 1996.

*Henry C. Shores*  
COMMISSIONER

*Jim [Signature]*  
COMMISSIONER

*W. Kent Carter*  
COMMISSIONER

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*Auth Henry for Marc Slotnick*

I, ALMA Y. KING, do hereby certify  
that this is a true copy from the original  
Teste: ALMA Y. KING, Clerk  
Kanawha County Commission

Date 7-17-96 By *Robin L. Dutton*  
Deputy

## IN THE COUNTY COMMISSION OF KANAWHA COUNTY, WEST VIRGINIA

UPON APPLICATION FOR  
ANNEXATION OF LAND INTO  
THE CITY OF NITRO BY  
MINOR BOUNDARY ADJUSTMENT

ORDER

On the 9th day of May, 1996, came the applicant, City of Nitro, a municipal corporation, in Kanawha and Putnam Counties, West Virginia, by Phillip D. Gaujot, its counsel, and tendered and asked leave to file its Application for Annexation and to give Notice that it had filed its application herein for an Order changing the boundary of the City of Nitro, and that a hearing on the question of such change of boundary would be held on this day and, it appearing to the Commission that said notice was duly published in the Charleston Gazette and Charleston Daily Mail, newspapers of general circulation in said City of Nitro and in the territory sought to be annexed, once a week for two successive weeks, beginning on the 29th day of May, 1996, and ending on the 12th day of June, 1996, as shown by the certificates of the Charleston Newspaper, and was duly and prominently posted at five public places within the area sought to be annexed, as shown by the return thereon, it is ORDERED that said Notice, together with said Certificates of Publication and Return of Posting be, and the same are filed herein.

Thereupon, the applicant moved the Commission for the adjustment of the boundary of said City of Nitro to embrace and annex a certain area of land described by metes and bounds as follows:

DESCRIPTION OF ANNEXATION OF  
FIKE CHEMICALS, INC. 0.928 ACRE TRACT  
FOR THE CITY OF NITRO

A tract of land situate on the waters of the Kanawha River, Pocatalico District, West Virginia, more particularly, described as follows:

BEGINNING at a 5/8 inch iron pipe found, said rebar being on the eastern right-of-way edge of Route 25/9, (Known also as Viscose Road, and/or Plant Road) on the western edge of a railroad right-of-way recorded in Deed

RECORDED  
BOOK/PAGE : 2391- / 207-  
KANAWHA COUNTY, WV  
DATE/TIME RECORDED 07/12/1996 10:50:00:00  
INST # : 496098 TYPE: DEED  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUE: .00

Book 159, page 426, also being in the center of a 50 foot roadway reservation leading to Dano Container, Inc., and Fike Chemicals, Inc., also being in the present city limits of Nitro as annexed with Par Industrial Park annexation of 1983 book 19, page 81; thence with the center of said 50 foot roadway for one call

S. 77° 55' 18" E., 132.84 feet to a 1/2 inch rebar with plastic cap, from which a 1 inch iron pipe found in the center of said roadway bears S. 77° 55' 18" E., at 323.46 feet, said rebar being a common corner between Fike Chemicals, Inc., recorded in deed book 270 page 263, and Dano Container, Inc., recorded in Deed Book 301, page 191, thence with the common division lines of said Fike Chemicals, Inc., and said Dano Container, Inc., for five calls

(1) S. 39° 00' 42" W., 307.23 feet to a 1/2 inch rebar with plastic cap; thence

(2) S. 78° 52' 42" W., 60.65 feet to a 1/2 inch rebar with plastic cap; thence

(3) N. 77° 50' 18" W., 34.06 feet to a 1/2 inch rebar with plastic cap, thence

(4) N. 72° 19' 18" W., 32.44 feet to a 1/2 inch rebar with plastic cap, said rebar being on the eastern right-of-way of said railroad, thence running through and across said railroad right-of-way

(5) N. 49° 10' 18" W., 29.15 feet to a 1/2 inch rebar with plastic cap, said rebar being on the western edge of said railroad right-of-way, and also being on the eastern right-of-way edge of said Route 25/9, also being in the said city limits thence with the said eastern right-of-way of Route 25/9 and said city limits

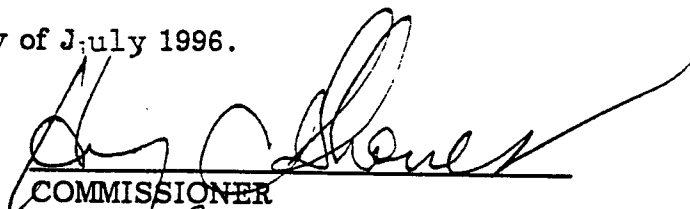
N. 40° 50' 09" E., 320.03 feet to the point of beginning, containing 0.928 acres, as shown on a Plat of Survey dated December 1, 1989, by Dunn Engineers, Inc., file no. 8916, Entitled "PLAT OF SURVEY SHOWING BOUNDARY SURVEY OF FIKE/ARTEL CHEMICAL SITES, KANAWHA & PUTNAM COUNTIES, NITRO, WEST VIRGINIA, IN ACCORDANCE WITH REM II PROGRAM-E.P.A. CONTRACT 68-01-7250, AND SUBCONTRACTOR NO. 4938-895-4192."

And it appearing to the Commission, and the Commission so finds, that the proposed annexation is only a minor boundary adjustment; and, from the response to the hearing held concerning the question of adjustment of the corporate boundary of the City of Nitro, that the freeholders in the area to be

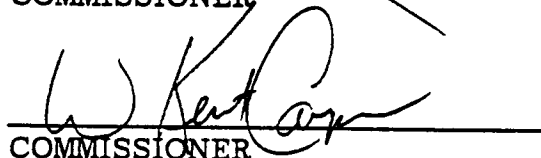
annexed are not substantially opposed to the proposed boundary change; and the Commission being of opinion that the applicant is entitled to the relief prayed for in its Application, it is, therefore, ADJUDGED, ORDERED and DECREED that the boundary of the City of Nitro be, and is hereby, changed to embrace and annex the territory hereinabove described.

It is further ORDERED that the Clerk of the Commission be, and is hereby, directed to deliver to the Council of the City of Nitro, a certified copy of this Order as soon as practicable.

ENTER this 11th day of July 1996.

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

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I, ALMA Y. KING, do hereby certify  
that this is a true copy from the original  
Teste: ALMA Y. KING, Clerk  
Kanawha County Commission

Date 7-12-96 By Robyn P. Pitter  
Deputy

## CITY OF NITRO

## ORDINANCE 96-07

AN ORDINANCE AMENDING AND SUPPLEMENTING AN ORDINANCE ENTITLED "ORDINANCE AUTHORIZING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND BETTERMENT TO THE PUBLIC SEWERAGE SYSTEM FACILITIES OF THE CITY OF NITRO AND THE FINANCING CERTAIN PRELIMINARY COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$373,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 1995 A, AND THE FINANCING TEMPORARILY OF CERTAIN COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$150,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 1995 B; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO THE SERIES 1995 A BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO" BY AUTHORIZING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND BETTERMENT TO THE PUBLIC SEWERAGE SYSTEM FACILITIES OF THE CITY OF NITRO AND THE FINANCING CERTAIN COSTS THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$4,900,000.00 IN AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM REVENUE BONDS, SERIES 1996 A, PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO THE SERIES 1996 A 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 NITRO:

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 adopted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Nitro (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Kanawha and Putnam Counties of said State.



B. The Issuer presently owns and operates a public sanitary sewerage collection and treatment system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be designed and constructed certain additions, betterments and improvements for the existing sewerage facilities of the Issuer consisting of the improvements and upgrading of the wastewater treatment plant and the replacement of certain wastewater collection lines and all appurtenant facilities (the "Project") which constitute properties for the collection and treatment of wastewater (the existing sewerage system facilities of the Issuer, the Project and any further additions thereto or extensions thereof is herein called the "System") at an estimated cost of \$5,230,900.00, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have been approved by the Issuer.

C. By ordinance enacted July 11, 1995, and effective July 25, 1995, the Issuer issued its Sewer System Revenue Bonds, Series 1995 A, in the principal amount of \$373,000.00 to provide funds to pay the costs of the preliminary design of the Project, and its Sewer System Revenue Bonds, Series 1995 B to finance temporarily certain Project costs.

D. The Issuer intends to issue its Sewer System Revenue Bonds, Series 1996 A, in order to pay the remaining costs of the Project, to pay the amount outstanding on the 1995 Series B Bonds, to provide funds to reimburse itself for costs previously incurred and to pay the costs of issuance of the Series 1996 A Bonds

E. 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 the costs of the operation and maintenance of said System, the principal of and interest on the Bonds and all Sinking Fund, Reserve Account and other payments provided for herein, all as such terms are hereinafter defined.

F. It is deemed necessary for the Issuer to issue its Sewerage System Revenue Bonds Series 1996 A in the total aggregate principal amount of not more than \$4,900,000.00 (the "Series 1996 A Bonds"). The proceeds of the Series 1996 A Bonds will be used to finance certain costs for the construction and acquisition of the Project and to reimburse the Issuer for certain costs already incurred. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Reserve Accounts; 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 of the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of same in operation, 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 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

G. The Issuer intends to finance such costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority") in connection with West Virginia Water Pollution Control Revolving Fund

Program (the "SRF Program"), pursuant to the Act, in order to take advantage of the favorable terms available to the Issuer under the SRF Program.

H. The period of usefulness of the System after completion of the Project is not less than 20 years.

I. It is in the best interests of the Issuer that its Series 1996 A Bonds be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement to be entered into by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of the Environment ("DEP"), in form satisfactory to the Issuer, the Authority and the DEP, as shall be approved herein.

J. Other than the Series 1995 A Bonds, as defined herein, there is not outstanding any obligations of the Issuer which will rank prior to or on a parity with the Bonds as to lien and source of and security for payment. The Series 1995 A Bonds and the Series 1996 A Bonds shall be secured by a first lien on the revenues of the System, which lien shall be shared on a proportionate basis between each series of bonds.

K. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bonds, or will have so complied prior to issuance of any thereof, including obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia.

L. The Issuer is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and System, and the Issuer, all subordinate entities, all entities which issue obligations on behalf of the Issuer, and all entities formed or, to the extent provided under Section 148 of the Code, herein defined, availed of, to avoid the purposes of Section 148(f)(4)(C) of the Code and all other entities benefiting thereby reasonably expect to issue less than \$5,000,000 aggregate principal amount of tax-exempt obligations (other than private activity bonds) during the calendar year 1995.

M. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Council to issue the Series 1996 A Bonds for the purposes set forth herein.

N. The Project has been approved by the West Virginia Infrastructure and Jobs Development Counsel as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended, or is grandfathered from review thereby.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be 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 registered owners of any and all of such Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, 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 Chapter 16, Article 13 and Chapter 22C, Article 2 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 of the Series 1996 A Bonds, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer or any acting Mayor duly appointed by the Governing Body.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 4.01 hereof.

"Bondholder," "Holder of the Bonds," "Holder" 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.

"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.

"Bonds" means the Series 1995 A Bonds and the Series 1996 A and any bonds on a parity therewith authorized to be issued hereunder.

"Closing Date" means, with respect to the Series 1996 A Bonds, the date upon which there is an exchange of the Bonds for the proceeds representing the purchase of the Bonds by the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, and 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 Dunn Engineers, Inc., Charleston, West Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the cost of construction and acquisition of the Project.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns.

"DEP" means the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of the Environment.

"Excess Investment Earnings" means an amount equal to the sum of:

(A) The excess of

(i) The aggregate amount earned from the Closing Date on all Nonpurpose Investments in which Gross Proceeds of the Series 1996 A Bonds are invested [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings], over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings] had been equal to the Yield on the Series 1996 A Bonds, plus

(B) Any income attributable to the excess described in clause (A) of this definition of Excess Investment Earnings.

"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 Council of the Issuer, as it may 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 Proceeds" means the sum of the following amounts:

(i) Original proceeds, namely, net amounts received by or for the Issuer as a result of the sale of the Series 1996 A Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1996 A Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the Issuer, such as interest and dividends, resulting from the investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Series 1996 A Bonds;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any prior bonds and which are deemed to become proceeds of the Series 1996 A Bonds, ratably as original proceeds of the Series 1996 A Bonds, and interest earnings and profits resulting from investment

of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds, investment proceeds or transferred proceeds (as referenced in clauses (i) through (iii) above) of the Series 1996 A Bonds, which are held in any fund to the extent that the Issuer reasonably expects to use such other fund to pay Debt Service;

(v) Amounts in the Series 1996 A Bonds Reserve Account and in any other fund established as a reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Series 1996 A Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Series 1996 A Bonds; and

(viii) Amounts received as a result of investing amounts described in this definition.

"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 7.01 hereof) or any Tap Fees, as hereinafter defined.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" shall mean 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.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes.

"Issuer" means The City of Nitro, in Kanawha and Putnam Counties, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" means the Loan Agreement to be entered into among the West Virginia Department of Environmental Protection, the Authority and the Issuer providing for the purchase of the Series 1996 A Bonds from the Issuer by the Authority, the forms of which shall be approved, and the execution and delivery by the Issuer authorized and directed by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 1996 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Series 1996 A Bonds Reserve Account. For purpose of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 1996 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation 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 the Paying Agent (all as herein defined), other than those capitalized as part of the Costs, 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 from 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 moneys, 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 IX 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 Bonds issued under the provisions and within the limitations prescribed by Section 6.07 hereof.

"Paying Agent" means the West Virginia Municipal Bond Commission, as paying agent for the Series 1996 A Bonds.

"Prior Ordinance" means the ordinance enacted by the Council of the Issuer on July 11, 1995, effective July 25, 1995, pursuant to which the Series 1995 A Bonds and the Series 1995 B Bonds were issued.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including,

without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Project" means the acquisition and construction of certain improvements and betterments to the Issuer's wastewater collection and treatment facilities of the Issuer, consisting of the upgrading the wastewater treatment plant and certain collection lines and lift stations within the jurisdiction of the Issuer, and all necessary appurtenances.

"Purchase Price," for the purpose of computation of the Yield of the Series 1996 A Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 1996 A Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Series 1996 A Bonds of each maturity is sold or, if the Series 1996 A Bonds are privately placed, the price paid by the first buyer of the Series 1996 A Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 1996 A Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 1996 A Bonds.

"Qualified Investments" means and includes any of 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, 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 State Board of Investments Pursuant to Chapter 12, Article 6 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 exempt from federal income taxation, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recorder" means the Recorder of the Issuer.

"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 or Bonds 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 Section 4.01 of the Prior Ordinance.

"Revenue Fund" means the Revenue Fund established by Section 4.01 of the Prior Ordinance.

"Series 1995 A Bonds" means the \$373,000.00 in aggregate principal amount of Sewerage System Revenue Bonds, Series 1995 A, of the Issuer issued pursuant to the Prior Ordinance.

"Series 1996 A Bonds" means the not more than \$4,900,000.00 in aggregate principal amount of Sewerage System Revenue Bonds, Series 1996 A, of the Issuer issued pursuant to this Ordinance.

"Series 1995 A Bonds Reserve Account" means the Series 1995 A Bonds Reserve Account established in the Series 1995 A Bonds Sinking Fund pursuant to Section 4.02 of the Prior Ordinance.

"Series 1996 A Bonds Reserve Account" means the Series 1996 A Bonds Reserve Account established in the Series 1996 A Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 1995 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 1995 A Bonds in the then current or any succeeding year.



"Series 1996 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 1996 A Bonds in the then current or any succeeding year.

"Series 1995 A Bonds Sinking Fund means the Series 1995 A Bonds Sinking Fund established by Section 4.02 of the Prior Ordinance.

"Series 1996 A Bonds Sinking Fund means the Series 1996 A Bonds Sinking Fund established by Section 4.02 hereof.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds from the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"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 resolutions authorizing the sale of the Notes or the Original Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Original 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 the Renewal and Replacement Fund and the Reserve Accounts, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" means the existing sewerage system facilities as expanded by the Project, and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with said sewerage system; and shall include any and all additions, extensions, improvements properties or other facilities at any time acquired or constructed for the System after completion of the Project.

"Yield" means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose Investment or on the Series 1996 A Bonds produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Bonds, all computed as prescribed in applicable Regulations.

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 IIAUTHORIZATION OF CONSTRUCTION  
AND ACQUISITION OF THE PROJECT

Section 2.01. Authorization for the Construction and Acquisition of the Project. There is hereby authorized acquisition and construction of the Project in accordance with the plans and specifications prepared by the Consulting Engineers. The Project consists generally of replacing approximately 4,400 lineal feet of 12" gravity sewer line, upgrading two pump stations, installing one new pump station, upgrading the wastewater treatment plant by installing a 625,000 gpd treatment unit, an aerobic digester, belt filter press, upgrading telemetry systems and similar work.. The proceeds of the Bonds hereby authorized shall be applied as provided in Article V hereof.

It is estimated that the proposed construction will cost approximately \$5,230,900.00, and will consist of the following:

Line Replacement	1,930,000.00
Treatment Plant Upgrade	1,705,000.00
21 <sup>st</sup> Street Project	277,300.00
Purchase of Jet Vac	165,000.00
Reimbursement/Refinance of Previous Upgrades	253,000.00
Total Construction	4,330,300.00
Engineering	254,900.00
Inspection	283,300.00
Easements	15,000.00
Legal	20,000.00
Other Administrative	15,000.00
Bond Counsel for 1996 Bonds	25,000.00
Project Contingency	244,400.00
Reserve for 1995 Bond	33,000.00
Bond Counsel for 1995 Bonds	10,000.00
Total Costs	900,600.00
Total Project	5,230,900.00

The Issuer has paid and intends to pay the costs of the Project from the proceeds of the \$373,000 Series 1995 A Bonds and the Series 1996 A Bonds.

The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the SRF Program.

### ARTICLE III

#### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Series 1996 A Bonds. For the purposes of paying certain Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 1996 A Bonds and related costs, there shall be issued negotiable Series 1996 A Bonds of the Issuer, in an aggregate principal amount of not more than \$4,900,000.00. Said Series 1996 A Bonds shall be issued as a single bond and designated as "Sewerage System Revenue Bonds, Series 1996 A." The Series 1996 A Bonds shall bear no interest until \_\_\_\_\_. From \_\_\_\_\_ the Series 1996 A Bonds shall bear interest at the rate of two percent (2%) per annum. There shall also be payable on the Series 1996 A Bonds a one percent (1%) administrative fee. The Series 1996 A Bonds shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 1996 A Bonds shall be deposited in the Bond Construction Trust Fund.

Section 3.02. Terms of the Series 1996 A Bonds. The Series 1996 A Bonds shall bear interest as set forth above; shall be payable and mature on such dates and in such amounts as set forth in Schedule Y attached hereto; 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 1996 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 on the Series 1996 A Bonds shall be paid by check or draft of the Paying 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 1996 A Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 1996 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 1996 A Bonds shall be exchangeable at the option and expense of the Holder for other fully registered 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. The Bonds shall be dated as of the date specified in a supplemental resolution and shall bear interest from the date so specified therein.

Section 3.03. Execution of Bonds. The Bonds shall be executed, either manually or by facsimile, 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 Recorder. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the 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. Any 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 Bond 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 forms set forth in Section 3.09 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 any Bond 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 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 any of said 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 any of the Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered 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 Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of 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 Bonds during the period commencing on the 15th day of the month preceding an interest payment date on the Bonds or, in the case of any proposed redemption of 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 any Bond 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 1996 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the Series 1996 A Bonds Reserve Account. No holder or holders of any of the Series 1996 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1996 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Series 1996 A Bonds to be on Parity with the Series 1995 A Bonds. The payment of the debt service of all the Series 1995 A Bonds and Series 1996 A Bonds shall be secured forthwith equally and ratably with each other, by a first lien on the Net Revenues derived from the System, which first lien shall be shared prorata among all the above described indebtedness. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Funds, the Reserve Accounts therein and the Renewal and Replacement Fund hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 1996 A Bonds to the Bond Registrar, and the Registrar shall authenticate, register and deliver the Bonds to the original purchasers thereof upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the 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 Bonds to the original purchasers; and

C. The unqualified approving opinion of bond counsel on the Bonds.

Section 3.10. Form of Original Bonds. The text of the 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 1996 A Bond]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF NITRO  
SEWERAGE SYSTEM REVENUE BOND  
SERIES 1996 A

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia in Kanawha and Putnam Counties 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 (\$ \_\_\_\_\_), 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 hereto as Exhibit A and incorporated herein by reference, together interest thereon at the rate of two percent (2%) per annum and an administrative fee of one percent (1%) per annum, which interest and administrative fee shall begin to accrue \_\_\_\_\_, in installments on March 1, June 1, September 1 and December 1 of each year, beginning \_\_\_\_\_, as set forth on the "Schedule of Annual Debt Service" attached as Exhibit B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit B.

The interest rate on each installment shall run from \_\_\_\_\_, and shall be payable on March 1, June 1, September 1 and December 1 of each year, beginning \_\_\_\_\_, as shown on the aforesaid Schedule. Principal installments of this Bond are payable in any coin or currency which, on the respective 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 \_\_\_\_\_, 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 among the Issuer, the Authority and the West Virginia Division of Environmental Protection, dated \_\_\_\_\_, 1996.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, improvements and betterments to the sewerage system facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. 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 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance and Supplemental Resolution, duly enacted and adopted, respectively, by the Issuer on \_\_\_\_\_, 1996, and \_\_\_\_\_, 1996, (collectively called 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.

THIS BOND IS ISSUED ON A PARITY WITH THE SEWERAGE SYSTEM REVENUE BONDS, SERIES 1995 A OF THE ISSUER (THE "SERIES 1995 A BONDS"), ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$373,000, WITH RESPECT TO LIENS AND SOURCES OF AND SECURITY FOR PAYMENT OF THE SERIES 1996 A BONDS.

