"Community sign" means temporary, on- or off-premises signs, generally made of a woven material or durable synthetic materials primarily attached to or hung from light poles or on buildings. These signs are solely of a decorative, festive and/or informative nature announcing activities, promotions or events with seasonal or traditional themes having broad community interest, and which are sponsored or supported by a jurisdiction-based nonprofit organization.

"Comprehensive plan" means a plan for physical development, including land use, adopted by a governing body, setting forth guidelines, goals and objectives for all activities that affect growth and development in the governing body's jurisdiction.

"Conditional use" means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning ordinance.

"Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interest in the common elements are vested in the owners.

"Contiguous" means lots, parcels, municipal boundaries or county boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways, roads or other traffic or utility easements, streams, rivers, and other natural topography are not to be used to determine lots, parcels, municipal boundaries or county boundaries as contiguous.

"Convalescent center" means a facility which is publicly or privately operated and intended for long-term patient care due to human illness or infirmity, including the elderly and developmentally disabled, normally employing the services of skilled and licensed practitioners, excluding hospitals.

"Convenience commercial center" means a completely planned and designed commercial development providing for the sale of general merchandise and/or convenience goods and services. A convenience commercial center shall provide a small cluster of convenience shops or services.

"Copy" means those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, excluding numerals identifying a street address only.

"Corner lot" means a lot abutting on two intersecting or intercepting streets, where the interior angle of intersection or intercept on does not exceed 135 degrees.

"Court" means a space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on three or more sides by walls of a building.

"Dance hall" or "discotheque" means an establishment intended primarily for dancing and entertaining within an enclosed building, using either live or electronically produced music, either open to the public or operated as a private club open to members only.

"Density" means the number of dwelling units which are allowed on an area of land, which area of land shall be permitted to include dedicated streets contained within the development.

"Destination tourism center" means an area containing a minimum of two hundred thousand square feet of buildable space adjacent or complementary to a tourism attraction, and which provides a variety of entertainment and leisure options.

"Development complex sign" means a free-standing sign identifying a multiple-occupancy development, such as a shopping center or planned industrial park, which is controlled by a single owner or landlord, approved in accordance with this chapter.

"Directional sign" means any sign that is designed and erected for the purpose of providing direction and/or orientation for pedestrian or vehicular traffic.

"Dog racing" means the activity licensed under the authority of Article 23, Chapter 19 of the Code of West Virginia of 1931, as amended.

"Double faced sign" means a sign with two faces, back to back.

"Driveway" means a private access road, the use of which is limited to persons residing, employed, or otherwise using or visiting the parcel in which it is located.

"Duplex dwelling" means a building designed or arranged to be occupied by two families living independently, the structure having only two dwelling units.

"Dwelling unit" means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this ordinance, for not more than one family, or a congregate residence for six or less persons.

"Easement" means that portion of land or property reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for use under, on, or above said lot or lots.

"Educational institution" means public or parochial pre-primary, primary, grade, high, prepatory school or academy, junior college, college or university, if public or founded or conducted by or under the sponsorship of a religious or charitable organization.

"Electric sign" means any sign activated or illuminated by means of electrical energy.

"Electronic message sign or center" means an electrically activated changeable sign whose variable message capability can be electronically programmed.

"Essential utilities and equipment" means underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories:

- 1. Local serving;
- 2. Nonlocal or transmission through the county or municipality; and

- 3. Water and sewer systems, the activities of which are regulated, in whole or in part, by one or more of the following state agencies:
 - a. Public service commission;
 - b. Department of environmental protection; or
 - C. The department of health and human resources.

"Existing use" means use of land, buildings or activity permitted or in existence prior to the adoption of a zoning map or ordinances by the county or municipality. If the use is nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one year: Provided, That in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.

"Exterior sign" means any sign placed outside a building.

"Factory-built home". See, "Modular and manufactured homes".

"Family" means an individual or two or more persons related by blood, marriage or adoption, or a group not to exceed six unrelated persons living together as a single housekeeping unit.

"Family day care" means the keeping for part-time care and /or instruction, whether or not for compensation, of six or less children at any time within a dwelling, not including members of the family residing on the premises.

"Farm animals" means animals other than household pets that shall be permitted to, where permitted, be kept and maintained for commercial production and sale and/or family food production, education, or recreation. Farm animals are identified by these categories: large animals, e.g., horses and cattle; medium animals, e.g., sheep, goats; or small animals, e.g., rabbits, chinchillas, chickens, turkeys, pheasants, geese, ducks and pigeons: Provided, That the term "farm animals" shall not include any animals prohibited by State law or this Code from being kept and maintained.

"Fascia sign". See, "wall or fascia sign."

"Flag lot" means a lot so shaped and designed that the main building site is set back from the street on which it fronts and includes an access strip connecting the main building site with the frontage street.

"Flashing sign". See "animated sign, electrically activated ."

"Flea market" means an occasional or periodic sales activity held within a building, structure, or open area where groups of individual sellers offer goods, new and used, for sale to the public, not to include private garage sales.

"Flood prone area" means any land area susceptible to repeated inundation by water from any source.