This Bond is payable only from and secured by a first lien pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1996 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay 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 Net Revenues, the moneys in the Series 1996 A Bonds Reserve Account and unexpended Bond proceeds. 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 required in any year for principal of and interest on the Series 1996 A Bonds and the Series 1995 A Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1996 A Bonds or the Series 1995 A Bonds, provided however, that so long as there exists in the Series 1996 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series 1996 A Bonds in the then current or any succeeding year, and in the respective reserve accounts established for the Series 1995 A Bonds and any other obligations outstanding prior to or on a parity with the Series 1996 A Bonds or the Series 1995 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 Bond 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, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the 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 have existed, 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 revenues of the System has been pledged to and will be set aside

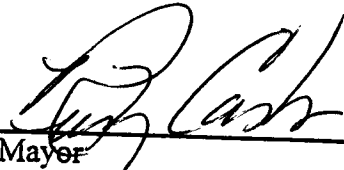
306

into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

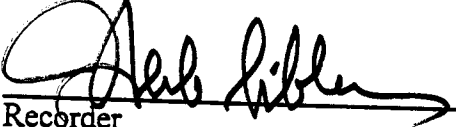
All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF NITRO has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 1996.

[SEAL]

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of The City of Nitro Sewerage System Revenue Bonds, Series 1996 A, 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: \_\_\_\_\_

\_\_\_\_\_  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

EXHIBIT A

SCHEDULE OF ADVANCES

Amount

Date

\_\_\_\_\_



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EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

(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 Series 1996 A Bonds; Ratification of Execution of Loan Agreement with Authority. The Series 1996 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 Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, ratified and approved.

Section 3.12. "Amended Schedule A" Filing. Upon completion of acquisition and construction of the Project, the Issuer will file with the Authority a schedule substantially in the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funding therefor.

#### ARTICLE IV

#### SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Continuation or Establishment of Fund and Accounts with Depository Bank. The following special funds or accounts are hereby continued or created 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;
- (2) Renewal and Replacement Fund; and
- (3) Bond Construction Trust Fund.

Section 4.02. Continuation or Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby continued or established with the Commission:

- (1) Series 1995 A Bonds Sinking Fund;
  - (a) Within the Series 1995 A Bonds Sinking Fund, the Series 1995 A Bonds Reserve Account.
- (2) Series 1996 A Bonds Sinking Fund;
  - (a) Within the Series 1996 A Bonds Sinking Fund, the Series 1996 A Bonds Reserve Account.

Section 4.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System 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 herein provided.

(1) The Issuer shall, each month, pay from the Revenue Fund, all current Operating Expenses of the System ~~and retain the sum permitted as working capital.~~

(2) (a) From the moneys remaining in the Revenue Fund, the Issuer shall next commencing 3 months prior to the first date of payment of interest on the Series 1995 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Series 1995 A Bonds Sinking Fund, a sum equal to 1/3rd of the amount of interest which will become due on said Series 1995 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 1995 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, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(b) Simultaneously, the Issuer shall, commencing 3 months prior to the first date of payment of principal on the Series 1995 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1995 A Bonds Sinking Fund, a sum equal to 1/3rd of the amount of principal which will mature and become due on said Series 1995 A Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1995 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, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(c) Simultaneously, the Issuer shall, commencing 3 months prior to the first date of payment of interest on the Series 1996 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Series 1996 A Bonds Sinking Fund, a sum equal to 1/3rd of the amount of interest which will become due on said Series 1996 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 1996 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, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(d) Simultaneously, the Issuer shall, commencing 3 months prior to the first date of payment of principal on the Series 1996 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1996 A Bonds Sinking Fund, a sum equal to 1/3rd of the amount of principal which will mature and become due on said Series 1996 A Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1996 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, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

In the event there is insufficient money in the Revenue Fund to make the payments described in this paragraph above, the Issuer shall use the available moneys and make the payments provided for on a prorata basis.

(3) (a) Thereafter, the Issuer shall, commencing 3 months prior to the first date of payment of principal of the Series 1995 A Bonds apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1995 A Bonds Reserve Account, an amount equal to 1/120th of the Series 1995 A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1995 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 1995 A Bonds Reserve Requirement.

(b) Simultaneously, with the transfer to the Series 1995 A Bonds Reserve Account as aforesaid, the Issuer shall, commencing 3 months prior to the first date of payment of principal of the Series 1996 A Bonds apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1996 A Bonds Reserve Account, an amount equal to 1/120th of the Series 1996 A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1996 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 1996 A Bonds Reserve Requirement.

(4) From the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, commencing with the month succeeding the first full calendar month after completion of the Project, transfer to 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 the Series 1995 A Bonds Reserve Account or the Series 1996 A Bonds 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 VII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Series 1995 A Bonds Reserve Account or the Series 1996 A Bonds 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 by Subsection 4.03(A)(2)(d)] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 1995 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the respective Series 1995 A Bonds as the same shall become due. Moneys in the Series 1995 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 1995 A Bonds, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose.

Moneys in the Series 1996 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the respective Series 1996 A Bonds as the same shall become due. Moneys in the Series 1996 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 1996 A Bonds, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Sinking Fund and respective Reserve Accounts shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Series 1996 A Bonds Sinking Fund and applied to the next ensuing interest payments, if any, due on the Series 1996 A Bonds, and then to the next ensuing principal payments due thereon.

Any withdrawals from the Series 1995 A Bonds Reserve Account which result in a reduction in the balance of the Series 1995 A Bonds Reserve Account to below the Series 1995 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments set forth in Section 4.03(A)(2) above have been made in full.

Any withdrawals from the Series 1996 A Bonds Reserve Account which result in a reduction in the balance of the Series 1996 A Bonds Reserve Account to below the Series 1996 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments set forth in Section 4.03(A)(2) above have been made in full.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective Sinking Fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate Reserve Account in an amount equal to the maximum provided and required to be paid into the concomitant Sinking Fund in any year for account of the Bonds of such series, including such additional Bonds which by their terms are payable from such Sinking Fund.

The Issuer shall not be required to make any further payments into the Series 1995 A Bonds Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Series 1995 A Bonds Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1995 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Issuer shall not be required to make any further payments into the Series 1996 A Bonds Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Series 1996 A Bonds Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1996 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 Sinking Fund created hereunder, and all amounts required for said Sinking Fund shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Sinking Fund shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, 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.

Moneys in the respective Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 7.01 hereof.

The Series 1996 A Bonds Sinking Fund, including the Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1996 A Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

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 said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Fund, including the Reserve Accounts therein, and the Renewal and Replacement Fund 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 complete the "monthly Payment Form," a form of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its check to the Authority by the 5th day of each calendar month.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar or the Depository Bank, on such dates as the Commission, the Registrar or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay the Depository Bank's charges then due. The Issuer shall also remit from the Revenue Fund to the Authority, on such dates as the Authority shall require, the Issuer's allocable share of reasonable administrative expenses, if any, incurred by the Authority with respect to the SRF Program.

E. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove 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.

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

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

I. All Tap Fees shall be deposited by the Issuer, as received, in the Bond Construction Trust Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

J. The Issuer shall each month on the day set forth in Section 4.03A(2) hereof, and if such day is not a business day, then the next succeeding business day), deposit with the Commission the SRF Administrative Fee as set forth in Schedule Y attached to the Loan Agreement.

## ARTICLE V

### BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 5.01. Application of Series 1996 A Bond Proceeds; Pledge of Unexpended Bond Proceeds. The moneys received from the sale of the Series 1996 A Bonds, as requisitioned by the Issuer, shall be deposited in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 5.02.

The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Bond Legislation. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so expended, are hereby pledged as additional security for the Series 1996 A Bonds.

Section 5.02. Disbursements From the Bond Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the DEP and the Authority a report listing the specific purposes for which the proceeds of the Series 1996 A Bonds will be expended and the disbursement procedures for such proceeds, including a estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 5.01 hereof, disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from the Authority and DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement as Exhibit C, and

(1) a certificate signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the 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 made 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; and

(D) That payment for each of the items proposed is then due and owing, or that Issuer or the Sanitary Board has previously paid such item in connection with the Project is being reimbursed for such payment.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of the Project, as certified by the Consulting Engineers, the Depository Bank shall transfer any moneys remaining in the Bond Construction Trust Fund to the Series 1996 A Bonds Reserve Account, and when fully funded, shall return such remaining moneys to the Issuer for deposit in the Revenue Fund. The Issuer shall thereafter, apply such moneys in full, first to the next ensuing interest payments, if any, due on the Series 1996 A Bonds and thereafter to the next ensuing principal payments due thereon.

## ARTICLE VI

### ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. 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 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 Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

Section 6.02. Bonds not to be Indebtedness of the Issuer. The Bonds shall not be nor constitute an 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 any Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or the interest thereon.

Section 6.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 1996 A Bonds issued hereunder and Series 1995 A Bonds heretofore issued shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds and to make the payments into the Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

Section 6.04. Initial Schedule of Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the ordinance of the Issuer enacted February 23, 1995.

Section 6.05. Sale of the System. Except as otherwise required by law, 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 pay fully all the Bonds Outstanding, or to effectively defease this Bond Legislation in accordance with Section 9.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds, 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 at maturity of and interest on the Bonds. Any balance remaining after the payment of all the 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, together with all other amounts received during



the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$25,000, the Sanitary Board shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and 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, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$25,000 but not in excess of \$50,000, the Sanitary Board 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 may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$25,000 and not in excess of \$50,000, shall with the written consent of the Authority, be remitted by the Issuer to the Commission for deposit in the Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value or otherwise. Such payment of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds 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 same 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 over 50% in amount of the Bonds then Outstanding and the Consulting Engineers. 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 6.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 6.06 and in Section 6.07B, 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 Bonds; provided, however, that additional Bonds on a parity with the Bonds may be issued as provided for in Section 6.07 hereof. All obligations issued by the Issuer after the issuance of the 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 1995 A Bonds and the Series 1996 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

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 Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System from any grants for the Project, or any other obligations related to the Project or the System.

Section 6.07. Parity Bonds A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided and with the written consent of the Authority and the DEP.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, improvements or betterments to the System or refunding one or more series of Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Authority and the Bank a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, 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 to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, 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 Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and
- (3) The 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 (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove 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 Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements, if any, to the System that are to be financed by such Parity Bonds.

All covenants and other provisions of this Bond Legislation (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 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 accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

All Parity Bonds shall mature on the day of the years of maturities, and the semiannual interest thereon shall be payable on the days of each year, specified in a Supplemental Resolution.

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 Series 1996 A Bonds and the Series 1995 A 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 lien on and source of and security for payment from such revenues, with the Series 1996 A Bonds or the Series 1995 A 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 with respect to the 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.

B. Notwithstanding the foregoing, or any provision of Section 6.06 to the contrary, additional Bonds may be issued solely for the purpose of completing the Project as described in the application to the Authority submitted as of the date of the Loan Agreement without regard to the restrictions set forth in this Section 6.07, if there is first obtained by the Issuer the written consent of the Authority to the issuance of bonds on a parity with the Bonds.

Section 6.08. Books and Records. 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 and the DEP, 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 and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of 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 and the DEP, or their agents and representatives, to inspect all records pertaining to the operation of the System at all reasonable times following completion of construction 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 construction.

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. 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 Governing Body. The Governing Body 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 Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Consulting Engineers, the Authority and the DEP, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of 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 with respect to said Bonds and the status of all said funds and accounts.

(C) The amount of any Bonds 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 shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to the Authority and DEP, or any other original purchaser of the Bonds. Such audit report submitted to the Authority and DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Loan Agreement and this Bond Legislation.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement as Exhibit B, and forward a copy to the Authority and DEP by the 10th day of each month.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority or the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of the Project, the Issuer shall also provide the Authority and the DEP, or their 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 and the DEP with respect to the System pursuant to the Act.

Section 6.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating

Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted 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 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 reasonable expenses of operation, repair and maintenance 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 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds; provided that, in the event an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and reserve accounts for obligations prior to or on a parity with the Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates and charges for services set forth in the rate ordinance described in the Section 6.04 hereof.

Section 6.10. Operating Budget and Audit. 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 expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and DEP 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 the Consulting Engineers, 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 the Consulting Engineers 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 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.

Section 6.11. 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 6.12. Engineering Services and Operating Personnel. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, the DEP and the Issuer at the completion of construction that construction of the Project is in

accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed.

The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

Section 6.13. 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 of the Issuer, 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 30 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 either 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, or, if the waterworks facilities are 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 of the Public Service Commission of West Virginia.

Section 6.14. 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 the Issuer 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 6.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as any of the 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 said Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the Bank, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the Bank, the contractors and subcontractors, as their interests may appear.

(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 \$100,000 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; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting 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 the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body 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.

B. The Issuer shall also require all contractors engaged in the construction of the Project to carry such workers compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project, provided that the amounts and terms of such coverage are satisfactory to

the Authority and the DEP. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the DEP, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount at least equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract.

Section 6.16. Completion of Project. The Issuer will complete the Project as promptly as possible and operate and maintain the System 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 acquisition and construction of the Project, and all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System.

Section 6.17. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Bonds during the term thereof is, under the terms of the Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.



D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Authority) which would adversely affect such exclusion.

Section 6.18. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State of West Virginia and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 6.19. Compliance with Loan Agreement and Law. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

## ARTICLE VII

### INVESTMENT OF FUNDS; NON ARBITRAGE

Section 7.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation, 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 Bond Legislation, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 7.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys 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 bond 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, 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 Bonds are Outstanding.

Section 7.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bonds, so that the Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 7.03. Rebate of Excess Investment Earnings to the United States. In accordance with Section 148(f)(4)(C) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that the Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Bonds are issued will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(C) of the Code and the Regulations promulgated thereunder. For purposes of this Section 7.03 and for purposes of applying Section 148(f)(4)(C) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a subordinate entity shall, for purposes of applying this Section 7.03 and Section 148(f)(4)(C) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(C) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer shall take the following actions:

A. CREATION OF FUNDS. There are hereby created, to be held by the Depository Bank as separate funds distinct from all other funds and accounts held by the Depository Bank under this Bond Legislation, the Earnings Fund and the Rebate Fund. All interest earnings and profits on amounts in all funds and accounts established under this Bond Legislation, other than (i) interest earnings and profits on any funds referenced in Subsection C(5) of this Section if such earnings in any Bond Year are less than \$100,000, (ii) interest earnings and profits on amounts in funds and accounts which do not constitute Gross Proceeds, and (iii) interest earnings and profits on the Rebate Fund shall, upon receipt by the Depository Bank, be deposited in the Earnings Fund. In addition, all interest earnings and profits on Gross Proceeds in funds held by the Issuer shall, upon receipt, be paid to the Depository Bank for deposit in the Earnings Fund. Annually, on or before the 30th day following the end of each Bond Year or on the preceding business day in the event that such last day is not a business day, or such earlier date as may be required under the Code, the Depository Bank shall transfer from the Earnings Fund to the Rebate Fund for purposes of ultimate payment to the United States an amount equal to Excess Investment Earnings, all as more particularly described in this Section. Following the transfer referenced in the preceding sentence, the Depository Bank shall transfer all amounts remaining in the Earnings Fund to be used for the payment of Debt Service on the next interest payment date and for such purpose, Debt Service due from the Issuer on such date shall be credited by an amount equal to the amount so transferred.

B. DUTIES OF ISSUER IN GENERAL. The Issuer shall calculate Excess Investment Earnings in accordance with Subsection C and shall assure payment of an amount equal to Excess Investment Earnings to the United States in accordance with Subsections D and E.

C. CALCULATION OF EXCESS INVESTMENT EARNINGS. Within 15 days following the last day of the first Bond Year, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the Excess Investment Earnings referenced in clause (A) of the definition of Excess Investment Earnings. Thereafter, within 15 days following the last day of each Bond Year and within 15 days following the date of the retirement of the Bond, the Issuer shall calculate, and shall provide written notice to the Authority and Depository Bank of, the amount of Excess Investment Earnings. Said calculations shall be made or caused to be made by the Issuer in accordance with the following:

(1) Except as provided in (2), in determining the amount described in clause A(i) the definition of Excess Investment Earnings, the aggregate amount earned on Nonpurpose Investments shall include (i) all income realized under federal income tax accounting principles (whether or not the person earning such income is subject to federal income tax) with respect to such Nonpurpose Investments and with respect to the reinvestment of investment receipts from such Nonpurpose Investments (without regard to the transaction costs incurred in acquiring, carrying, selling or redeeming such Nonpurpose Investments), including, but not limited to, gain or loss realized on the disposition of such Nonpurpose Investments (without regard to when such gains are taken into account under Section 453 of the Code relating to taxable year of inclusion of gross income), and income under Section 1272 of the Code (relating to original issue discount) and (ii) any unrealized gain or loss as of the date of retirement of the Bonds in the event that any Nonpurpose Investment is retained after such date.

(2) In determining the amount described in clause (A) of the definition of Excess Investment Earnings, Investment Property shall be treated as acquired for its fair market value at the time it becomes a Nonpurpose Investment, so that gain or loss on the disposition of such Investment Property shall be computed with reference to such fair market value as its adjusted basis.

(3) In determining the amount described in clause (A)(ii) of the definition of Excess Investment Earnings, the Yield on the Bonds shall be determined based on the actual Yield of the Bonds during the period between the Closing Date of the Bonds and the date the computation is made (with adjustments for original issue discount or premium).

(4) In determining the amount described in clause (B) of the definition of Excess Investment Earnings, all income attributable to the excess described in clause (A) of said definition must be taken into account, whether or not that income exceeds the Yield of the Bond, and no amount may be treated as "negative arbitrage."

(5) In determining the amount of Excess Investment Earnings, there shall be excluded any amount earned on any fund or account which is used primarily to achieve a proper matching of revenues and Debt Service within each Bond Year and which is depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1 year's earnings on such fund or account or 1/12th of annual Debt Service as well as amounts earned on said earnings if the gross earnings on such fund or account for the Bond Year is less than \$100,000.

D. PAYMENT TO THE UNITED STATES. The Issuer shall direct the Depository Bank to pay from the Rebate Fund an amount equal to Excess Investment Earnings to the United States in installments with the first payment to be made not later than 30 days after the end of the 5th Bond Year and with subsequent payments to be made not later than 5 years after the preceding payment was due. The Issuer shall assure that each such installment is in an amount equal to at least 90% of the Excess Investment Earnings with respect to the Gross Proceeds as of the close of the computation period. Not later than 60 days after the retirement of the Bonds, the Issuer shall direct the Depository Bank to pay from the Rebate Fund to the United States 100% of the theretofore unpaid Excess Investment Earnings in the Rebate Fund. In the event that there are any amounts remaining in the Rebate Fund following the payment required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required by this Subsection D, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor.

In the event of a failure to pay any such amount or amounts, the Issuer will pay, from any lawful sources available therefor, to the United States, an amount equal to the sum of 50% of the amount not paid, plus interest at the required rate on the portion of the amount which was not paid on the required date, beginning on such date, unless waived.

E. FURTHER OBLIGATIONS OF ISSUER. The Issuer shall assure that Excess Investment Earnings are not paid or disbursed except as required in this Section. To that end the Issuer shall assure that investment transactions are on an arm's length basis and that Nonpurpose Investments are acquired at their fair market value. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Regulations as from time to time in effect. The Depository Bank shall keep the moneys in the Earnings Fund and Rebate Fund invested and reinvested to the fullest extent practicable in Government Obligations with maturities consonant with the required use thereof and investment profits and earnings shall be credited to the account of such fund on which earned.

F. MAINTENANCE OF RECORDS. The Issuer shall keep and retain for a period of 6 years following the retirement of the Bonds, records of the determinations made pursuant to this Section 7.03.

G. INDEPENDENT CONSULTANTS. In order to provide for the administration of this Section 7.03, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate.

H. FURTHER AGREEMENT. Notwithstanding the foregoing, the Issuer further covenants to comply with all Regulations from time to time in effect and applicable to the Bonds, as may be necessary in order to fully comply with Section 148(f) of the Code.

I. REPORTING TO AUTHORITY. The Issuer shall furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority, Authority including, without limitation, information with respect to earnings on all funds constituting "gross proceeds" of the Series 1996 A Bonds (as such term "gross proceeds" is defined in the Code). In addition, the Issuer shall cooperate with the authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

Section 7.04. Securities Laws 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 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).

## ARTICLE VIII

### DEFAULT AND REMEDIES

Section 8.01. Events of Default. A. Each of the following events shall constitute an "Event of Default" with respect to the Series 1995 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 1995 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 1995 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 1995 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, Registrar 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.

B. Each of the following events shall constitute an "Event of Default" with respect to the Series 1996 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 1996 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 1996 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 1996 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, Registrar 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 8.02. Remedies. 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 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 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 8.03. 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, 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 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 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 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 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 IX

### DEFEASANCE

Section 9.01. Defeasance of Series 1995 A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1995 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 with respect to the Series 1995 A Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1995 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1995 A Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents 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 1995 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 1995 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 moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, 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 1995 A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys 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 1995 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.

Section 9.02. Defeasance of Series 1996 A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1996 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 with respect to the Series 1996 A Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1996 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1996 A Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents 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 1996 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 1996 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 moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, 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 1996 A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys 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 1996 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 X

### MISCELLANEOUS

Section 10.01. Amendment or Modification of Bond Legislation. No material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Series 1996 A Bonds or the Series 1995



A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or 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 respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without 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 Bonds from gross income of the holders thereof.

Section 10.02. 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 10.03. 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 Bonds.

Section 10.04. 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 10.05. 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, except for the provisions of the Ordinance enacted July 11, 1995, as amended and supplemented by a resolution adopted July 25, 1995, to the extent such provisions affect the Series 1995 A Bonds.

Section 10.06. 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 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, Recorder 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 10.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

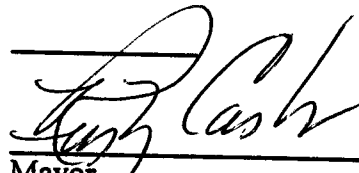
Section 10.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Legislation determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in The Charleston Daily Mail, which is a qualified newspaper of general circulation in The City of Nitro, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the City Council upon a date certain, not less than ten days subsequent to the date

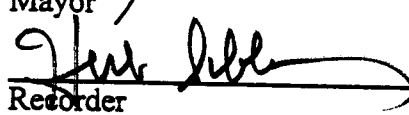
of the first publication of the abstract and notice, and present protests, and that a certified copy of the Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading - July 16, 1996

Passed on Second Reading - \_\_\_\_\_

Effective Date Following  
Public Hearing

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Recorder

## CITY OF NITRO COUNCIL MEETING MINUTES

AUGUST 20, 1996

Mayor Rusty Casto declared a quorum and called the meeting to order at 7:30 p.m. Others attending were City Attorney Phillip Gaujot, City Recorder Herbert Sibley, Councilmen at Large Robert Mattox, Richard Savilla, Steve West, Councilmen Robert Young, David Miller, George Atkins and Frank Grover, Jr.

**Pinning of Badge- Fire Department**

Mayor Casto presented Captain Ron King with his Captain Badge. Captain King was promoted to Captain for the Nitro Fire Department, February 1996.

**AGENDA ITEM NO. 1 INVOCATION:** Given by Councilman at Large Robert Mattox.

**AGENDA ITEM NO. 2- APPROVAL OF AUG 06. COUNCIL MINUTES:**

**COUNCILMAN AT LARGE STEVE WEST MOVED THE AUG 06 MINUTES BE APPROVED WITH TWO CORRECTIONS** Agenda Item No. 6 motion should read Mayor Casto to appoint a committee to investigate relationship between the Nitro Development Authority and the City of Nitro. Second correction, Agenda Item No. 13. Entered in Executive Session at approximately 9:00 p.m. to discuss various personnel matters. Council reconvened at 9:20 p.m. **COUNCILMAN RICHARD SAVILLA MOVED TO GIVE ROBIN SMITH A MERIT RAISE TO INCREASE SALARY TO \$7.70 PER HR. THE MOTION WAS SECONDED BY COUNCILMAN DAVID MILLER AND WAS CARRIED.**

**AGENDA ITEM NO. 2A:SANITARY BD AGREEMENT/CITY OF NITRO:**

Connie Stephens Manger of Nitro Sanitary Board requested that an agreement be entered into with City of Nitro and the Sanitary Board. This agreement in reference to a National Pollution Discharge Elimination System Permit Number WV0023299. **COUNCILMAN DAVID MILLER MOVED TO ACCEPT AS PRESENTED BY MANAGER STEPHENS THE EXPLANATIONS OF THIS AGREEMENT. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.**

**COUNCILMAN BOB YOUNG MOVED TO APPROVE THE SANITARY BOARD AGREEMENT. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.**

**AGENDA ITEM NO. 3. WESTSIDE PARKING:**

Councilman Atkins stated several citizens in the audience are concerned about Park Avenue parking. He indicated we need to discuss the matter. However, it was brought out a committee had already been formed and it should be resolved in that committee. Mayor Casto requested that Chairman Atkins schedule a meeting as soon as possible. After discussion matter was referred to committee.

**AGENDA ITEM NO. 4 - RDA NOMINATION:**

Mayor Casto requested a volunteer to accept nomination. Receiving no volunteer, Mayor Casto agreed to serve for a period of time.

**AGENDA ITEM NO. 5 - WV DEVELOPMENT ENDORSEMENT:**

Mayor Casto reminded Council there was a grant approved by the WV Development Authority authorizing expenditure of as much as \$7000 to furnish handicapped entrance to City Hall. After some discussion it was decided to table.

**AGENDA ITEM NO. 6 - CAT ORDINANCE REPORT:**

Councilman Grover made brief report regarding cat ordinance and indicated after an additional committee meeting some recommendation will be made. A meeting is scheduled at 6:00 p.m. September 3, 1996 in Conference room.

**AGENDA ITEM NO. 7 - SNOW PLOW BIDS:**

Recorder Treasurer Sibley reported proper notice had been made to Charleston Newspapers requesting bids for a snow plow truck and accessories. Bids will be received until August 29th 1996 at 3:00 p.m. and will be opened at council meeting September 3, 1996.

**AGENDA ITEM NO. 8 - PAR INDUSTRIAL PK (PHIL GAUJOT)**

Counselor Phillip Gaujot stated he will file a motion in federal bankruptcy court next week to force Par Industrial Corp to pay \$1.29 million it owes to the city as well as approximately \$600,000 in interest. The debt stems from loans provided to Par Ind. from 1983 to 1987 for an industrial park it was building in the city. The company declared bankruptcy in October 1992. Since then, Attorney Gaujot said he has tried to renegotiate the terms of the loan numerous times but failed, several months ago we thought we had an agreement, but they rescinded. Counselor Gaujot said the main issue seems to be the amount of interest.

Counselor Gaujot said the court motion will seek to have Par Industrial's bankruptcy status changed from Chapter 11 to Chapter 7. If the court rules in Nitro's favor, the company's assets will be sold to pay its debts.

**AGENDA ITEM NO. 9 - CARRIAGE WAY STREETS:**

Mayor Casto yielded the floor to City Attorney Phillip Gaujot. Counselor Gaujot stated his recommendations for Carriage Way Residents to file a petition with the City of Nitro requesting the City to accept the streets. The City should check the condition of the streets and how much this will affect the insurance premium. After this **an ordinance** must be prepared and a public hearing held.

**MAYOR CASTO ENTERTAINED A MOTION TO SEND ISSUE OF CARRIAGE STREETS TO COMMITTEE WITH COUNCILMAN ROBERT YOUNG AS CHAIRMAN, ALONG WITH COUNCILMAN AT LARGE STEVE WEST AND BUILDING OFFICIAL BOB SERGENT. THE MOTION WAS SECONDED BY REC/TREAS HERBERT SIBLEY AND WAS CARRIED.** A Traffic Committee meeting is scheduled for Tuesday at 7:00 p.m.

**AGENDA ITEM NO. 10- NITRO BUSINESS & PROF ASSOC:**

Mayor Casto commended Dean Miller and Lawrence Hill for their work at the pool party and yielded the floor to Dean Miller, Spokesman for the Business & Professional Association. Mr. Miller thanked the City for their cooperation regarding the pool party and he said hopefully they could have more of them next year. Also, Mr. Miller announced the Christmas Parade December 7 at 6:00 p.m. Parade route will be from Plant Road down 21st Street at Community Center. Mr. Miller stated that once again the bungalow was discussed, he said it would take approximately \$2000 to restore the bungalow. Mayor Casto asked Council's opinion regarding restoration of the bungalow and providing the \$2000 from Community Improvement Funds.

**COUNCILMAN ROBERT YOUNG MOVED TO PRESERVE THE BUNGALOW. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE ROBERT MATTOX AND WAS CARRIED.**

**COUNCILMAN AT LARGE ROBERT MATTOX MOVED TO GRANT REQUEST FOR CHRISTMAS PARADE DECEMBER 7, AT 6:00 P.M. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.**

**AGENDA ITEM NO. 11- BASKETBALL LIGHTS:**

Mayor Casto stated he did not have a bid from the contractor at this time, but he is going to be able to do it for less than the first estimates. We will be starting our leagues after school starts.

**AGENDA ITEM NO. 12 MAYOR'S REPORT:**

Mayor Casto stated most of you know we have a problem with the City Pool. Mayor Casto said we need a new deck, which will be between \$55, 000 and \$65,000 maybe a liner, pump house, a lot of work needs to be done if the pool is to be kept open. There are three options, number one; stay in the business and fix it up, number two; do as Cross Lanes and turn it over to a private agency and City stay completely out of it or number three; fill it up with dirt and get out of the business. Mayor Casto asked Council to talk to the citizens to get their feeling on the pool.

Also Mayor Casto noted a Public Hearing was held at 7:00 p.m. August 20, 1996 prior to Council meeting regarding Ordinance 96-7, an ordinance regarding repair and upgrading of the Nitro Sewer and Treatment Plant. Attorney Jim Withrow was present to answer questions.

**COUNCILMEN'S COMMENTS:**

**Councilman Frank Grover, Jr.** stated he and Public Works Director, Gene Williams have been out looking at some of the storm drain problems and have found more drains then we thought were there, there are three drains. We are working on some plans to relieve some of the storm drainage problems. One of the biggest problem areas is behind the Twin City Church. Councilman Grover stated it will take a long time and cost a lot of money. Also he said, there are a lot of parking problems, some of the streets are narrow and we need to blacktop some of the streets that have been taken in to the area. On street parking creates problems for everybody. Councilman Grover commented we are one step closer to recycling. Sally Shepherd will be bringing down two containers at the City Garage, and when this happens I will setup a schedule. This will help us decide if this is beneficial to the City.

**Councilman David Miller** stated there are several houses in his ward that need more attention even after they have mowed. He said he feels someone needs to go door to door and contact land owners to clean up property. Also Councilman Miller said the Police and Fire Dept need some group health insurance after they retire. Some discussion followed.

**Councilman at Large Steve West** stated we need to have a committee meeting to discuss responsibilities, and duties but since there is already two committee meetings scheduled we will do it later.

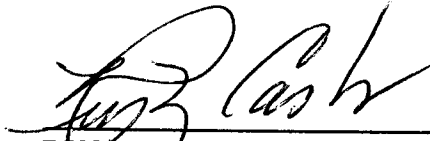
**Councilman George Atkins** stated he would like to meet with Councilman at Large Robert Mattox and anyone else interested and go to the City Garage and clean out all of the junk accumulated.

**Councilman at Large Richard Savilla** commented he would like to move on with the 31st bridge as soon as possible. Also he said had contacted Dunn Eng. regarding the bridge. Mayor Casto stated he had already contacted Dunn Eng. and has a file on the bridge in his office.

**Councilman at Large Robert Mattox** requested outcome of the City budget adjustments for 1995/1996 not being approved by the State. What has been done? City Recorder Herb Sibley said there has been no action on the budget and he has been waiting since June for the State Auditor. Recorder Sibley said the minutes that were done by outside, Court Recorder on June 18, 1996 did not reach the City in time to be presented to the State with 1995/96 adjustments.. Councilman at Large Robert Mattox asked City Recorder Sibley if he had met with Ms. Stanley. City Recorder Sibley stated he did not have an appointment with Ms. Stanley but he would contact.

**Mayor Casto** stated he is expanding and restructuring the city police force. The police force will now consist of: **Chief, Captain, Lieutenant and five Sergeants**. Mayor Casto said two weeks ago Greg Winter, a ten year veteran was promoted to Chief and Officers Mike Chatterton and Jack Jordan were promoted to Sergeants. Mayor Casto said the two new sergeants will received two years back pay because they should have been promoted earlier. Also Mayor Casto said he has great respect for the Police Department and we will be hiring two new officers.

There being no further business, the meeting was adjourned at 9:05 p.m.

  
RUSTY CASTO, MAYOR

  
HERBERT SIBLEY, REC.

**CITY OF NITRO COUNCIL MEETING MINUTES****SEPTEMBER 03, 1996**

Mayor Casto declared a quorum and called the meeting to order at 7:30 p.m. Others present: City Recorder/Treasurer Herb Sibley, City Attorney Phillip Gaujot, Councilmen at Large Robert Mattox, Richard Savilla, Steve West, Councilmen Robert Young, David Miller and Frank Grover, Jr. Absent, Councilman George Atkins.

**AGENDA ITEM NO. 1 INVOCATION:** Dean Miller**AGENDA ITEM NO. 2 CITIZEN OF THE MONTH:**

Mayor Casto announced Steve Reed, a student at Nitro High School as "Citizen of the month" for September and presented him with a Nitro hat and tee shirt and congratulated him for his interest and contributions to the City of Nitro. Steve said he was proud of Nitro High School and the City of Nitro.

**AGENDA ITEM NO. 3 FIRE DEPARTMENT FUND DRIVE:**

Mayor Casto yielded the floor to Councilman David Miller. Councilman Miller said the purpose of this fund drive is to raise money to purchase smoke detectors from First Alert, Smoke Alert Company. They are selling their top-of-the-line, ten year life expectancy battery, detectors for \$15.00 each to the Fire Department. We are trying to raise money to purchase the detectors, and in turn give the detectors to the Ministerial Association to be distributed to the needy citizens. Councilman Miller stated they have received good response from the Businesses in Nitro.

**AGENDA ITEM NO. 4 - APPROVAL OF AUG 20, 1996 MINUTES:**

**COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE THE MINUTES WITH A CORRECTION IN THE LAST PARAGRAPH ON THE LAST PAGE. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER. THE NEXT TO LAST SENTENCE SHOULD READ, PENDING COUNCIL'S APPROVAL. THE MOTION CARRIED.**



**AGENDA ITEM NO. 5 - SANITARY BOARD APPOINTMENT:**

Mayor Casto yielded the floor to Sanitary Board General Manager, Connie Stephens. Ms. Stephens stated Mayor Casto submits B. S. Saluga, Engineer, to bring before Council for approval of appointment to the Sanitary Board. As we are entering into construction, the state law requires we have a registered professional engineer on the board. Mr. Saluga meets the requirements, and he has a very impressive record. Ms. Stephens said the Sanitary Board feels very lucky to have him agree to set on the board during our construction project. **COUNCILMAN ROBERT YOUNG MOVED TO APPROVE APPOINTMENT OF B. S. SALUGA TO THE NITRO SANITARY BOARD. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE ROBERT MATTOX AND WAS CARRIED.**

**AGENDA ITEM NO. 6 - POOL UPDATE:**

Mayor Casto said Mr. Wyatt came down to look at the pool. Structurally the pool is in good shape. He is in the process of preparing a report of recommendations for the pool. Mayor Casto said the report will be in his hands by the end of the month and a copy will be sent to council. The pool is currently being painted and winterized.

Also Mayor Casto said Nitro youth are being signed up for the swim team next year.

**AGENDA ITEM NO. 7 - CAT ORDINANCE REPORT:**

Councilman Grover stated he discussed the existing ordinance with City Attorney Phillip Gaujot and he recommends changing the language of current ordinance to cover cats as well as dogs and also make an attempt to catch and pickup stray cats. Councilman Grover said the Citizens need to be made aware if their pets are running loose, they may be picked up. The animals that have been caught and the description of the animal will be posted on a bulletin board at the Police Department.

**AGENDA ITEM NO. 8 - U DAG:**

Mayor Casto yielded the floor to Counselor Gaujot. Counselor Gaujot stated he is currently preparing a motion but still needed to confirm some numbers. He will have this ready to file soon.

**AGENDA ITEM NO. 9 - FINANCIAL REPORT:**

Recorder/Treasurer Sibley said he put a copy of the financial report for July/August in each councilmen's box. On the last page, listed \$19,752.00 more than revenue for the month of August and for the year to date \$31,342.00. We have spent more than we have taken in. Mr. Sibley stated we cannot continue to do this. Efforts are being made to control purchases and notification sent to Department Heads regarding purchases and limiting overtime to emergencies. Recorder/Treasurer Sibley stated there should be some

**AGENDA ITEM NO. 10 - STUDENT GOVT DAY 11/19:**

Mayor Casto announced Nitro High School Students will assist City Council on November 19, 1996, and will work with the other Department Heads on that day. **CITY RECORDER HERBERT SIBLEY MOVED TO APPROVE STUDENT GOVT DAY NOVEMBER 19TH, OR ANY OTHER DAY THAT MAY BE APPLICABLE. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.**

**AGENDA ITEM NO. 11 - PAVILION DOOR CITY PARK:** Not addressed.

**AGENDA ITEM NO. 12 - NITRO BUSINESS & PROFESSIONAL ASSOC:**

Mayor Casto yielded the floor to speaker Dean Miller. Mr. Miller stated they had a very productive meeting. Also he said a statement in the paper implied the City Council was giving the association tax money, actually they are receiving interest from U-dag money and he would like this clarified. Mr. Miller stated he had made many contacts regarding the bungalow and by November 1st, hopefully the outside will be done and ready to seal for the winter. Mr. Miller extended an invitation to all council to attend the association meetings. He said they are planning a day "Nitro Pride Day" to clean up the town.

**AGENDA ITEM NO. 13 - RESOLUTION 96-10:**

**COUNCILMAN DAVID MILLER MOVED TO APPROVE RESOLUTION 96-10 A RESOLUTION AUTHORIZING MAYOR RUSTY CASTO TO ACT ON ITS BEHALF INTO A CONTRACTUAL AGREEMENT WITH CRIMINAL JUSTICE AND HIGHWAY SAFETY DIVISION TO RECEIVE AND ADMINISTER GRANT FUNDS PURSUANT TO PROVISIONS OF THE DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE ROBERT MATTOX AND WAS CARRIED.** Copy attached.

**AGENDA ITEM NO. 14 - MAYOR'S REPORT:**

Mayor Casto stated he has received resignation of John Santrock from Library Board. Sue Martin, Librarian has requested appointment of Mrs. George ( Dot) Atkins to the Nitro Library Board. **COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE THE APPOINTMENT OF MRS. GEORGE ATKINS (DOT) TO THE LIBRARY BOARD. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.**

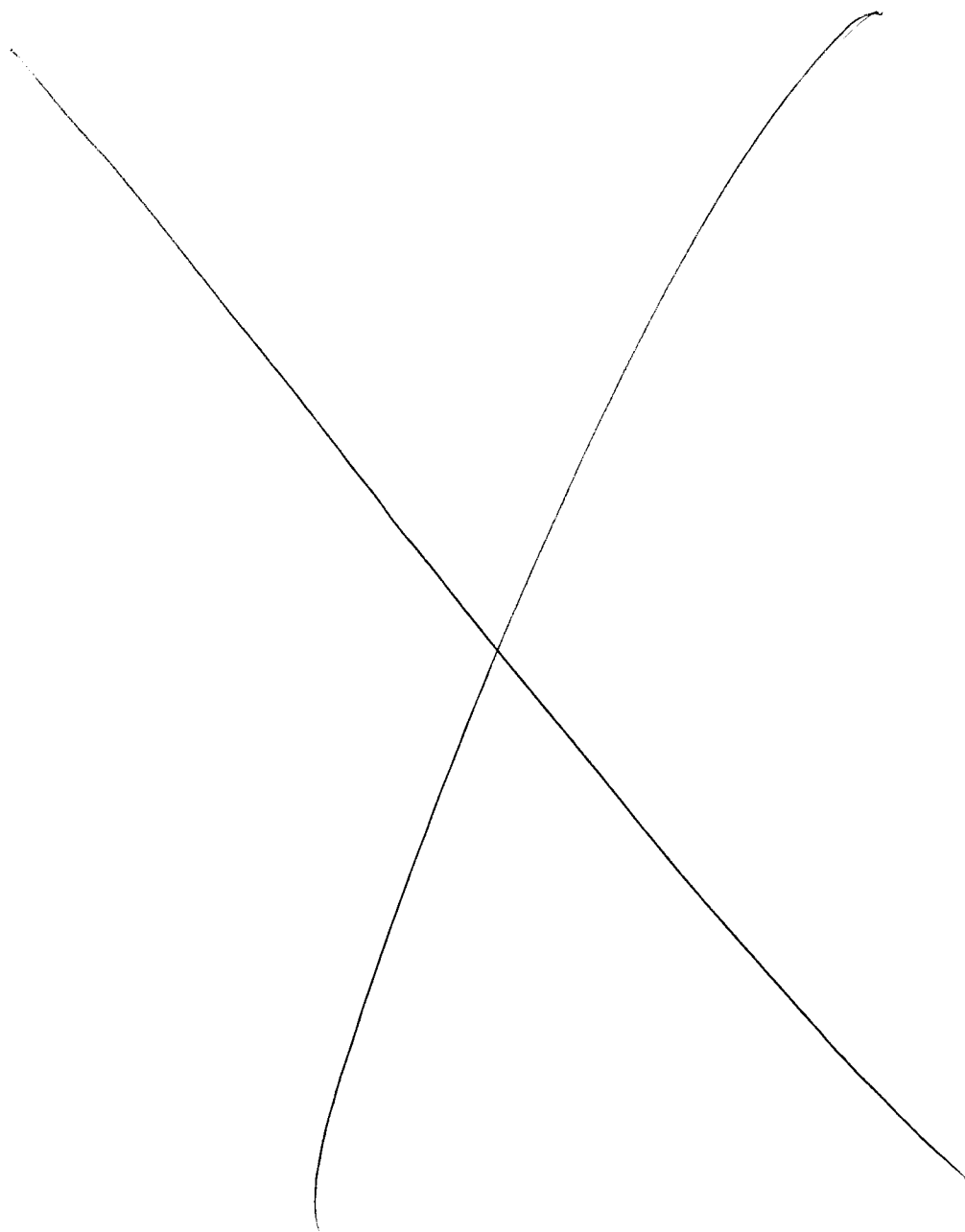
relief soon as the largest amount of property taxes are collected September 10th. Mr. Sibley announced a finance meeting for Tuesday, September 10th at 7:30 p.m. at City Hall. and he urged each councilmen to attend.

Recorder Sibley stated he advertised for a "truck/plow salt spreader" and received five (5) bids. **COUNCILMAN ROBERT YOUNG MOVED TO ACCEPT ALL BIDS RECEIVED. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.** The bids were opened by several councilmen. Recorder Sibley read the advertisement that appeared in the Charleston Newspaper. "The City of Nitro will accept sealed bids until 3:00 p.m. Thursday August 29, 1996 for a one ton, 4 WD truck with provision for snow plow hookup, complete with dumped. Also bid for one eight ft. salt spreader and one seven/half ft snow plow with all hookups. Specifications may be obtained from the Public Works Dept. The City of Nitro reserves the right to reject any or all bids. Actually there are only three bids, the other are hookups. **COUNCILMAN AT LARGE STEVE WEST MOVED THE BIDS BE SUBMITTED TO THE FINANCE COMMITTEE FOR A DECISION OF PURCHASE AND EACH BID BE READ FOR THE RECORD. THE MOTION WAS SECONDED BY COUNCILMAN DAVID MILLER AND WAS CARRIED.** First bid on truck, General Truck Sales, \$32644.00, Turnpike, Truck and Bed \$31799.05, WV Tractor, Spreader \$3500, Spinner \$50.00, Plow \$2600.00, R. H. Peters, Truck \$22000, Bed \$3895, Plow \$2350, Spreader \$3675, FRT. \$150, total \$32070.00, J & J Enterprise, Truck \$22900.00, Spreader \$3149, Plow \$2595, H. D.\$3950 ,Total \$32,594.

Recorder/Treasurer Herb Sibley presented Council with two resolutions, first one is the agreement with the Sanitary Board, resolution authorizing Mayor of the City of Nitro to enter into an agreement between the City of Nitro and the Nitro Sanitary Board. **COUNCILMAN ROBERT YOUNG MOVED TO MAKE RESOLUTION 96-12 A PART OF THE SEPTEMBER 3, 1996 MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN DAVID MILLER AND WAS CARRIED.** Copy attached.

Second resolution: A resolution authorizing Mayor of the City of Nitro to enter into an easement agreement with Monsanto Chemical Company. **COUNCILMAN AT LARGE ROBERT MATTOX MOVED TO MAKE RESOLUTION 96-11 A PART OF SEPTEMBER 3, 1996 COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.** Copy attached.

Recorder Treasurer Herbert Sibley read Resolution 96-13 A resolution authorizing Mayor of the City of Nitro to enter into grant program between the West Virginia Development Office and the City of Nitro. **COUNCILMAN ROBERT YOUNG MOVED TO APPROVE RESOLUTION 96- 13. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE ROBERT MATTOX AND WAS CARRIED.** Mayor Casto explained this means we will be tearing out the front doors to City Hall and installing handicapped accessible doors. Copy attached.



## Councilmen's Comments:

**Councilman Frank Grover, Jr.** stated he and some of the other councilmen had looked at the storm drains and will try to devise a plan to take care of the some of the drainage problems in town.

**Councilman David Miller** commented there are several drains that still need cleaned and there are several problem areas not being addressed. Councilman Miller read response summary for the month of August, 1996. 8 Fires, 8 Box Alarms, 9 Auto Accidents, 1 False/Canceled, 14 E.M.S. & 10 Other. Total 50 Emergency Responses **COUNCILMAN FRANK GROVER, JR. MOVED TO MAKE THIS REPORT A PART OF THE COUNCIL MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.** Copy attached.

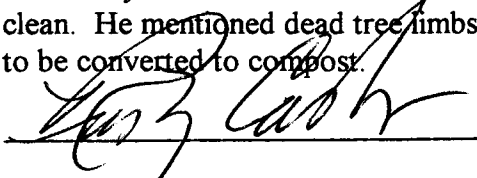
**Councilman Robert Young** stated the drain above his house still needed to be cleaned out. Also he said, due to Councilman Atkins absence, he left him a letter requesting he make a motion to have a sign erected on Park Avenue reading "**Resident Parking Only**" and issue two guest parking passes to each household. After much discussion **RECORDER, HERB SIBLEY MOVED TO PUT PARK AVENUE PARKING PROBLEM BACK INTO COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.**

**Councilman Steve West** commended the Police Dept. for keeping the traffic moving at the ballgame Friday night. Also Councilman West said the ad hoc committee did not formally meet, but they did meet and talked a lot. We will be meeting with as many Nitro Development Authority Board members as possible and as soon as possible.

**Councilman Richard Savilla** stated the intersection at Lock & Main Ave. currently has a three way stop and he suggested another stop sign, everyone stopping except for the ones turning right. Councilman Savilla said he would like to see this addressed.

**Councilman Robert Mattox** stated he and Councilman Atkins met with Gene Williams, Public Works Director regarding the surplus properties at City Garage. Mr. Williams is preparing a list of properties that may be available for auction or junk. Also Councilman Mattox recommends, if there is not, a log book listing of all city property, vehicle & equipment identification numbers and the Department Head being responsible for the city equipment.

**Recorder Herb Sibley** stated he was very interested in recycling and anxious to see it started. We now have a container in place. We will be making an announcement by some method soon. The bin will be similar to the one that was on the Kroger parking lot. Mr. Sibley said the Citizens of Nitro also need to be responsible for keeping the town clean. He mentioned dead tree limbs need to be accumulated and the trimmed limbs need to be converted to compost.



RUSTY CASTO, MAYOR



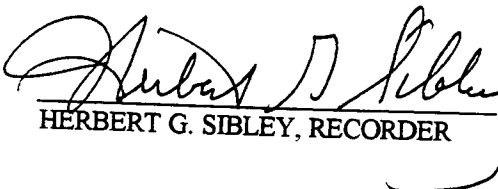
HERBERT SIBLEY, RECORDER



## RESOLUTION 96-10

The City Council of the City of Nitro met on September 3, 1996, with a quorum present and passed the following resolution.

Be it resolved that the City Council hereby authorizes The Honorable Rusty Casto, Mayor of the City of Nitro, to act on its behalf to enter into a contractual agreement with the Criminal Justice and Highway Safety Division to receive and administer grant funds pursuant to provisions of the Drug Control and System Improvement Grant Program.

  
HERBERT G. SIBLEY, RECORDER

**GRANT PROGRAM CONTRACT**  
**between the**  
**WEST VIRGINIA DEVELOPMENT OFFICE**  
**and the**  
**CITY OF NITRO**

**THIS AGREEMENT**, entered into this 1st day of July, 1996, by the West Virginia Department of Finance and Administration on behalf of the West Virginia Development Office hereinafter called the "WVDEVO" and the City of Nitro and its authorized officers, agents, and representatives, hereinafter called the "Grantee."

**WITNESS THAT:**

**WHEREAS**, the WVDEVO has promised and agreed to assist the Grantee to perform such tasks hereafter described in the scope of services, which is to be partially financed by funds made available through the Community Partnership Grants Program.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

1. **Assistance of the Grantee.** The WVDEVO hereby agrees to assist the Grantee including all authorized officers, agents, and representatives, to perform such tasks and functions as set forth below in the scope of services.
2. **Scope of Services.** The Grantee, or its designated agent, shall do, perform and carry out, in a satisfactory and proper manner as determined by the WVDEVO, and appropriate regulatory agencies, if required, all duties, tasks, and functions necessary to make Nitro City Hall accessible to the handicapped.
3. **Personnel.** The Grantee represents that it has, or will secure at its own expense, personnel with the necessary qualifications and experience required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with WVDEVO.

4. **Time Performance.** The Grantee will commence its duties under this Contract on July 1, 1996, and such duties shall be undertaken and completed in such sequences as to assure their expeditious completion in the light of the purpose of the Contract; but, in any event, all of the services required hereunder shall be completed by June 30, 1997. Completion date of this Contract may only be extended by mutual written agreement of both parties dependent on the reappropriation of funds under the Community Partnership Grant Program.

5. **Compensation.** In consideration of the services rendered by the Grantee, the WVDEVO agrees to pay the Grantee the sum of \$7,000. This amount constitutes complete compensation for all services rendered. In no instance shall the agreed upon compensation exceed \$7,000 without the written consent of the Governor of the State of West Virginia.

6. **Method of Payment.** In order to receive payments under the terms of this Agreement, the Grantee shall submit the following: (a) a Letter of Transmittal containing a progress report, and (b) a Request for Payment Financial Report. The final ten percent shall be made available upon submission of certification of completion and acceptance of the project by the Grantee.

Upon receipt of said documents, the WVDEVO shall review the same for reasonableness and appropriateness.

7. **Termination of Contract for Cause.** If, through any cause, the Grantee shall fail to fulfill in a necessary and proper manner his obligations under this Contract, or if the Grantee shall violate any of the covenants, agreements, or stipulations of this Contract, the WVDEVO shall thereupon have the right to terminate this Contract by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. The Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.



Notwithstanding the above, the Grantee shall not be relieved of liability to the WVDEVO for damages sustained by the WVDEVO by virtue of any breach of the Contract by the Grantee, and the WVDEVO may withhold any payments to the Grantee for the purpose of set-off until such time as the exact amount of damages due the WVDEVO from the Grantee is determined.

8. **Termination for Convenience of WVDEVO.** The WVDEVO may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the Contract is terminated by the WVDEVO as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

9. **Termination by the Grantee.** The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the project. After project commencement, this agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the Grantee makes any expenditure or incurs any obligation with respect to the project.

10. **Changes.** The WVDEVO and the Grantee may, from time to time, require changes in the scope of the services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed, which are mutually agreed upon by and between the WVDEVO and the Grantee, shall be incorporated in written amendments to this Contract.

11. **Equal Employment Opportunity.** With respect to employment in carrying out the program objectives, the Grantee agrees:

That it will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, national origin, or physical handicap;

12. **Project Wage Rates.** No contract involving construction, reconstruction, demolition, improvement, enlargement, painting, decoration, alteration, and/or repair work

which involves the employment of an "outside" contractor and/or subcontractors shall be awarded through funds provided under this agreement which does not comply with the West Virginia Act on Wages on Construction of Public Improvements (Article 5A, Chapter 21 of the West Virginia Code). Such provisions shall include the payment of the Fair Minimum Wage Rates as determined by the West Virginia Commissioner of Labor for each craft or classification of all workmen needed to perform the contract in the locality in which the public work is performed. For projects involving federal funds which are covered by the provisions of the Davis Bacon Act (40 U.S.C. 276-a 276a-5), the Grantee shall cause the contractor and/or subcontractors to pay the higher wage rate, federal or state.

Further, the Grantee shall cause these wage rates as determined to be printed on all bidding blanks, and attention should be specifically noted to these facts within the body of the advertisement for bids. The Grantee shall also have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance including copies of contractor's payrolls.

13. **Competitive Bid Procedures**. The Grantee shall solicit sealed bids for all commodities or supplies related to this project which have an estimated value of over five thousand dollars (\$5,000). Any attempts by the Grantee to segregate the project into sections having an estimated value of less than \$5,000 may be cause for termination of an agreement under the provisions of Paragraph 7.

These bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of Article Three, Chapter Fifty-Nine, of the Code of West Virginia. This notice shall be published by the Grantee in the newspaper with the largest circulation serving the general area twice within fourteen days next preceding the final date of submitting bids. The Grantee shall also, where feasible, solicit sealed bids by listing the project in the F. W. Dodge Reports, sending requests by mail to prospective suppliers or contractors, and by posting notice on a bulletin board in a public place. The Grantee shall

have available upon request for review by the WVDEVO or its designated representative, bid documents and other evidence of compliance with these procedures.

The Grantee shall procure architectural or engineering services in accordance with Chapter 5G of the West Virginia Code and the grantee shall procure construction contracts in accordance with Chapter 5-22-1 of the West Virginia State Code.

14. **Bonding.** The Grantee shall secure bonding in accordance with Chapter 38-2-39 of the West Virginia Code.

15. **Facilities Accessible to the Handicapped.** The Grantee shall require any facilities constructed under the auspices of this Contract to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A11/.1-1961, as modified (41CFR101-17.1703 and (13CFR309.14)). The Grantee shall be responsible for conducting inspections to ensure compliance with these specifications.

16. **Facilities Operation.** The Grantee shall operate and maintain all facilities constructed under the auspices of this Contract in accordance with minimum standards as may be required or prescribed by the applicable federal, state and local statute, law, ordinance or regulation as to actual construction procedures, as well as maintenance and operation of such facilities upon completion.

17. **Interest of Members of WVDEVO and Others.** No officer, member or employee of the WVDEVO or officer, member or employee of the Grantee who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, nor shall any officer, member of, or employee of, the Grantee or any member of its governing body, or officer, member, or employee of the contractor have any interest, direct or indirect, in this Contract or the proceeds thereof.

18. **Officials Not To Benefit.** No member of the Legislature of the State of West Virginia, or individual performing a service for the Grantee in connection with this project, shall be admitted to any share thereof or to any benefit to arise from this Agreement.

19. **Inspections of Project Records.** At any time during normal business hours and as often as the WVDEVO or its designated representative may deem necessary, there shall be made available to the WVDEVO or its designated representative for examination, all of its records with respect to all matters covered by this Contract and permit the WVDEVO or its designated representative to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records and personnel, conditions of employment and other data relating to all matters covered by this Contract during the entire time period beginning with project approval and ending three years after the final disbursement of grant funds.

20. **Project Audits.** (a) The Grantee shall cause an audit of this program to be included in the audit of the Grantee performed by the State Tax Department or its designated representative in accordance with Chapter 6, Article 9, Section 7 of the State Code. The audit shall be performed in conformance with generally acceptable accounting procedures.

(b) In accordance with Chapter 12, Article 4, Section 14 of the West Virginia State Code, if the grantee is not audited by the State Tax Department and the grantee received state funds or grants in the amount of fifteen thousand dollars or more, the grantee shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization, and must show that the funds or grants were spent for the purposes intended when the grant was made. State funds or audits of state funds or grants under fifteen thousand dollars may be authorized by the joint

committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee.

21. **Reporting**. The Grantee shall submit any reports requested by the WVDEVO concerning financial status and program progress. Failure to provide such reports as required by WVDEVO in a timely manner shall be cause for termination of this Contract under the terms of Paragraph 7.

22. **Fiscal Management**. The Grantee shall be responsible for establishing and maintaining adequate procedures and internal financial controls governing the management and utilization of funds provided under this Contract, as well as funds provided as the Grantee's matching share.

23. **Political Activity**. No officer or employee of the Grantee whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the activities expressly prohibited by the Hatch Act.

24. **Construction Within Twelve Months**. The Grantee shall have the project under construction within twelve months after execution of this agreement by both parties. The Grantee further understands that if the project is not under construction within a twelve-month period that it must resubmit its application, at which time the WVDEVO will reevaluate its obligation to provide funds for the project.

25. **Repayment**. The Grantee shall refund to the State any expenditures determined to be made for an ineligible purpose for which State funds were received.

26. **Resolution of Disputes**. Resolution of disputes between the State and the Grantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the State's Administrative Offices with final decision on questions of policy or fact being determined by the Executive Director of the West Virginia Development Office or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision

CITY OF NITRO

By: \_\_\_\_\_

Rusty Casto, Mayor

Thomas C. Burns, Executive Director

STATE OF WEST VIRGINIA  
WEST VIRGINIA DEVELOPMENT OFFICE

IN WITNESS WHEREOF, the WVDEVO and the Grantee have executed this Agreement as of the date first above written.

27. **Signing.** This Contract shall be signed by the Executive Director of the West Virginia Development Office and by the Mayor of the City of Nitro upon authorization of the Nitro City Council by adoption and passage of a resolution, motion or similar official action.

on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizen's complaints or disputes regarding Grantee performance or actions relative to the approved project are the responsibility of the Grantee.



## RESOLUTION NO. 96-11

RESOLUTION AUTHORIZING THE MAYOR OF THE CITY  
OF NITRO TO ENTER INTO AN EASEMENT AGREEMENT  
WITH MONSANTO COMPANY

WHEREAS, Pursuant to the State of West Virginia Landfill Closure Requirements, Monsanto Company is undertaking landfill closure activities at the armour Creek Landfill, Putnam County, Nitro West Virginia; and

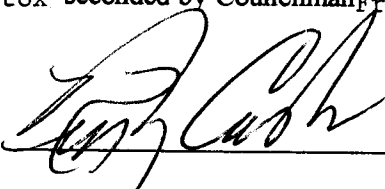
WHEREAS, To perform the required closure activities, Monsanto Company seeks a temporary easement and right-of-way for the installation of a flexible pipeline over a portion of property owned by the City of Nitro; and


WHEREAS, The Council of the City of Nitro deems it proper to provide a temporary easement over said property to Monsanto Company to allow the installation of said flexible pipeline;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Nitro, West Virginia, the Mayor of the City of Nitro is hereby authorized to sign an Easement Agreement between Monsanto Company and the City of Nitro, a copy of which said Easement Agreement, with Exhibits of metes and bounds description and plat, is attached hereto.

Motion made by Councilman Bob Mattox seconded by Councilman Frank Grover, Jr.

Adopted September 3, 1996

  
RUSTY CASTO, MAYOR

  
HERBERT SIBLEY, RECORDER

## EASEMENT AGREEMENT

This **EASEMENT AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_ 1996, by and between Monsanto Company ("Monsanto") and City of Nitro ("Owner").

**WHEREAS**, pursuant to State of West Virginia landfill closure requirements Monsanto is undertaking landfill closure activities at the Armour Creek Landfill, Putnam County, Nitro, West Virginia ("Site"); and

**WHEREAS**, to perform the required closure activities, Monsanto seeks a temporary easement and right-of-way for the installation of a flexible pipeline over a portion of Owner's property at Nitro, West Virginia, fully described in Exhibit A, ("Subject Property"); and

**WHEREAS**, the Owner is willing to provide a temporary easement over the Subject Property to Monsanto for the purposes and on the terms and conditions hereinafter set forth; and

**NOW THEREFORE**, in consideration of sum of One Dollar (\$1.00), cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

### 1. OWNER'S WARRANTY

The Owner hereby represents and warrants that it owns fee title to the Subject Property, that conveyance of the Subject Property to the Owner was by deed recorded in Deed Book 136, at page 370 at the Office of the Clerk of the County Commission of Putnam County, West



Virginia, that there are no mortgages, liens or other encumbrances thereon and that it has the legal right and authority to grant the easement and other rights herein contemplated.

## **2. GRANT OF EASEMENT AND RIGHT-OF-WAY**

The Owner hereby grants and conveys to Monsanto, its respective successors and assigns and its officers, employees, agents, contractors and subcontractors, a temporary non-exclusive easement, twenty feet (20') in width, ten feet (10') on each side of the centerline of the pipeline to be installed, on, over, across, under and through the Subject Property, running approximately 40 feet in length, for the purpose of constructing a pipeline, and right-of-way ten feet (10') in width, five feet (5') on each side of the centerline of the pipeline to be installed, on, over, across, under and through the Subject Property, running approximately 40 feet in length, for the purpose of operating, maintaining, repairing, replacing and removing a pipeline and other equipment and related fixtures and attachments necessary for the conveyance of wastewater and other liquid materials within such pipeline. The easement and right-of-way referred to is more fully shown on the attached plat, (Exhibit B).

The term of the temporary easement and right-of-way shall be for a period beginning upon the execution of this Agreement and terminating on the earlier to occur of such time as the closure activities necessitating the use of the pipeline described above shall have been completed and the fifth anniversary of this Agreement; provided, however, that Monsanto shall have the right and option to extend the rights conferred herein for an additional three years upon 60 days notice.

### 3. CONDITIONS TO GRANT OF EASEMENT

(a) Monsanto, its respective successors and assigns and its officers, employees, agents, contractors and subcontractors, shall have the right of ingress and egress over the Subject Property to and from the easement, and the right to use reasonable portions of the Subject Property immediately adjacent to the easement for the purposes of constructing, operating, maintaining, repairing, replacing and removing the pipeline, including the right to cut or trim any trees, bushes and other vegetation which may interfere with the construction, operation, maintenance, repair or removal of the pipeline.

(b) The Owner retains the right to use and enjoy the Subject Property for purposes not inconsistent with the right herein granted to Monsanto. The Owner agrees to the following: (a) not to construct improvements on the easement or to take any other action which would interfere with the pipeline and the rights of Monsanto to construct, operate, maintain, repair or remove the pipeline; (b) not to plant trees or other vegetation which could damage the pipeline or interfere with the rights herein granted; (c) not to alter the ground profile of the land within the easement by more than one foot (1') without the written permission of Monsanto.

(c) The Owner shall give all tenants, licenses or other users of the Subject Property notice of the existence of this Easement Agreement and the easement and rights-of-way granted to Monsanto hereunder. The Owner shall neither make, nor permit other to make, use of the Subject

Property in such manner as may interfere with or hinder Monsanto's easement or rights-of-way over the Subject Property granted pursuant to this Easement Agreement.

(d) Monsanto shall repair any physical damage to the Subject Property caused by the construction, operation, maintenance, repair or removal of the pipeline so as to restore the Subject Property to a condition no worse than its condition immediately prior to such damage.

#### **4. HOLD HARMLESS**

Monsanto shall defend and hold the Owner and its successors and assigns harmless from and against any and all claims, liability, loss, damages, cost and expense, including reasonable attorneys' fees, (hereinafter "Claims") suffered or incurred by the Owner, its successors and assigns, on account of bodily injury, or death, or damage to property resulting from or arising out of Monsanto's construction, operation, maintenance, repair or removal of the pipeline on the Subject Property pursuant to this Easement Agreement except to the extent such Claims arise from the negligence or intentional misconduct of the Owner, its successors or assigns or employees or agents.

#### **5. RIGHTS TO RUN WITH THE LAND**

The Easement Agreement shall be recorded with the Recorder of Deeds of Putnam County, West Virginia, shall run with the land and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, including without limitation successors of interest to the Subject Property.

**6. ENTIRE AGREEMENT**

This Easement Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and may not be amended, supplemented or terminated except by a writing signed by both parties. At the expiration of Monsanto's temporary easement and right-of-way hereunder, and upon the Owner's written request, Monsanto shall sign and record and instrument evidencing such expiration.

**7. GOVERNING LAW**

The Easement Agreement shall be governed by and construed under the laws of the State of West Virginia.

**IN WITNESS WHEREOF**, the undersigned have executed this Easement Agreement on and as of the date first written above.

CITY OF NITRO

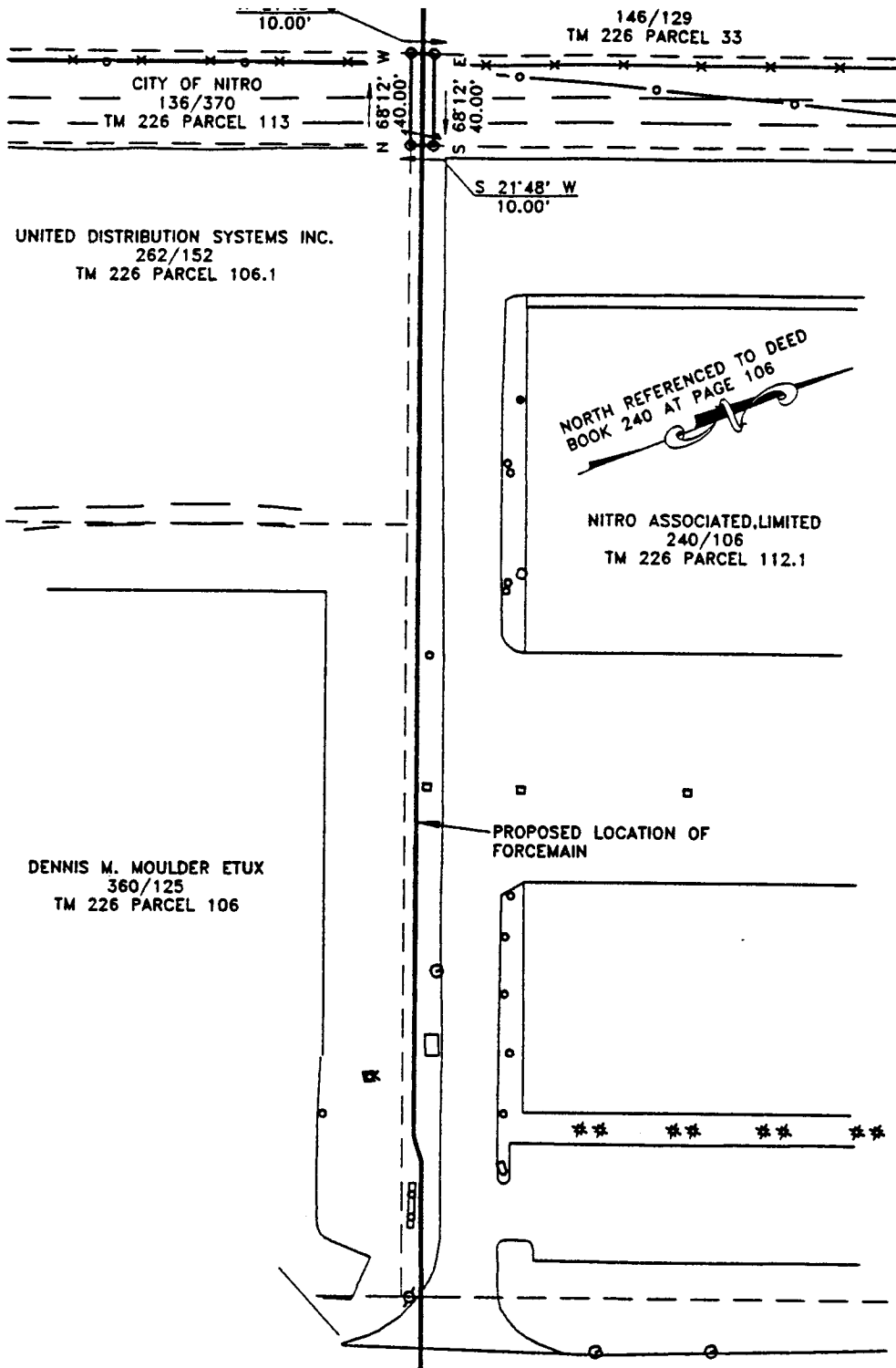
By: 

Mayor Rusty Casto

MONSANTO COMPANY

By: \_\_\_\_\_

Anthony C. Tuk



PLAT SHOWING PROPOSED  
FORCEMAIN EASEMENT  
THROUGH  
CITY OF NITRO TRACT  
DESCRIBED IN DEED BOOK 136 AT PAGE 370  
SITUATE ON THE WATERS OF ARMOUR CREEK  
A TRIBUTARY OF THE KANAWHA RIVER  
POCA DISTRICT, PUTNAM COUNTY, WEST VIRGINIA

DATE: JULY 2, 1996

SCALE: 1" = 60'

MARK C. SHAMBLIN R.P.S.  
W.V. REG. #827

TERRADON CORPORATION  
P.O. Box 519  
Nitro, West Virginia 25143  
(304) 755-8291 FAX 755-2636

**FORCE MAIN EASEMENT  
THROUGH  
CITY OF NITRO TRACT**

A tract of land situated on the waters of Armour Creek, a tributary of the Kanawha River, along the west right-of-way line of CSX Railroad, located in Poca District, Putnam County. West Virginia more particularly described as follows:

BEGINNING at a point corner to United Distribution Systems, Inc. tract, described in Deed Book 262 at Page 152 and Nitro Associated, Limited tract, described in Deed Book 240 at Page 106, and in the boundary line of the City of Nitro tract, described in Deed Book 136 at Page 370;

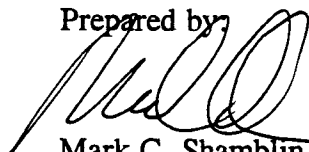
THENCE, through the said City of Nitro tract, from which this easement is a part, N68°-12'W 40.00 feet to a point in the boundary line of Monsanto Chemical Company tract described in Deed Book 146 at Page 129;

THENCE, with said Monsanto Chemical Company tract N21°-48'E 10.00 feet to the point;

THENCE, through the City of Nitro tract, from which this tract is a part, S68°-12'E 40.00 feet to a point in the boundary line of the said Nitro Associated, Limited tract;

THENCE, with said Nitro Associated, Limited tract S21°-48'W 10.00 feet to the place of beginning, as surveyed by TERRADON Corporation and shown upon a map titled "*Plat Showing Proposed Forcemain Easement Through City of Nitro Tract, described in Deed Book 136 at Page 370,*" said map is attached hereto and made a part of this description.

Prepared by

  
Mark C. Shamblin, P.S.  
WV Reg. No. 827

## ACKNOWLEDGMENT

STATE OF WEST VIRGINIA )  
 )  
COUNTY OF \_\_\_\_\_ ) SS

On this, the \_\_\_\_ day of \_\_\_\_\_, 1996, before me, a Notary Public, in and for said State and County, personally appeared Rusty Casto, Mayor of CITY OF NITRO, has the authority to execute the foregoing Easement Agreement on behalf of CITY OF NITRO, and who is known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Easement Agreement, and acknowledges that he executed the foregoing instrument for the purposes therein contained.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

**Notary Public**

## ACKNOWLEDGMENT

STATE OF WEST VIRGINIA )  
 )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this, the \_\_\_\_ day of \_\_\_\_\_, 1996, before me, a Notary Public, in and for said State and County, personally appeared ANTHONY C. TUK, of MONSANTO COMPANY, has the authority to execute the foregoing Easement Agreement on behalf of MONSANTO COMPANY, and who is known to be (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Easement Agreement, and acknowledges that he executed the foregoing instrument for the purposes therein contained.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

**Notary Public**



RESOLUTION NO 96-12

RESOLUTION AUTHORIZING THE MAYOR OF THE  
CITY OF NITRO TO ENTER INTO AGREEMENT  
BETWEEN THE CITY OF NITRO AND THE SANITARY  
BOARD OF THE CITY OF NITRO

WHEREAS, The City of Nitro holds a National Pollution Discharge Elimination System Permit, whereby the City is authorized to discharge certain storm waters and waste waters into the rivers and streams in and around the City of Nitro; and

WHEREAS, The Sanitary Board of the City of Nitro operates certain Combined Storm Overflows; and

WHEREAS, The City and Sanitary Board are required to reduce and eliminate the discharge of untreated waste water; and

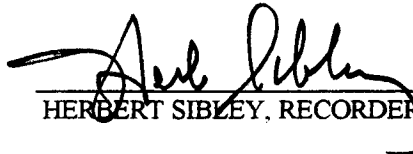
WHEREAS, The City Council of the City of Nitro finds it proper to enter into an agreement with the Sanitary Board pertaining to the same.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Nitro, West Virginia, that the Mayor of the City of Nitro is hereby authorized to enter into an Agreement with the Sanitary Board of the City of Nitro, a copy of which Agreement is attached hereto.

Motion made by Councilman Robert Young, seconded by Councilman David Miller.

Adopted September 3, 1996.

  
RUSTY CASTO, MAYOR

  
HERBERT SIBLEY, RECORDER



**RESOLUTION AUTHORIZING MAYOR OF THE CITY OF NITRO  
TO ENTER INTO GRANT PROGRAM CONTRACT BETWEEN THE  
WEST VIRGINIA DEVELOPMENT OFFICE AND THE CITY OF NITRO**

WHEREAS, The Mayor of the City of Nitro submitted an application to the Governor's Community Partnership Grant Program, requesting Seven Thousand Dollars (\$7,000.00) to assist in enabling the City in making City Hall accessible to the handicapped; and,

WHEREAS, By letter dated August 13, 1996, addressed to the Mayor from Gaston Caperton, Governor of the State of West Virginia, the City was notified of the approval of such request; and,

WHEREAS, An agreement has been prepared between the West Virginia Development Office and the City of Nitro, a copy of which is attached hereto; and,

WHEREAS, Council for the City of Nitro, upon advice of its legal counsel, finds that said Agreement is proper as to form.

Now, therefore, be it RESOLVED, by the City Council of the City of Nitro, West Virginia that the Mayor of the City of Nitro is hereby authorized to enter into the Grant Program Contract between the West Virginia Development Office and the City of Nitro, a copy of which is attached hereto.

Motion made by Herbert Sibley, Recorder,  
Seconded by Frank Grover, Jr. to adopt this  
Resolution.

## Nitro Fire Department

## Response summary for the month of August, 1996

Fires - 8  
Box Alarms - 8  
Auto Accidents - 9  
False / Canceled - 1  
E.M.S. - 14  
Other - 10

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Total - 50 Emergency Responses

## Definitions:

**Box Alarm-** Alarm System that rings into our communication center automatically usually now a private monitoring company, used to be alarm "pull boxes" strategically located throughout The City of Nitro. Examples of Box Alarms now reported are, 1600 Park Ave. The Village on Park. When a smoke detector is activated it sets off the alarm in the Building and automatically dials a monitoring service, with Who, What, When, Where, & Why; which in turn dials The City of Nitro Communications center, relaying pertinent information, who then dispatches The Fire Dept.

**E.M.S.-** Emergency Medical Services. The Nitro Fire Department responds, when notified, to all Medical Emergencies. This "First Responder" program usually results with The Fire Department arriving on Scene prior to the arrival of an Ambulance, Which has meant the difference between Life and Death, for several Nitro Residents.

## \*\*\* Notable Incident \*\*\*

On 8-21-96 at 12:47 A.M. responded to Structure Fire, "Alliance Auto Auction" formerly the Jim Walter Home's Warehouse. Upon Arrival they found a Metal Building Glowing. Encountered Heavy Fire Involvement in the East end ( facing Rt. 25). Utilized St. Albans Fire Department for their Ladder Company, & Poca Fire Department Moved an Engine Company and Additional Personnel into Nitro Fire Station.

## AGREEMENT

THIS AGREEMENT, made and entered as of the 1<sup>st</sup> day of September, 1996, by and between THE CITY OF NITRO, a West Virginia municipal corporation (the "City"), and THE SANITARY BOARD OF THE CITY OF NITRO, an agency of The City of Nitro (the "Sanitary Board").

WHEREAS, the City holds a National Pollution Discharge Elimination System Permit No. WV0023299, whereby the City is authorized to discharge certain storm waters and waste waters into the rivers and streams in and around the City; and

WHEREAS, the Sanitary Sewerage System of the City is under the control and supervision of the Sanitary Board; and

WHEREAS, the Sanitary Board operates certain Combined Storm Overflows ("CSOs"), which permit the Sanitary Board to discharge untreated waste water during certain times of heavy rainfall, when the City's combined sewer system is overtaxed; and

WHEREAS, as a condition of maintaining the City's NPDES permit, the City and the Sanitary Board are required to make certain efforts to reduce and eliminate the discharge of untreated waste water; and

WHEREAS, one method of reducing the amount of untreated waste water to be discharged is to certain the City's storm sewer system is operating efficiently and at maximum capacity, and to reduce the volume of solids and floatables that enter the system so there is less need to discharge untreated water during times of high rainfall and storm activity; and

WHEREAS the City has agreed to take certain action with respect to its storm sewer system in order to increase its capacity and efficiency and reduce the volume of solids and floatables which enter the City's combined sewer system.

follows:

1. The City will undertake to clean the streets of the City at least once in each calendar quarter. This cleaning is to improve the flow of storm water and reduce the amount of other materials which may enter the system during storms.

2. The City will undertake to clean and flush the City's storm sewers at least once in each calendar quarter. This cleaning is in order to maximize the capacity of the storm sewer system so that wet weather overflows are required less often.

3. The City will undertake to clean the catch basins in the streets of the City at least once in each calendar quarter. This cleaning is to improve the flow of storm water and reduce the amount of other materials which may enter the system during storms.

In Witness Whereof, each of the parties has caused this agreement to be executed by its duly authorized officers.

THE CITY OF NITRO

By: 

Mayor

Attest:

  
City Recorder

THE SANITARY BOARD OF THE CITY

By: 

Chairman

Attest:

  
Secretary

**CITY OF NITRO COUNCIL MEETING MINUTES****SEPTEMBER 17, 1996**

Mayor Casto declared a quorum and called the Council meeting to order at 7:30 p.m. Others present, City Recorder/Treasurer Herbert Sibley, City Attorney Phillip Gaujot, Councilmen at Large Robert Mattox, Richard Savilla, Steve West, Councilmen Robert Young, David Miller, George Atkins and Councilman Frank Grover, Jr.,

**AGENDA ITEM NO. 1 INVOCATION:** Councilman Robert Mattox.

**AGENDA ITEM NO. 2 APPROVAL OF MINUTES:**

**COUNCILMAN AT LARGE ROBERT YOUNG MOVED TO APPROVE THE SEPTEMBER 03, 1996 MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE RICHARD SAVILLA AND WAS CARRIED WITH COUNCILMAN GEORGE ATKINS ABSTAINING.**

**AGENDA ITEM NO. 3 ROCKLEDGE DRIVE:** Mayor Casto yielded the floor to Michael Pack, a resident of 217 Rockledge Drive, Ward 1, Nitro. Mr. Pack thanked Councilman Robert Young and Mayor Casto for taking an interest in this matter. Mr. Pack explained there is a cul- de-sac development in the highway that forks at the top of the hill near my home, a large hole in center of highway. This caused by underground seepage of some sort. The source is not known. There was a large crater left in the middle of the highway which at that time was filled with dirt. In December of 1993, my wife accidentally rolled her van into that ditch. This accident resulted in considerable damage to the underneath of my vehicle. The prior administration repaired the hole and alleviated the problem at the time. However, in July of 1994, the water started coming up in my yard. Mr. Pack stated he had done a number of things to try to stop the leak. Since that time, it has gotten increasingly worse, running water continually like a stream. Since spring, the water has started coming under my driveway and expands into the seams of the concrete of my driveway. Mr. Pack further explained the problem to council in an effort to reach a solution. Mr. Pack recommends working together with the City and take out a section of the street and install a French drain to divert the water under the street would probably be the most logical method. Mr. Pack stated this also may present a health problem to the community.

Mayor Casto stated he has contacted Dunn Engineers to do a study on this matter and make recommendations. Also Mayor Casto questioned if this is an underground stream, what is the liability of the City. Counselor Gaujot said it may be the City's duty to divert the water to appropriate drainage. Mayor Casto said Dunn Engineers should have a report by the next regularly scheduled council meeting.

**AGENDA ITEM NO. 4 U-DAG UPDATE:** Mayor Casto yielded the floor to City Attorney, Phillip Gaujot. Counselor Gaujot stated he had what he thought would be the final draft of a motion to file with the bankruptcy court, but just today received some other figures. He anticipates filing Thursday. Also He said he will be attending a seminar in Pittsburgh, Friday and Saturday dealing with the Fike Artel Property.

Counselor Gaujot further discussed the possibilities of the Fike Artel Property.

**AGENDA ITEM NO. 5 BEAUTIFICATION REPORT:** Mayor Casto read letter to council regarding beautification. Also Mayor Casto stated he recommends setting up a town "beautification committee." This committee would consist of the Mayor, four members nominated and approved by each of the town's four ward councilmen and the Mayor's nominee be approved by Council. It would also be critical to the committee to have a set amount of funds deposited in the committees checking account each month. The committee would also have the authority to visit the businesses and concerned individuals to solicit funds for projects. Secondly we need a tough sign ordinance passed by council. It is my opinion the above two measures and purchase of a street sweeper will go a long way to make our City more visible and a better place for our citizens to live. Mayor Casto said he would appreciate input from the council regarding this matter. A discussion followed addressing the sign issue. Mayor Casto stated he will bring this matter back to council.

**AGENDA ITEM NO. 6 BUSINESS & PROFESSIONAL ASSOC:** Mayor Casto yielded the floor to Dean Miller, Nitro Business & Professional Assoc. spokesperson. The main topic of discussion was the Christmas promotion being changed to "Santa's Pot of Gold" with a \$1000 grand prize. This being in connection with the Christmas Parade, and will be given away at that time. The Christmas Parade is scheduled for December 7, 1996, at 6:00 p.m. We are requesting local businesses to participate in the floats. Mr. Miller reported the interest money from U-Dag will be used to put the house on foundation, front porch restored, windows repaired, and the wooden sidewalks will be restored. By November 1, most of the work will be done. The Contractor, John Adkins is donating his labor. Mr. Miller named officers for 96/97 as Linda Wilson, President, Tim Sizemore, Vice President, Ed Basham, Treasurer & Sherry Wiley, Secretary.

**AGENDA ITEM NO. 7 FINANCE REPORT:** Mayor Casto yielded the floor to Recorder/Treasurer Herb Sibley. Rec/Treas Sibley stated the top portion of the financial report is the levy estimate for fiscal year 1997. The first photo copy page is a consolidation of all the other pages. We will start with the last page, a listing of all the officers we have, their titles at the present time. The first line is their wage per hour, annual salary, overtime to date and 3rd quarter earnings, which is the first fiscal quarter for this year and their hire date. The second page regarding communications with same information. The next page is consolidation of wage earnings for each communication officer, with year to date, regular and overtime total and projected annual earnings. Next page, Police wage earnings for officers, year to date regular and overtime total and projected earnings. Next page consolidation of all these earnings with estimated earnings for police officers per year \$335,018.00. Communication Officers \$79,126.00 making a total of \$414,144.00. Estimated COPS Grant \$29,556 for Officer Scurlock first year. Estimated M-Dent Grant, Sgt. Jack Jordan is \$29,400. This is an annual reimbursement. Both are reductions to the gross payroll reducing it to \$355,188, our budget calls for \$404,775. If these totals hold true, we will be under budget by \$49,587. This does not include any additional monies for the offices of sergeant. Rec/ /Treasurer Sibley said he did work up that number of \$11,159.39. Recorder Sibley asked Council to review the statements.

Recorder / Treasurer Sibley stated there will be advertising regarding recycling in the near future in local papers. We now have two large receptacles in place. More suitable hours are being worked out with the board of Public Works. Recorder/Treasurer Sibley stated he did not anticipate any expenditure except advertising.

Councilman Frank Grover, Jr. reminded Council at this time recycling is strictly voluntary.

**AGENDA ITEM NO. 8 RESOLUTION 96-14:** Councilman at Large Richard Savilla read Resolution 96-14 A RESOLUTION RELATING TO THE BOARD OF MEMBERS OF COUNTY REDEVELOPMENT AUTHORITIES, THAT THE CITY AND TOWN COUNCIL OF EACH MUNICIPALITY LOCATED WITHIN THE COUNTY SHALL SUBMIT TO THE COUNTY COURT THE NAME OF ONE REPRESENTATIVE, RUSTY CASTO, MAYOR TO BE APPOINTED TO THE BOARD. **COUNCILMAN AT LARGE STEVE WEST MOVED TO ADOPT RESOLUTION 96-14. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE ROBERT MATTOX AND WAS CARRIED. (Copy attached)**

**AGENDA ITEM NO. 9 MAYORS REPORT:** Mayor Casto reported he visited the Governors Office requesting money toward the 31st Street Bridge and should hear results of that meeting by end of year. Also, Mayor Casto said hopefully by the next council meeting the Taxi Stand will be torn down and cleaned up.

**Councilman Frank Grover, Jr.** stated the storm water problem in the east end must be addressed soon. Also he said, changes are still being worked out on the cat ordinance. Councilman Grover said a cage had been borrowed from another city recently. This ordinance is still being addressed.

**Councilman George Atkins**, stated the estimate to replace the doors at the pavilion is \$1006.27. This is a turn key job. A local Contractor, Pete Reynolds will be doing the work.

Councilman Atkins stated another meeting regarding Park Avenue parking needs to be scheduled. Also Councilman Atkins said he had received many complaints regarding the extreme noise from the band and he said they are not getting any cooperation from the school on the traffic problem.

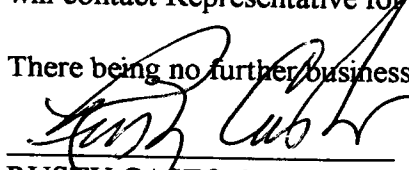
**Councilman David Miller**, stated he was representing the Fireman's Association and he said they are in the process of closing a deal with Convest Limited, and Investment Corporation to purchase some equipment. We are in the process of buying a new radio system, upgrade the existing system, giving us the second frequency, which has already been applied for and received. Also we are going to refurbish the hazard material van. The original agreement was if the City purchased the van, we would refurbish it. As part of that scenario we need to place a lien on the van so we can give Convest the title on the van. After much discussion, it was decided City Attorney Phillip Gaujot will study the legalities of using city property as collateral. Council to discuss this matter at next meeting.

Mayor Casto reported the Library Board has requested Mary Trout be re-appointed to serve as board member for the term of 1996 thru 2001.

COUNCILMAN FRANK GROVER MOVED TO RE-APPOINT MARY TROUT TO THE LIBRARY BOARD FOR THE TERM OF 1996 THRU 2001. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED.

**Recorder Herbert Sibley** mentioned a representative from United States Department of Engineers, was interested in putting in a fishery along side the river bank starting at the Putnam County line going approximately 1000 yds. This barrier would have certain aquatic greenery growing there to attract fishes and the barrier would cause the bank to fill instead of the bank disintegrating. This representative would be willing to address council. Jay Long, Recreation Director will contact Representative for further information.

There being no further business, the meeting was adjourned.

  
RUSFY CASTO, MAYOR

  
HERBERT SIBLEY, RECORDER





RUSTY CASTO  
MAYOR

RESOLUTION 96-14

WHEREAS, it is provided by Chapter 7 Article 12, Section 3 of the Code of West Virginia, relating to the Board of Members of County Redevelopment Authorities, that "the City and town council of each municipality located within the county shall submit to the County Court the name of one representative to be appointed to the Board",

NOW THEREFORE BE IT RESOLVED: That the council of the City of Nitro Kanawha County, West Virginia, does hereby submit to the County Commission of Kanawha County the name of Rusty Casto, Mayor to be appointed as the representative of the City of Nitro on the Board of the Regional Development authority of Charleston, Kanawha County, West Virginia Metropolitan Region, to serve for a term of three years and until his successor has been appointed and qualified unless sooner removed by appropriate action of said council.

BE IT FURTHER RESOLVED: That a certified copy of this resolution be forthwith delivered by the City Recorder to the Kanawha County Commission.

I, HERBERT SIBLEY, Recorder of the City of Nitro, Kanawha County, West Virginia, hereby certify that the foregoing resolution was duly adopted at a regular meeting of the council of said City of Nitro, held on September 17, 1996.

RECORDER

## CITY OF NITRO COUNCIL MEETING MINUTES

OCTOBER 15, 1996

Mayor Casto declared a quorum and called the meeting to order at 7:30 p.m. Others present City Recorder/Treasurer Herbert Sibley, Councilmen at Large Robert Mattox, Richard Savilla, Steve West, Councilmen Robert Young, David Miller, George Atkins and Frank Grover, Jr., Also present City Attorney Phillip Gaujot.

**AGENDA ITEM NO. 1 INVOCATION:** Councilman at Large Robert Mattox.

**AGENDA ITEM NO. 2 APPROVAL OF 10/01/96 MINUTES:** COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. REC/TREAS SIBLEY MOVED TO AMEND THE FIRST SENTENCE OF THE MOTION IN AGENDA ITEM NO. 3, BY ADDING, EVEN THOUGH THERE IS NO MONEY IN BUDGET FOR THIS ITEM, THESE PRICES ARE FOR INFORMATION PURPOSES ONLY. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE RICHARD SAVILLA AND WAS CARRIED.

**AGENDA ITEM NO. 3 U-DAG UPDATE:** Mayor Casto yielded the floor to City Attorney Phil Gaujot. Counselor Gaujot said he had been informed a proposal will be forth coming soon and there is a hearing next week. Also Counselor Gaujot commented he had received a draft modification of the agreement from THF that they want the City to agree to. Attorney Gaujot stated he will compare this agreement with the previous agreement and report to Council at the next meeting. A discussion followed regarding resolutions, ordinances and annexation.

Attorney Phil Gaujot announced the next Council Meeting is scheduled for the 1st Tuesday in November, which is election day and the Council Meeting date will need to be rescheduled. COUNCILMAN AT LARGE STEVE WEST MOVED TO RESCHEDULE THE NOVEMBER COUNCIL MEETINGS TO NOVEMBER 12TH AND NOVEMBER 19TH AT 7:30 P.M. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.

**AGENDA ITEM NO. 4 BEAUTIFICATION UPDATE:** Mayor Casto stated the last two weeks has been very busy with beautification of the City. We are moving along with the 1918 bungalow and now in the process of building a porch and installing windows. The Sammy Plant House on 18th Street hill has been torn down and the old Cab Stand has been demolished as promised.

The slip has been removed from Hickory Road, which blocked emergency vehicles. Also much work has been done at the pool and Mayor Casto invited council members to take a look at the improvements there. Mayor Casto said he would like to get the Beautification Committee started by the next Council Meeting, if Council can present their list by that time.

**AGENDA ITEM NO. 5 BUSINESS & PROFESSIONAL ASSOC REPORT:** Mayor Casto yielded the floor to Rec/Treasurer Herb Sibley. Mr. Sibley reported the Business and Professional Association requested the City park a truck at the bungalow site so they could haul the trash away.

The second item discussed was the "Pot of Gold", a thousand dollar gift contest along with several other prizes to be given away during the month of December. Also the Christmas Light Contest with awards to be given to the best decorated.

**AGENDA ITEM NO. 6 FINANCE REPORT:** Mayor Casto yielded the floor to City Rec/Treasurer Herb Sibley. Mr. Sibley reported the committee recommendation for the trash liners was Unisource of Huntington, Bid \$ 20,768. COUNCILMAN BOB YOUNG MOVED TO AWARD UNISOURCE OF HUNTINGTON THE BID FOR TRASH LINERS. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE RICHARD SAVILLA AND WAS CARRIED.

City Recorder Sibley reported he had received money from taxes from both County Sheriff Departments and was able to pay several of the older outstanding invoices. He stated the city was in better financial shape than reported at last meeting.

Rec/Treas Sibley said in regard to the snow plow, it should be delivered no later than November 30, 1996. That bid was \$31,900 R. H. Peters Chevrolet, successful bidder. COUNCILMAN FRANK GROVER, JR. MOVED TO APPROVE THE BID FROM R. H. PETERS CHEVROLET. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.

Mr. Sibley stated a representative from Convest was down to get papers signed. The program we have regarding the snow plow will be paid for in two years. This keeps us from paying a lot of interest. Total Cost is \$31,900 with interest at 5.7%. Payments about \$1500.00 per month for two years.

Recorder Sibley commented in regard to the computer system, he is not against computers but he said there is a greater priority which is the Street bridge. A discussion followed in regard to this bridge.

**AGENDA ITEM NO. 7 CALENDAR PICTURES:** Mayor Casto announced Sunday at 1:00 p.m. the community was invited to have a picture taken for the 1997 calendar. Also he said this would be a good time for Council to have their picture taken. Mayor Casto stated year last we spent \$4900 and took in \$200. This year we have pledged twenty five ads and we still have two weeks to go for a total of \$2500. This is much better than last years record. Mayor Casto stated his goal was to clear a \$1000 at least on the calendar.

**AGENDA ITEM NO. 8 MAYOR'S REPORT:** Mayor Casto reported Mr. Gary Minutes from 3 M Sign Company was in my office Tuesday October 15th to explain and answer questions regarding street signs. Mayor Casto stated as soon as he gets more information he will report to Council.

Mayor Casto said one of his campaign promises was to sell the Mayor's car and I also want to sell the camera. In the next two weeks I will be selling these and putting the money in the bank. This money will go toward a new roof over the shower houses.

**AGENDA ITEM NO. 9 COUNCILMEN'S COMMENTS:**

Councilman Frank Grover presented council with pictures in the area of River Avenue. Mayor Casto stated the owners have been notified of this problem.

Councilman George Atkins mentioned curb painting and directional pointers on the West Side. Mayor Casto stated this will be taken care of tomorrow. (10/16/96)

**Councilman David Miller** reported problems in ward 2, Penwood Avenue and Short St. need repair. Also he mentioned 31st Street Bridge.

**Councilman Bob Young** reported two large brush piles at Brookhaven. This problem has been reported many times and as of tonight this problem is still there. Also problem with eyesore on 40th Street. Recorder Sibley stated this situation is being taken care of now. Councilman Young said the maple tree across the street from there needs to be trimmed or cut down. You can not see the street light. A discussion followed regarding the chipper located at the Sanitary Board property.

**Councilman Steve West** reported the next meeting of the Nitro Area Community Forum is scheduled for January, 1997. Councilman West mentioned he would like to suggest tying recycling and the Christmas Promotion together.

**Recorder/Treasurer Herb Sibley** requested a study from the Police and Fire Committee regarding Military leave. Also overtime being paid during sick leave and vacation time in the Fire Department.

Councilman at Large Steve West announced a Police Committee meeting next Tuesday night at 7:30 p.m.

There being no further business, the meeting was adjourned.

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RUSTY CASTO, MAYOR

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HERBERT SIBLEY, RECORDER

# CITY OF NITRO COUNCIL MEETING MINUTES

OCTOBER 1, 1996

Mayor Casto declared a quorum and called the meeting to order at 7:30 p.m. in Council Chambers, at City Hall. Others present, City Recorder/Treasurer Herbert Sibley, Councilmen at Large, Robert Mattox, Richard Savilla, Steve West, Councilmen Robert Young, David Miller, George Atkins and Frank Grover, Jr. Also present, City Attorney, Phillip Gaujot.

**AGENDA ITEM NO. 1 INVOCATION:** Councilman at Large Robert Mattox.

**AGENDA ITEM NO. 2 CITIZENS OF THE MONTH:** Mayor Casto named Mary Hill Citizen of the Month for October. Also Mayor Casto presented Mrs. Hill with a bouquet of flowers and commended her for all of the volunteer work she has done for the City of Nitro. Mayor Casto yielded the floor to Mrs. Hill who reported on the work of the Women's Club and their various activities.

**AGENDA ITEM NO. 3 COMPUTER REPORT:** Mayor Casto yielded the floor to Councilman at Large Steve West. Councilman West reported the committee met and approved a computer network system. Mr. Tom Rowsey of Cyber Systems came down and surveyed the computer situation at City Hall. While he was here he corrected a couple of problems with the current system without charge. His normal rate is \$75.00/hr. He will be writing specifications for this program and the City Recorder should receive them this coming week. **COUNCILMAN AT LARGE STEVE WEST MOVED UPON RECEIPT OF SPECS THE CITY RECORDER RUN ADVERTISEMENT FOR BIDS. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.**

**COUNCILMAN BOB YOUNG MOVED TO APPROVE THE SEPTEMBER 17, 1996 COUNCIL MEETING MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED WITH COUNCILMAN STEVE WEST ABSTAINING DUE TO NOT RECEIVING COPY OF MINUTES.**

**AGENDA ITEM NO. 4 PARK AVENUE:** Mayor Casto yielded the floor to Councilman George Atkins. Councilman Atkins stated the Traffic Control Committee met last week and their recommendation was to make Park Avenue one-way from 11th Street S. to 15th North. After some discussion, **RECORDER/TREASURER HERBERT SIBLEY MOVED TO TABLE THIS ITEM UNTIL FURTHER CONTACT WITH BOARD OF EDUCATION. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT MATTOX AND WAS CARRIED WITH A FRIENDLY AMENDMENT TO APPLY TO STATE ROAD COMMISSION FOR A LIGHT AT 11TH STREET AND FIRST AVENUE.**

**AGENDA ITEM NO. 5 BUSINESS & PROFESSIONAL ASSOC:** Due to absence of Dean Miller, Mayor Casto reported work on the Bungalow has started and the exterior should be completed by November 1st. Also the Christmas blow out will be discussed at the next meeting.

**AGENDA ITEM NO. 6 PARADE REQUEST:** Recorder Sibley stated he received a request from Confidence Elementary School to solicit funds for their school carnival. This request was not acted upon.

**CITY RECORDER HERBERT SIBLEY MOVED TO GRANT NITRO HIGH SCHOOL'S PARADE REQUEST. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE ROBERT MATTOX AND WAS CARRIED.**

**AGENDA ITEM NO. 7 BEAUTIFICATION UPDATE:** Mayor Casto commented he has spoken to several people around town regarding the beautification of the City. Hopefully, profits from the City calendar will be a \$1000 plus. Also he said he still needed pictures of Council members. Mayor Casto stated he would like to have \$200/mo. donated by the City and would like to setup a checking account with the Mayor's and Recorder's signature on the account. Also Mayor Casto said he would ask groups and organizations to underwrite and pay for beautification efforts. Updates of landscaping and financial reports will be given to council on regular basis. A discussion followed regarding the committee.

**AGENDA ITEM NO. 8 U-DAG:** Mayor Casto yielded the floor to City Attorney Phillip Gaujot. Counselor stated he filed a motion with Referee in Bankruptcy Court and a hearing will be held October 23, 1996 and he will be reporting after that hearing.

**AGENDA ITEM NO. 9. ANNEXATION ORDERS:** Rec/Treas Sibley stated at the request of Council to take the Kanawha County Commission Annexation orders which is 184 acres at the mall location and the .92 acres at Artel and make them a part of our record. **COUNCILMAN AT LARGE BOB MATTOX MOVED TO MAKE THE ANNEXATION ORDERS A PART OF THE OCTOBER 3RD COUNCIL MEETING MINUTES. THE MOTION WAS SECONDED BY COUNCIL BOB YOUNG AND WAS CARRIED. (Copy attached)**

**AGENDA ITEM NO. 10. FINANCE REPORT:** Rec/Treas Herbert Sibley stated he has prepared and sent to the West Virginia State Tax Department the annual municipal 95/96 budget report. The second report is required to be run in local newspaper which is a break down of our receipts and expenditures.

The second item to discuss is the regular finance report for September. Recorder Sibley reported we are now in the black by \$82,927. We have unpaid invoices in the amount of \$99,751.26. A finance meeting will be announced for Tuesday, October 8 at 7:30 p.m.

Recorder Sibley stated a gentlemen from Metro will be down tomorrow to do a story on recycling. Also Mr. Sturgeon, from Gazette Mail to negotiate inserting 10,000 inserts in the local paper. This will be 2 inserts at \$390.00 total. Recorder Sibley further explained method of the recycling program. A discussion followed.

**AGENDA ITEM NO. 11 PROCLAMATION- NAT BUSINESS WOMEN:** **COUNCILMAN GEORGE ATKINS MOVED TO PROCLAIM OCTOBER 21ST THRU 25TH AS NATIONAL BUSINESS WOMEN'S WEEK. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED. (Copy attached)**

**AGENDA ITEM NO. 12 BID OPENING:** Mayor Casto yielded the floor to Recorder/Treasurer Herb Sibley. Mr. Sibley stated he had advertised for bids for trash liners and received 7 bids. Several Councilmen opened the bids. First bid, Hutchinson Sanitary Supply \$6.95/cs total \$22,240, Second bid, Unisource \$6.49/cs total \$20,768, Rose City Press \$6.87/cs total \$21,984, U. S. Food Service \$7.80/cs Total \$24,960, Phillips Supply Co. \$6.96/cs Total \$22, 272, T & L Supply \$7.30/cs Total \$23,360, Inter Boro \$4.75cs up to \$6.90cs from \$ 15,200 to \$ 22,080. **COUNCILMAN AT LARGE STEVE WEST MOVED THE TRASH LINER DECISION BE REFERRED TO FINANCE COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.**

**AGENDA ITEM NO 13 MAYOR'S REPORT:** Mayor Casto announced Mr. Gary Minutes of 3-M Street Sign will be down to discuss the cost of new street signs October 15th at 1:00 p.m. this is just an informational meeting.

Mayor Casto announced a short ceremony with a hanging of a wreath for "Breast Cancer Awareness " at 10:00 A. M. October 2nd at City Hall. Everyone invited.

Mayor Casto reported he has received a \$7000 grant award from the Governor's office to replace existing front door with handicap accessible doors. Also he said Dunn Engineers have been down to look at some of the problems on 31st Street East, the bridge on 31st Street, Knight property and Rockledge Dr. at Brookhaven. Hopefully, we will have something to report next meeting.

**COUNCILMAN AT LARGE BOB MATTOX MOVED TO APPROVE TRICK OR TREAT NIGHT FOR OCTOBER 31ST FROM 6:00 TO 8:00 P.M. THE MOTION WAS SECONDED BY REC/TREAS HERB SIBLEY AND WAS CARRIED.**

**COUNCILMAN AT LARGE STEVE WEST MOVED TO GRANT SALVATION ARMY'S REQUEST TO PLACE KETTLES IN FRONT OF BUSINESSES FROM NOVEMBER 15 TO DECEMBER 24TH. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED.**

**COUNCILMAN AT LARGE STEVE WEST MOVED MAYOR CASTO APPOINT A COMMITTEE TO RECOMMEND SOLUTIONS FOR PROBLEMS REGARDING FENCE ON 10TH STREET. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.**

**Councilmens Comments:**

Councilman George Atkins reported the doors at the pavilion have been installed. Also he said painting still needs to be done on the curbs on the Westside and at the 11th Street Crossing, designating left and right.

Councilman David Miller questioned the result of Convest requiring a lien on the Van. Counselor Gaujot stated Convest has agreed not to require a lien against the van, just against the property. Councilman Miller read Fire Dept Report. Councilman Frank Grover commented the drains must be addressed in the upper end of town.

Councilman Bob Young questioned the large pile of trash beside Stag Shop.

Councilman at Large Steve West announced a meeting of the Nitro Area Community Forum October 8th, Nitro Community Center 5:30 p.m. to 7:00 p.m. Everyone is invited.

Councilman Robert Mattox stated he had looked at the problem at Rockledge, this is a real problem and it is not the only one at Brookhaven. There are some real concerns there. In the East Nitro Area there are abandoned vehicles and gas bottles. The area of River Avenue needs to be cleaned up, it is a real mess.

City Recorder Herb Sibley announced a Finance meeting, Tuesday Oct 8th at 7:30 p.m..

City Attorney Phil Gaujot reported he attended the Brownsfield Seminar in Pittsburgh last week, and found out we have a heck of a deal with Fike Artel if we can make it work. The ball is now in our court. We have to make a proposal to EPA to take that property. Counselor said he was trying to come up with a proposal without any cash payment that will be satisfactory to EPA. Also he said, Mr. Staenberg with THF Realty, said they have to reconfigure the mall and as a result they need 8 to 12 more acres. They want the City to annex the 8 to 12 acres into the City. Mr. Staenberg wants to ask the City to nullify the

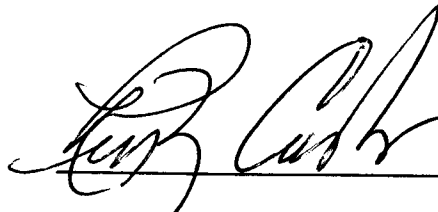
taking the sergeants test, October 5th and four will be taking the lieutenant test October 26th. and one taking the captains test. Councilman at Large Savilla asked if the sergeant test is delayed until December how many will be eligible?

Patrolman Javins stated Civil Service sets testing according to their schedule and according to Law. When the Mayor declares a vacancy and sends a letter to the Commission, then the Commissioners work out test dates.

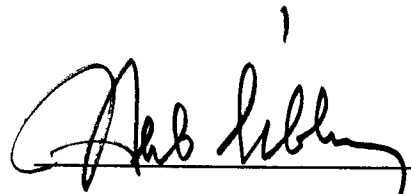
Sergeant Jack Jordan stated what we are looking at in the past we complained of not having a sergeant on shift. There has been all kinds of law suits in regard to this matter. If I am patrolman getting patrolman pay and then I am in charge of the shift and something happens, I will be held accountable because I am the senior patrolman. So the court is basically saying if you are going to act as sergeant, then we should be compensated as such. Sergeant Jordan said this has been requested over and over again. At this present time we still do not have sergeants on each shift. This is something we can delay and delay like it has been done for the past 17 years since I have been here. This is something that needs to be done as soon as possible. Councilman Richard Savilla commented he fully supported the need for sergeants on each shift. Some discussion followed.

Chief Winter announced new officer, Charles Woodrum.

There being no further business, the meeting was adjourned.



RUSTY CASTO, MAYOR



HERBERT SIBLEY, RECORDER



*Law Offices*  
*Phillip D. Gaujot*

177 WALNUT STREET  
MORGANTOWN, WEST VIRGINIA 26505  
304/292-3000  
FAX: 304/292-1072

GAUJOT LAW & PROFESSIONAL BUILDING  
113 GOFF MOUNTAIN ROAD-CROSS LANES  
CHARLESTON, WEST VIRGINIA 25313  
304/776-2222

REPLY TO:  
Charleston, West Virginia

September 25, 1996

Mr. Herb Sibley  
City of Nitro  
Nitro City Building  
20th Street & Second Avenue  
Nitro, West Virginia 25143

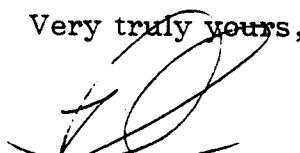
Dear Herb:

Enclosed please find a copy of the Order signed by the Kanawha County Commission pertaining to the annexation of the Fike Chemical tract of land, which you will see was recorded in the Office of the Clerk of the County Commission of Kanawha County. I suggest this Order and the Order pertaining to the 187 acres, more or less, be made part of the City records at the next Council meeting.

If you have any questions, please do not hesitate to give me a call.

With kindest regards, I remain

Very truly yours,



Phillip D. Gaujot

PDG:hk

f:\wp51\client\nitro\sibley2.s25

## IN THE COUNTY COMMISSION OF KANAWHA COUNTY, WEST VIRGINIA

UPON APPLICATION FOR  
ANNEXATION OF LAND INTO  
THE CITY OF NITRO BY  
MINOR BOUNDARY ADJUSTMENT

ORDER

On the 9th day of May, 1996, came the applicant, City of Nitro, a municipal corporation, in Kanawha and Putnam Counties, West Virginia, by Phillip D. Gaujot, its counsel, and tendered and asked leave to file its Application for Annexation and to give Notice that it had filed its application herein for an Order changing the boundary of the City of Nitro, and that a hearing on the question of such change of boundary would be held on this day and, it appearing to the Commission that said notice was duly published in the Charleston Gazette and Charleston Daily Mail, newspapers of general circulation in said City of Nitro and in the territory sought to be annexed, once a week for two successive weeks, beginning on the 29th day of May, 1996, and ending on the 12th day of June, 1996, as shown by the certificates of the Charleston Newspaper, and was duly and prominently posted at five public places within the area sought to be annexed, as shown by the return thereon, it is ORDERED that said Notice, together with said Certificates of Publication and Return of Posting be, and the same are filed herein.

Thereupon, the applicant moved the Commission for the adjustment of the boundary of said City of Nitro to embrace and annex a certain area of land described by metes and bounds as follows:

## DESCRIPTION OF A 184.195 ACRE TRACT

Description of a tract of land situate in Union District, Kanawha County, West Virginia, to be annexed into the existing corporation limits of the

RECORDED  
BOOK/PAGE : 2391- / 210-  
KANAWHA COUNTY, WV  
DATE/TIME RECORDED 07/12/1996 10:52:15:00  
INST # : 496099 TYPE: DEED  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/Dye: .00  
04

City of Nitro by minor boundary adjustment. Said area lying southwest of Tri-State Greyhound Park Ltd. Being a part of the Storage property as recorded in DB-1981, PG-92 and including a 1.124 acre parcel as recorded in DB-2246, PG-853 and a 8.818 acre parcel designated as Tract "A-21" adjoining on the northeast side, and being more particularly described as follows:

BEGINNING at a point, said point being a set stone in the northeast corner of the Storage property as recorded in DB-1981, PG-92; thence from point of beginning and along the easterly line of said Storage property, S.  $56^{\circ} 40' 55''$  W. a distance of 117.24 feet to an Iron Pin; thence S.  $34^{\circ} 36' 27''$  W. a distance of 150.98 feet to an Iron Pin; thence S.  $45^{\circ} 12' 28''$  W. a distance of 125.05 feet to an Iron Pin; thence S.  $55^{\circ} 11' 35''$  W. a distance of 124.55 feet to an Iron Pin; thence S.  $81^{\circ} 59' 23''$  W. a distance of 108.79 feet to an Iron Pin; thence N.  $33^{\circ} 19' 58''$  W. a distance of 38.35 feet to an Iron Pin; thence S.  $56^{\circ} 40' 55''$  W. a distance of 756.37 feet to a set stone; thence S.  $11^{\circ} 21' 12''$  W. a distance of 306.27 feet to a point; thence S.  $13^{\circ} 54' 50''$  W. a distance of 225.40 feet to a point; thence S.  $33^{\circ} 46' 48''$  a distance of 174.90 feet to a point; thence S.  $57^{\circ} 2' 11''$  W. a distance of 220.20 feet to a point; thence S.  $65^{\circ} 38' 34''$  W. a distance of 232.00 feet to a point; thence N.  $68^{\circ} 48' 34''$  W. a distance of 138.00 feet to a point; thence N.  $60^{\circ} 36' 11''$  W. a distance of 87.40 feet to a point; thence N.  $76^{\circ} 29' 56''$  W. a distance of 116.40 feet to a point; thence N.  $84^{\circ} 16' 6''$  W. a distance of 83.60 feet to a point; thence N.  $86^{\circ} 4' 00''$  W. a distance of 149.60 feet to a point; thence N.  $59^{\circ} 26' 35''$  W. a distance of 170.00 feet to a point; thence N.  $62^{\circ} 3' 13''$  W. a distance of 234.70 feet to a point; thence S.  $82^{\circ} 49' 54''$  W. a distance of 42.86 feet to a point; thence, leaving the line of said Storage property N.  $41^{\circ} 47' 16''$  E. a distance of 258.34' to a point; thence N.  $48^{\circ} 12' 44''$  W. a distance of 100.00 feet to a point; thence S.  $85^{\circ} 7' 44''$  W. a distance of 253.44 feet to a point; thence S.  $88^{\circ} 50' 11''$  W. a distance of 208.71 feet to a point; thence S.  $1^{\circ} 9' 49''$  E. a distance of 208.71 feet to a point in the southerly line of said Storage property; thence S.  $88^{\circ} 50' 11''$  W. a distance of 119.28 feet to a set stone; thence N.  $27^{\circ} 54' 9''$  W. a distance of 860.23 feet to a point; thence N.  $52^{\circ} 24' 21''$  E. a distance of 3394.00 feet to a point; thence S.  $36^{\circ} 23' 5''$  E. a distance of 93.40 feet to a point; thence S.  $46^{\circ} 5' 5''$  E. a distance of 317.50 feet to a point; thence S.  $50^{\circ} 35' 5''$  E. a distance of 429.00 feet to a point; thence S.  $62^{\circ} 38' 53''$  E. a distance of 160.90 feet to an existing Iron Pin; thence S.  $51^{\circ} 28' 05''$  E. a distance of 436.40 feet to an Iron Pin; thence leaving said Storage line, N.  $31^{\circ} 44' 28''$  E. a distance of 93.89 feet to an Iron Pin in the southerly line of an 80.00' right-of-way (Lakeview Drive); thence N.  $28^{\circ} 39' 45''$  E. a distance of 80.00 feet to an Iron Pin in the northerly line of said 80.00' right-of-way (Lakeview Drive); thence along said right-of-

way S. 61° 20' 15" E. a distance of 105.02 feet to an Iron Pin; thence leaving said right-of-way N. 3° 39' 02" E. a distance of 326.80 feet to an Iron Pin; thence N. 54° 16' 51" E. a distance of 100.00 feet to an Iron Pin; thence S. 13° 06' 09" E. a distance of 156.04 feet to an Iron Pin; thence N. 78° 27' 09" E. a distance of 180.23 feet to an Iron Pin in the westerly right-of-way of Tri-State Greyhound Park access road; thence along said right-of-way and with a curve to the left having a radius of 855.50 feet, a chord bearing of S. 22° 16' 42" E., a distance of 317.82 feet to an Iron Pin; thence continuing along said right-of-way S. 32° 59' 00" E. a distance of 162.56 feet to an Iron Pin; thence with a curve to the left, having a radius of 855.50 feet, a chord bearing of S. 44° 43' 27" E. a distance of 364.79 feet to an Iron Pin; thence leaving said right-of-way of Tri-State Greyhound Park access road S. 32° 07' 57" W. a distance of 173.62 feet to an Iron Pin; thence S. 49° 00' 05" W. a distance of 108.12 feet to an Iron Pin; thence S. 2° 11' 00" W. a distance of 83.61 feet to the point of beginning, containing 184.195 acres more or less.

Included in the above tract is an 80.00 foot easement for utilities and road along the northerly portion of tract.

And it appearing to the Commission from the response to the hearing held concerning the question of adjustment of the corporate boundary of the City of Nitro, that the freeholders in the area to be annexed are not substantially opposed to the proposed boundary change, and the Commission being of opinion that the applicant is entitled to the relief prayed for in its Application, it is, therefore, ADJUDGED, ORDERED and DECREED that the boundary of the City of Nitro be, and is hereby, changed to embrace and annex the territory hereinabove described.

It is further ORDERED that the Clerk of the Commission be, and is hereby, directed to deliver to the Council of the City of Nitro, a certified copy of this Order as soon as practicable.

ENTER this 11th day of July 1996.

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

f:\wp51\client\nitro\thf\184-195.ord

Hand Henry for Marc Slotnick

I, ALMA Y. KING, do hereby certify  
that this is a true copy from the original  
Teste: ALMA Y. KING, Clerk  
Kanawha County Commission

Date 7-17-96 By Robin L. Dutton  
Deputy

IN THE COUNTY COMMISSION OF KANAWHA COUNTY, WEST VIRGINIA

UPON APPLICATION FOR  
ANNEXATION OF LAND INTO  
THE CITY OF NITRO BY  
MINOR BOUNDARY ADJUSTMENT

ORDER

On the 9th day of May, 1996, came the applicant, City of Nitro, a municipal corporation, in Kanawha and Putnam Counties, West Virginia, by Phillip D. Gaujot, its counsel, and tendered and asked leave to file its Application for Annexation and to give Notice that it had filed its application herein for an Order changing the boundary of the City of Nitro, and that a hearing on the question of such change of boundary would be held on this day and, it appearing to the Commission that said notice was duly published in the Charleston Gazette and Charleston Daily Mail, newspapers of general circulation in said City of Nitro and in the territory sought to be annexed, once a week for two successive weeks, beginning on the 29th day of May, 1996, and ending on the 12th day of June, 1996, as shown by the certificates of the Charleston Newspaper, and was duly and prominently posted at five public places within the area sought to be annexed, as shown by the return thereon, it is ORDERED that said Notice, together with said Certificates of Publication and Return of Posting be, and the same are filed herein.

Thereupon, the applicant moved the Commission for the adjustment of the boundary of said City of Nitro to embrace and annex a certain area of land described by metes and bounds as follows:

DESCRIPTION OF ANNEXATION OF  
FIKE CHEMICALS, INC. 0.928 ACRE TRACT  
FOR THE CITY OF NITRO

A tract of land situate on the waters of the Kanawha River, Pocatalico District, West Virginia, more particularly described as follows:

BEGINNING at a 5/8 inch iron pipe found, said rebar being on the eastern right-of-way edge of Route 25/9, (Known also as Viscose Road, and/or Plant Road) on the western edge of a railroad right-of-way recorded in Deed

RECORDED  
BOOK/PAGE : 2391- / 207-  
KANAWHA COUNTY, WV  
DATE/TIME RECORDED 07/12/1996 10:50:00:00  
INST # : 496098 TYPE: DEED  
CLERK OF THE COUNTY COMMISSION  
TOTAL RECD/DUE: .00  
04

Book 159, page 426, also being in the center of a 50 foot roadway reservation leading to Dano Container, Inc., and Fike Chemicals, Inc., also being in the present city limits of Nitro as annexed with Par Industrial Park annexation of 1983 book 19, page 81; thence with the center of said 50 foot roadway for one call

S. 77° 55' 18" E., 132.84 feet to a 1/2 inch rebar with plastic cap, from which a 1 inch iron pipe found in the center of said roadway bears S. 77° 55' 18" E., at 323.46 feet, said rebar being a common corner between Fike Chemicals, Inc., recorded in deed book 270 page 263, and Dano Container, Inc., recorded in Deed Book 301, page 191, thence with the common division lines of said Fike Chemicals, Inc., and said Dano Container, Inc., for five calls

(1) S. 39° 00' 42" W., 307.23 feet to a 1/2 inch rebar with plastic cap; thence

(2) S. 78° 52' 42" W., 60.65 feet to a 1/2 inch rebar with plastic cap; thence

(3) N. 77° 50' 18" W., 34.06 feet to a 1/2 inch rebar with plastic cap, thence

(4) N. 72° 19' 18" W., 32.44 feet to a 1/2 inch rebar with plastic cap, said rebar being on the eastern right-of-way of said railroad, thence running through and across said railroad right-of-way

(5) N. 49° 10' 18" W., 29.15 feet to a 1/2 inch rebar with plastic cap, said rebar being on the western edge of said railroad right-of-way, and also being on the eastern right-of-way edge of said Route 25/9, also being in the said city limits thence with the said eastern right-of-way of Route 25/9 and said city limits

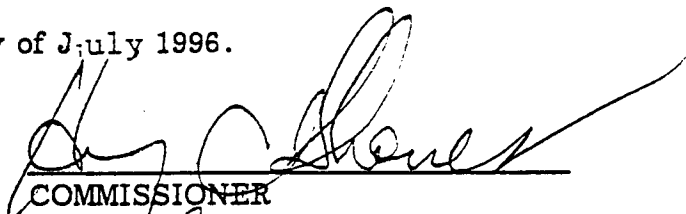
N. 40° 50' 09" E., 320.03 feet to the point of beginning, containing 0.928 acres, as shown on a Plat of Survey dated December 1, 1989, by Dunn Engineers, Inc., file no. 8916, Entitled "PLAT OF SURVEY SHOWING BOUNDARY SURVEY OF FIKE/ARTEL CHEMICAL SITES, KANAWHA & PUTNAM COUNTIES, NITRO, WEST VIRGINIA, IN ACCORDANCE WITH REM II PROGRAM-E.P.A. CONTRACT 68-01-7250, AND SUBCONTRACTOR NO. 4938-895-4192."

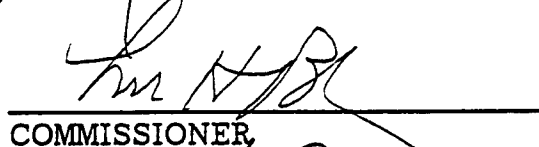
And it appearing to the Commission, and the Commission so finds, that the proposed annexation is only a minor boundary adjustment; and, from the response to the hearing held concerning the question of adjustment of the corporate boundary of the City of Nitro, that the freeholders in the area to be

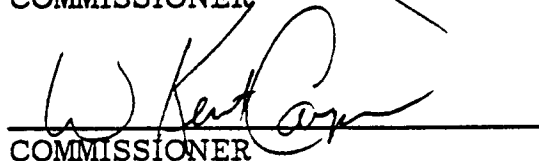
annexed are not substantially opposed to the proposed boundary change; and the Commission being of opinion that the applicant is entitled to the relief prayed for in its Application, it is, therefore, ADJUDGED, ORDERED and DECREED that the boundary of the City of Nitro be, and is hereby, changed to embrace and annex the territory hereinabove described.

It is further ORDERED that the Clerk of the Commission be, and is hereby, directed to deliver to the Council of the City of Nitro, a certified copy of this Order as soon as practicable.

ENTER this 11th day of July 1996.

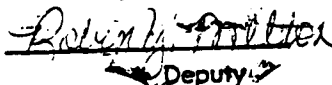
  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

f:\wp51\client\nitro\thf\like.fin

I, ALMA Y. KING, do hereby certify  
that this is a true copy from the original  
Teste: ALMA Y. KING, Clerk  
Kanawha County Commission

Date 7-12-96 By   
Deputy





**CITY OF NITRO WEST VIRGINIA**

**OFFICE OF THE MAYOR**

**PROCLAMATION 96-6**

**WHEREAS**, National Business Women's Week was first observed in 1928, and has become a nationwide salute to working women; and

**WHEREAS**, working women constitute a large segment of the nation's work force, and are constantly striving to serve their communities, their states, and their nation in civic and cultural programs; and

**WHEREAS**, major goals of business and professional women are to help create better conditions for business women through the study of social, educational, economic and political problems, to help women to be of greater service to their communities and to further friendships with other women throughout the world; and

**WHEREAS**, working women may be justly proud of the leadership they have demonstrated in these many fields of endeavor.

**NOW THEREFORE, I RUSTY CASTO, MAYOR** of the City of Nitro, West Virginia, do hereby proclaim October 21-25, 1996 as **NATIONAL BUSINESS WOMEN'S WEEK** in Nitro, encouraging all citizens and organizations to join this observance by encouraging and promoting this tribute to the achievements of all business and professional women.

**IN WITNESS WHEREOF**, I have  
hereunto set my hand and caused the  
Seal of the Executive Department to be  
affixed this week of October 21-25

**RUSTY CASTO, MAYOR, CITY OF NITRO**

## CITY OF NITRO COUNCIL MEETING MINUTES

OCTOBER 15, 1996

Mayor Casto declared a quorum and called the meeting to order at 7:30 p.m. Others present City Recorder/Treasurer Herbert Sibley, Councilmen at Large Robert Mattox, Richard Savilla, Steve West, Councilmen Robert Young, David Miller, George Atkins and Frank Grover, Jr., Also present City Attorney Phillip Gaujot.

**AGENDA ITEM NO. 1 INVOCATION:** Councilman at Large Robert Mattox.

**AGENDA ITEM NO. 2 APPROVAL OF 10/01/96 MINUTES:** COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. REC/TREAS SIBLEY MOVED TO AMEND THE FIRST SENTENCE OF THE MOTION IN AGENDA ITEM NO. 3, BY ADDING, EVEN THOUGH THERE IS NO MONEY IN BUDGET FOR THIS ITEM, THESE PRICES ARE FOR INFORMATION PURPOSES ONLY. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE RICHARD SAVILLA AND WAS CARRIED.

**AGENDA ITEM NO. 3 U-DAG UPDATE:** Mayor Casto yielded the floor to City Attorney Phil Gaujot. Counselor Gaujot said he had been informed a proposal will be forth coming soon and there is a hearing next week. Also Counselor Gaujot commented he had received a draft modification of the agreement from THF that they want the City to agree to. Attorney Gaujot stated he will compare this agreement with the previous agreement and report to Council at the next meeting. A discussion followed regarding resolutions, ordinances and annexation.

Attorney Phil Gaujot announced the next Council Meeting is scheduled for the 1st Tuesday in November, which is election day and the Council Meeting date will need to be rescheduled. COUNCILMAN AT LARGE STEVE WEST MOVED TO RESCHEDULE THE NOVEMBER COUNCIL MEETINGS TO NOVEMBER 12TH AND NOVEMBER 19TH AT 7:30 P.M. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.

**AGENDA ITEM NO. 4 BEAUTIFICATION UPDATE:** Mayor Casto stated the last two weeks has been very busy with beautification of the City. We are moving along with the 1918 bungalow and now in the process of building a porch and installing windows. The Sammy Plant House on 18th Street hill has been torn down and the old Cab Stand has been demolished as promised.

The slip has been removed from Hickory Road, which blocked emergency vehicles. Also much work has been done at the pool and Mayor Casto invited council members to take a look at the improvements there. Mayor Casto said he would like to get the Beautification Committee started by the next Council Meeting, if Council can present their list by that time.

**AGENDA ITEM NO. 5 BUSINESS & PROFESSIONAL ASSOC REPORT:** Mayor Casto yielded the floor to Rec/Treasurer Herb Sibley. Mr. Sibley reported the Business and Professional Association requested the City park a truck at the bungalow site so they could haul the trash away.

The second item discussed was the "Pot of Gold", a thousand dollar gift contest along with several other prizes to be given away during the month of December. Also the Christmas Light Contest with awards to be given to the best decorated.

**AGENDA ITEM NO. 6 FINANCE REPORT:** Mayor Casto yielded the floor to City Rec/Treasurer Herb Sibley. Mr. Sibley reported the committee recommendation for the trash liners was Unisource of Huntington, Bid \$ 20,768. COUNCILMAN BOB YOUNG MOVED TO AWARD UNISOURCE OF HUNTINGTON THE BID FOR TRASH LINERS. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE RICHARD SAVILLA AND WAS CARRIED.

City Recorder Sibley reported he had received money from taxes from both County Sheriff Departments and was able to pay several of the older outstanding invoices. He stated the city was in better financial shape than reported at last meeting.

Rec/Treas Sibley said in regard to the snow plow, it should be delivered no later than November 30, 1996. That bid was \$31,900 R. H. Peters Chevrolet, successful bidder. COUNCILMAN FRANK GROVER, JR. MOVED TO APPROVE THE BID FROM R. H. PETERS CHEVROLET. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.

Mr. Sibley stated a representative from Convest was down to get papers signed. The program we have regarding the snow plow will be paid for in two years. This keeps us from paying a lot of interest. Total Cost is \$31,900 with interest at 5.7%. Payments about \$1500.00 per month for two years.

Recorder Sibley commented in regard to the computer system, he is not against computers but he said there is a greater priority which is the Street bridge. A discussion followed in regard to this bridge.

**AGENDA ITEM NO. 7 CALENDAR PICTURES:** Mayor Casto announced Sunday at 1:00 p.m. the community was invited to have a picture taken for the 1997 calendar. Also he said this would be a good time for Council to have their picture taken. Mayor Casto stated year last we spent \$4900 and took in \$200. This year we have pledged twenty five ads and we still have two weeks to go for a total of \$2500. This is much better than last years record. Mayor Casto stated his goal was to clear a \$1000 at least on the calendar.

**AGENDA ITEM NO. 8 MAYOR'S REPORT:** Mayor Casto reported Mr. Gary Minutes from 3 M Sign Company was in my office Tuesday October 15th to explain and answer questions regarding street signs. Mayor Casto stated as soon as he gets more information he will report to Council.

Mayor Casto said one of his campaign promises was to sell the Mayor's car and I also want to sell the camera. In the next two weeks I will be selling these and putting the money in the bank. This money will go toward a new roof over the shower houses.

**AGENDA ITEM NO. 9 COUNCILMEN'S COMMENTS:**

**Councilman Frank Grover** presented council with pictures in the area of River Avenue. Mayor Casto stated the owners have been notified of this problem.

**Councilman George Atkins** mentioned curb painting and directional pointers on the West Side. Mayor Casto stated this will be taken care of tomorrow. (10/16/96)

**Councilman David Miller** reported problems in ward 2, Penwood Avenue and Short St. need repair. Also he mentioned 31st Street Bridge.

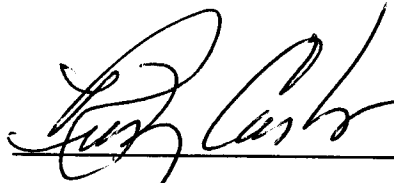
**Councilman Bob Young** reported two large brush piles at Brookhaven. This problem has been reported many times and as of tonight this problem is still there. Also problem with eyesore on 40th Street. Recorder Sibley stated this situation is being taken care of now. Councilman Young said the maple tree across the street from there needs to be trimmed or cut down. You can not see the street light. A discussion followed regarding the chipper located at the Sanitary Board property.

**Councilman Steve West** reported the next meeting of the Nitro Area Community Forum is scheduled for January, 1997. Councilman West mentioned he would like to suggest tying recycling and the Christmas Promotion together.

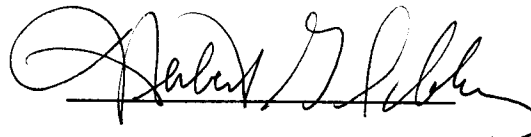
**Recorder/Treasurer Herb Sibley** requested a study from the Police and Fire Committee regarding Military leave. Also overtime being paid during sick leave and vacation time in the Fire Department.

Councilman at Large Steve West announced a Police Committee meeting next Tuesday night at 7:30 p.m.

There being no further business, the meeting was adjourned.



RUSTY CASTO, MAYOR



HERBERT SIBLEY, RECORDER

**CITY OF NITRO COUNCIL MEETING MINUTES****NOVEMBER 12, 1996**

Mayor Casto declared a quorum and called the meeting to order at 7:30 p.m. in Council Chambers at City Hall. Others present, City Recorder Herbert Sibley, Councilmen at Large, Robert Mattox, Richard Savilla, Steve West, Councilmen Robert Young, David Miller, George Atkins and Frank Grover, Jr. Also present, City Attorney Phillip Gaujot.

**AGENDA ITEM NO. 1 INVOCATION:** Councilman at Large Robert Mattox.

**CITIZEN OF THE MONTH**

Recreation Director introduced Ms. Sharon Fridley to Council and presented her with a document written in braille. Ms. Fridley read the document that named her as Citizen of the month. Recreation Director, Jay Long congratulated Sharon and presented her with a stuffed animal (rabbit). Mayor Casto welcomed Sharon to the Council Meeting and congratulated her for her very important work with the Lion's Club.

**AGENDA ITEM NO. 2 APPROVAL OF 10/15/96 CO MINUTES:** COUNCILMAN AT LARGE STEVE WEST MOVED TO APPROVE THE MINUTES AS DISTRIBUTED. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED.

Mayor Casto introduced Coach Burdette from Nitro High School. Coach Burdette presented Mayor Casto and Council with an autographed football. COUNCILMAN DAVID MILLER MOVED FOR A WILDCAT VICTORY SATURDAY. THE MOTION WAS SECONDED BY COUNCILMAN-ROBERT MATTOX AND WAS CARRIED.

Mayor Casto introduced Coach Lemley from Poca High School. COUNCILMAN AT LARGE RICHARD SAVILLA MOVED FOR A POCA DOT VICTORY SATURDAY. THE MOTION WAS SECONDED BY COUNCILMAN FRANK GROVER, JR. AND WAS CARRIED. Coach Lemley also presented Mayor Casto with a football.

Mayor Casto congratulated both teams for making it to the play-offs and wished them luck.

**AGENDA ITEM NO. 3 FIRE DEPARTMENT FUND RAISERS:** Mayor Casto yielded the floor to Mr. Jim Riffle. Mr. Riffle explained the fund raiser projects to Council. COUNCILMAN ROBERT YOUNG MOVED TO GRANT THE FIRE DEPARTMENT FUND RAISER REQUEST. THE MOTION WAS SECONDED BY COUNCILMAN GEORGE ATKINS AND WAS CARRIED.

**AGENDA ITEM NO. 4 BEAUTIFICATION:** Mayor Casto stated he was moving ahead with the beautification league. Mayor Casto requested councilmen attend the meetings or send a representative who can vote in your behalf. Mayor Casto announced Dean Miller will chair the Beautification League in Mayor Casto's behalf. Chairman Miller announced a meeting for Monday, November 18 at 7:00 p.m. in council chambers.

Mayor Casto stated since the last meeting, owners have signed for three houses to be torn down. One on 40th Street and Second Avenue, one at 31st Street and Second Avenue and one at 26th Street and Second Avenue. There are other houses being looked at.

City Attorney, Phillip Gaujot stated regarding the auction of obsolete equipment, the items less than \$1000 do not have to be sold by public auction but if the value is over \$1000 they must be sold by public auction. COUNCILMAN AT LARGE STEVE WEST MOVED THE CITY ATTORNEY PREPARE THE NECESSARY ORDINANCE FOR THE SALE OF CITY PERSONAL PROPERTY IN EXCESS WITH VALUE IN EXCESS OF \$1000 AND ALSO AN ORDINANCE FOR THOSE ITEMS CONSIDERED WORTH LESS THAN \$1000. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE ROBERT MATTOX AND WAS CARRIED.

Mayor Casto yielded the floor to Councilman George Atkins to comment on the street sweeper. Councilman Atkins stated he and Mayor Casto drove and worked with the street sweeper for about an hour and he said I feel this will be very beneficial to the City. Councilman Atkins yielded the floor to Mr. Scott Wooden, representative of State Equipment Company. Mr. Wooden spoke to Council giving background of their experience. Also Mr. Wooden showed Council a video of the street sweeper "Air Boss Mobile Sweeper." A question and answer session followed.

**AGENDA ITEM NO. 5 TRASH COLLECTION:** Mayor Casto yielded the floor to Councilman Frank Grover. Councilman Grover stated he would like to at least thank the kids in his area for their good conduct used during Halloween Trick or Treat night.

Councilman Grover stated beginning January 1st., 1997 the landfill will no longer accept yard waste. The State will require that these items be composted. The City must decide how to transport composting items and where they will go. Also there is a problem of getting rid of other appliances and large items. Councilman Grover will report on this matter at the next scheduled Council Meeting.

**AGENDA ITEM NO. 6 BUSINESS & PROFESSIONAL ASSOC REPORT:** Mayor Casto yielded the floor to Dean Miller, Spokesman. Mr. Miller announced the "Pot of Gold", and the Christmas Parade, December 7, 1996 at 6:00 p.m. Also Mr. Miller stated they are making some progress on the bungalow, but they need more help and he said, they need a truck. Mr. Miller said regarding the "Christmas Decoration Contest" an award will be given to the best decorated house and also the best decorated business.

**AGENDA ITEM NO. 7 FINANCE REPORT:** Mayor Casto yielded the floor to City Recorder, Herb Sibley. Mr. Sibley stated the revenue is \$86,000 over estimated budget and revenue over expense is \$51,584. Mr. Sibley said a Finance meeting will be announced soon.

Recorder Sibley read Resolution 96-16, A RESOLUTION AUTHORIZING LEASE WITH OPTION TO PURCHASE AGREEMENT, in its entirety to Council. CITY RECORDER/TREASURER MOVED TO ADOPT RESOLUTION 96-16. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE STEVE WEST AND WAS CARRIED. (COPY ATTACHED)

City Attorney Phillip Gaujot read Resolution 96-15 A RESOLUTION AUTHORIZING RUSTY CASTO, MAYOR OF THE CITY OF NITRO TO SIGN THE NECESSARY PARTNERSHIP GRANT APPLICATION FOR THE POCA RIVER SEWER EXTENSION PROJECT. COUNCILMAN GEORGE ATKINS MOVED TO ADOPT RESOLUTION 96-15. THE MOTION WAS SECONDED BY COUNCILMAN ROBERT YOUNG AND WAS CARRIED. (COPY ATTACHED)

Mr. Sibley commented an engineering firm, Chester Engineers, a Huntington firm is looking at the 31st Street bridge and will be making recommendations. This estimate calls for \$10,000 labor, 12ft steel stand, \$33,035 un-assembled, \$10,000 labor, \$15,000 concrete pads on both sides.

The second was a two-lane 24 ft span, \$50,000 un-assembled, and \$10,000 labor. Also we must obtain permits. These are ballpark figures.

Recorder Sibley stated he had advertised for the computer system, and he said we do not have money for this project at the present time. The only way we can do this, is to give good specs and then request bids.

Councilman at Large Steve West commented the specs that Mr. Rowsy submitted would be as good as any. A discussion followed.

**AGENDA ITEM NO. 8 RIVERVIEW APT:** Mayor Casto stated a letter had been received from Greg Lord, Attorney for Riverview Apts. Mayor Casto explained to Council, a few years ago Riverview Apts entered into an agreement with the City of Nitro. Mayor Casto gave this matter to the City Attorney. Counselor Gaujot will report on this matter at the next scheduled Council meeting. (Copy attached)

**AGENDA ITEM NO. 9 PLANNING COMMISSION:** Mayor Casto stated he has received a request from the Planning Commission for an ordinance regarding changes in property, letters to be written to chairperson of planning commission, names of property owners within 300 ft of any property involved in changes, a fee of \$100.00 payable to the City of Nitro to cover cost of legal ads and notices to property owners. This fee is non-refundable. COUNCILMAN DAVID MILLER MOVED THE CITY ATTORNEY PREPARE AN ORDINANCE TO COVER ANY PROPERTY CHANGES AND EXPENSES. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE RICHARD SAVILLA AND WAS CARRIED

**AGENDA ITEM NO. 10 NITRO DEVELOPMENT AUTHORITY:** Mayor Casto stated he contacted several people who would be willing to serve on the board of the Nitro Development Authority and he would like for Council to consider them for appointment. The list is as follows: Dean Miller, Brenda Tyler, Jim Westlund, Ken Kniceley, Mary Trout, Tim Sizemore, Dave Perry and Carmen Kostelansky. COUNCILMAN DAVID MILLER MOVED TO APPROVE THE APPOINTMENT OF THE ABOVE LIST AS MEMBERS OF THE NITRO DEVELOPMENT AUTHORITY. THE MOTION WAS SECONDED BY COUNCILMAN AT LARGE RICHARD SAVILLA AND WAS CARRIED.

**AGENDA ITEM NO. 11 TENNIS COURTS:** Mayor Casto stated the tennis courts can probably be obtained by using a users fee, and be of no cost to the taxpayer. The cost will be approximately \$40,000/50,000. The payment per month would be approximately \$600/mo for ten years. One month payment each year would come from the Nitro High Boosters Club, and then the City would give the school time on the courts. We have also contacted other area schools to participate. This money could most likely be raised by selling joint pool and tennis court passes and money from other areas to pay for them. Mayor Casto said he will report on cost and payment plans regarding this project at the next council meeting.

**AGENDA ITEM NO. 12 U-DAG:** Mayor Casto yielded the floor to Counselor Gaujot. Counselor Gaujot stated, as you recall, we filed a motion to convert the bankruptcy to chapter 7. That got Par busy filing their plan. This plan calls for paying the City of Nitro up to the time of filing only. After some negotiation, Mayor Casto, Herb Sibley and I feel we have a good deal for the City. We are waiting on some figures from Ralph Allison. Hopefully, we will have something to present to Council at the next meeting. Mayor Casto asked Counselor Gaujot how long have we waited on payment from Par. Counselor Gaujot commented they filed bankruptcy in 1993. They should have started paying in 1992 and when they didn't, we filed suit and they filed bankruptcy.

In regard to the annexation of twelve more acres, THF is coming back for consideration of amendments to the agreement. I have prepared the necessary papers for County Commission. I will report on this matter at the next meeting.

**AGENDA ITEM NO. 13 JEFF WOODS JUDGE:** This Agenda Item postponed until next meeting.

**AGENDA ITEM NO. 14 MAYOR'S COMMENTS:** Mayor Casto announced the 42nd Street Railroad Crossing will be closed from December 9th through the 19th. There will be another crossing close by to get through.

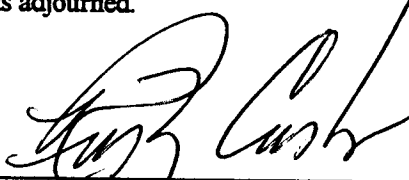
**Councilmen Comments**

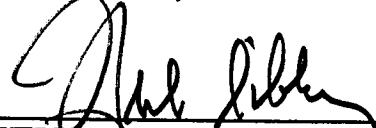
**Council at Large Dave Miller** stated the Fire Department has requested to take money from their training budget to become a member of the Fire Emergency T. V. Network. The Association is going to put up \$268.00, which is one months deposit. The City would be making the monthly payment approximately \$150.00. It is an on going subscription to be deducted from Fire Training budget. Also Councilman Miller stated he had two complaints from residents in his ward regarding commercial vehicles parked on their streets, blocking views.

**Councilman at Large Steve West** commented the Employee Relations Committee met but he had to leave so another meeting will be scheduled.

**Councilman at Large Robert Mattox:** Announced next week at the Council Meeting a representative will be here to present information and ideas on "Main Street USA". Also Councilman Mattox asked status of the sewer project scheduled for the 1st of November. Mayor Casto stated this project has been postponed until March.

There being no further business the meeting was adjourned.

  
\_\_\_\_\_  
RUSTY CASTO, MAYOR

  
\_\_\_\_\_  
HERBERT SIBLEY, RECORDER



**AUTHORIZING RESOLUTION**

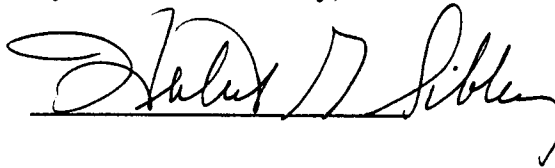
**At the regularly scheduled meeting of the Council for the City of Nitro, held on November 19, 1996, RUSTY CASTO, Mayor, City of Nitro, was duly authorized to sign the necessary Partnership Grant Application for the Poca River Sewer Extension Project. The Partnership Grant application will seek \$50,000.00 in funds through the Governor's Community Partnership Grant Program.**

**This motion being duly present and seconded has been adopted by a quorum vote and therefore RUSTY CASTO may enact all such documents relative to the application for funds through the Governor's Community Partnership Grant Program.**

**By: Rusty Casto, Mayor**

A handwritten signature in cursive script, appearing to read "Rusty Casto", written over a horizontal line.

**By: Herbert G. Sibley, Recorder**

A handwritten signature in cursive script, appearing to read "Herbert G. Sibley", written over a horizontal line.

## RESOLUTION AUTHORIZING LEASE WITH OPTION TO PURCHASE AGREEMENT

At a duly called meeting of the governing body of Lessee held on the 12<sup>th</sup> day of November, 1996, following recitals and resolution were introduced and adopted.

WHEREAS, the governing body of Lessee has determined that it is necessary and desirable and in the best interests of the Lessee to enter into a Lease with Option to Purchase Agreement (the "Lease Agreement") with Comvest Ltd., Inc., of Clarksburg, West Virginia, for the purpose of obtaining the Equipment described in the Lease Agreement presented to this meeting; and

WHEREAS, the governing body of Lessee has taken the necessary steps, including any legal bidding requirements, under applicable law to arrange for the acquisition of such Equipment.

BE IT RESOLVED by the governing body of Lessee, as follows:

Section 1. Authorization. The governing body of Lessee does hereby approve the Lease Agreement substantially in the form presented to this meeting, and does hereby designate the following individual (the "Designated Representative") to execute the Lease Agreement with such changes thereto as such person deems appropriate; and any related documents necessary to the consummation of the transactions contemplated by the Lease Agreement. The Designated Representative is hereby authorized to take any action, execute any document, or give any consent which may from time to time be required by the Lessee under the Lease Agreement. Any such action taken or document executed or consent given by the Designated Representative in his capacity as the representative of the Lessee shall be deemed to be an act by the Lessee and any such action, execution or consent shall be conclusive evidence that the same is authorized by this Resolution.

Designated Representative: MAYOR Rusty CASTO

Section 2. Designation as Qualified Tax-Exempt Obligation. Pursuant to Section 265 (3)(B) of the Internal Revenue Code of 1986 (the Code), the issuer hereby specifically designates the Lease and Equipment as a "qualified tax-exempt obligation" for purposes of Section 265 (b) (3) of the Code. The aggregate amount of tax-exempt obligations issued to date by the issuer, in this calendar year including the principal amount for the aforementioned Equipment Group A together with all other issues of such obligations reasonably expected in this calendar year, shall not exceed the maximum specified in said Section 265 (b) (3).

Section 3. Effective Date. This Resolution shall take effect immediately.

The undersigned certifies that the above resolution has not been repealed or amended and remains in full force and effect, and further certifies that the above and foregoing Lease Agreement is the same as presented at said meeting of the governing body of Lessee:

Seal:

[Signature]  
Secretary/Clerk

I hereby certify that I am the Recorder (office) of said municipality and that the foregoing is a correct copy of the resolution passed as therein set forth; and that the same is now in full force.

[Signature] mayor  
(To be signed by other than the Secretary)

Exhibit A - Loan Agreement  
Schedule Y - Payment Schedule

THE CITY OF NITRO

SUPPLEMENTAL RESOLUTION

Supplemental Resolution providing for the dates, maturities, interest rates, principal payment schedules, sale prices and other terms of the Sewerage System Revenue Bonds, Series 1996 A, designating a registrar, paying agent and depository bank, approving the sale of the Sewerage System Revenue Bonds, Series 1996 A pursuant to a Loan Agreement and making other provisions as to such Bonds.

WHEREAS, the City Council of The City of Nitro (the "Issuer"), on August 6, 1996, enacted an Ordinance, all as more fully set out therein; (said Ordinance is hereinafter referred to as the "Ordinance"); and

WHEREAS, the Ordinance provides for the issuance of Sewerage System Revenue Bonds, Series 1996 A (the "Series 1996 A Bonds"), of the Issuer in aggregate principal amounts not to exceed \$4,900,000, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and further provides that the dates, interest rates, maturities, sale prices and other terms of and matters relating to, the Series 1996 A Bonds should be established by supplemental resolution; and

WHEREAS, the Series 1996 A Bonds are proposed to be sold to the West Virginia Water Development Authority pursuant to a Loan Agreement (the "Loan Agreement"); and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Ordinance; and

WHEREAS, the Governing Body of the Issuer deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the prices, the maturity dates, the redemption provisions, the interest rates, and the interest and principal payment dates of the Series 1996 A Bonds be fixed hereby in the manner stated herein, that the Loan Agreement be ratified and approved and that other matters relating to the Bonds be herein provided for.

NOW THEREFORE, be it resolved by the City Council of The City of Nitro as follows:

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewerage System Revenue Bonds, Series 1996 A, in the aggregate principal amount of \$4,575,502 (the "Series 1996 A Bonds"), all in the form set forth in the Ordinance.

(A) The Series 1996 A Bonds of the Issuer shall be originally issued in the form of a single bond payable to the Authority, numbered consecutively AR-1, shall be in the principal amount of \$4,575,502. The Series 1996 A Bonds shall be dated as of December 10, 1996, or as of the date of closing and shall mature on June 1, 2018. The Series 1996 A Bonds shall bear interest at

the rate of 2% per annum, together with a 1% annual administrative fee, from June 1, 1998, until paid. Beginning September 1, 1998, the principal of and interest on the Series 1996 A Bonds shall be payable quarterly on September 1, December 1, March 1 and June 1 of each year, all as set forth on Schedule Y attached hereto.

(B) The sale of the Series 1996 A Bonds to the Authority, which is hereby designated as the Original Purchaser of the Series 1996 A Bonds, and the Loan Agreement dated October 10, 1996, in the form attached to this Resolution as Exhibit A is hereby ratified and approved. The Mayor is authorized and directed to execute and deliver the Loan Agreement with such changes and insertions as he may approve. The Mayor's signature on such Agreement shall be conclusive evidence of such approval.

Section 2. Except as herein provided, all other provisions relating to the Series 1996 A Bonds shall be as provided in the Ordinance, and the Series 1996 A Bonds shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor of the Issuer. The execution of the Series 1996 A Bonds by the Mayor shall be conclusive evidence of such approval.

Section 3. The Issuer hereby determines that the bank currently serving as the Depository Bank for the Sewer System Revenue Fund, Huntington National Bank, West Virginia, shall continue in that capacity.

Section 4. The Issuer hereby appoints and designates One Valley Bank, National Association, Charleston, West Virginia, as Registrar for the Bonds.

Section 5. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, as Paying Agent for the Bonds.

Section 6. The Mayor and the Recorder of the Issuer are hereby authorized and directed to execute and deliver such other documents and certificates, including the Registrar's Agreement and Tax Regulatory Agreement, required or desirable in connection with the Series 1996 A Bonds in order for the Series 1996 A Bonds to be delivered to the Original Purchaser pursuant to the Loan Agreement.

Section 7. The Issuer shall not permit at any time or times any of the proceeds of the Series 1996 A 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 Code, by reason of the classification of the Series 1996 A Bonds as "private activity bonds" within the meaning of the Code. It will take all actions necessary to comply with the Code, including the Treasury Regulations to be promulgated thereunder.

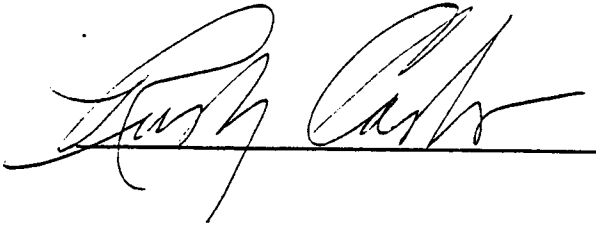
Section 8. In accordance with Section 148(f)(4)(C) of the Internal Revenue Code of 1986, as amended, the Issuer covenants that it is a governmental unit with general taxing powers; that the Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds as

defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Bonds are issued will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(C) of the Code and the Regulations promulgated thereunder.

Section 9. The Issuer hereby authorizes and directs the repayment, from the first disbursement made under the Loan Agreement, of the City's 1991 Construction Loan, outstanding in the approximate amount of \$100,000, and the City's Series 1995 B Bonds in the approximate amount of \$60,000, both of which obligations are owed to Huntington National Bank, West Virginia.

Section 10. This Supplemental Resolution shall be effective immediately upon adoption.

Adopted this 12<sup>th</sup> day of November, 1996.

  
Mayor

  
Recorder