"Floor area ratio" means the numerical value obtained by dividing the gross floor area of a building by the area of the lot on which the building is constructed.

"Free standing sign" means a sign principally supported by a structure affixed to the ground, and not supported by a

building, including signs supported by one or more columns, poles or braces placed in or upon the ground.

"Front yard" means a yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto.

"Frontage (Building)" means the length of an exterior building or structure of a single premise oriented to the public way or other properties that it faces.

"Frontage (Property)" means the length of the property line(s) of any single premise along either a public way or other properties on which it borders.

"General plan" means the declaration of purposes, policies and programs for the development of the City.

"Grade (Adjacent Ground Elevation)" means the lowest point of elevation of the existing surface of the ground, within the area between the building and a line 5 feet (1524 mm) from the building.

"Graffiti" means unauthorized marking on a structure.

"Gross acreage" means the overall total area of real property.

"Gross floor area" means the sum of the horizontal areas of floors of a building measured from the exterior face of exterior walls or, if appropriate, from the center line of dividing walls; this includes courts and decks or porches when covered by a roof.

"Gross leasable area (GLA)" means the total floor area of a commercial building designed for tenant occupancy and exclusive use, including basements, mezzanines and upper floors, expressed in square feet as measured from the center line of joint partitions and from outside wall faces.

"Ground sign". See "free-standing sign."

"Group care facility" means a facility, required to be licensed by the state, which provides training, care, supervision, treatment and/or rehabilitation to the aged, disabled, those convicted of crimes or those suffering the effects of drugs or alcohol; this does not include day-care centers, family day-care homes, foster homes, schools, hospitals, jails or prisons.

"Group day care" means an establishment for the care and/or instruction, whether or not for compensation, of seven or more persons at any one time. Child nurseries, preschools and adult care facilities are included in this definition.

"Guest room" means any room or rooms used or intended to be used by a guest for sleeping purposes. Every 100 square feet of superficial floor area in a dormitory shall be considered to be a guest room.

"Habitable space (Room)" means space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

"Heavy commercial" means an establishment or business which generally uses open sales yards, outside equipment storage, or outside activities that generate noise or other impacts considered incompatible with less-intense uses. Typical businesses in this definition are lumber yards, construction specialty services, heavy equipment suppliers or building contractors.

"Heavy manufacturing" means all other types of manufacturing not included in the definitions of light manufacturing and medium manufacturing.

"Heliport" means an area, either at ground level or elevated on a structure, licensed or approved for the landing, unloading, loading and takeoff of helicopters, and including auxiliary facilities such as parking, waiting room, and maintenance equipment.

"Historic district" means a geographically definable area, designated as historic on a national, state or local register, possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development.

"Historic landmark" means a site, building, structure or object designated as historic on a national, state or local register.

"Historic site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure and designated as historic on a national, state or local register.

"Home occupation" means the partial use of a dwelling unit for commercial or nonresidential uses by a resident thereof which is subordinate and incidental to the use of the dwelling for residential purposes.

"Hospital" means an institution designed for the diagnosis, treatment and care of human illness or infirmity and providing health services, primarily for inpatients, and including as related facilities, laboratories, outpatient departments, training facilities and staff offices.

"House trailer" means any licensed or unlicensed trailer or other vehicle designed or used for living or sleeping purposes regardless of whether the wheels are attached or unattached, or a permanent or semi-permanent foundation is constructed underneath or any structures of a permanent nature are attached thereto.

"Hot tub". See "Private swimming pool."

"Household pets" means dogs, cats, rabbits, birds, and other animals, maintained for family use only (noncommercial) with cages, pens, etc.

"Illuminated sign" means a sign characterized by the use of artificial light, either projecting through its surface(s) (internally illuminated), or reflecting off its surface(s) (externally illuminated).

"Indoor private swimming pool" means any private swimming pool that is totally contained within a private structure and surrounded on all four sides by walls of said structure.

"Indoor recreation" means an establishment providing completely enclosed recreation activities. Accessory uses shall be permitted to include the preparation and serving of food and/or the sale of equipment related to the enclosed uses. Included in this definition shall be bowling, roller skating or ice skating, billiards, pool, motion picture theatres, and related amusements.

"Industrial or research park" means a tract of land developed according to a master site plan for the use of a family of

industries and their related commercial uses, and that is of sufficient size and physical improvement to protect surrounding areas and the general community and to assure a harmonious integration into the neighborhood.

"Infill development" means to fill in vacant or underused land in existing communities with new development that blends in with its surroundings.

"In-ground pool". See "Private swimming pool."

"Interior lot" means a lot other than a comer lot.

"Interior sign" means any sign placed within a building, but not including window signs. Interior signs, with the exception of window signs, are not regulated by this chapter.

"Irregular lot" means a lot whose opposing property lines are generally not parallel, such as a pie-shaped lot on a culde-sac, or where the side property lines are not parallel to each other.

"Kennel" means any lot or premises on which five or more dogs or cats over four months of age are kept, for compensation or not.

"Kiddie ride" means an amusement ride or amusement attraction that is expressly designed for or offered to: (1) Children age 12 or less; (2) Persons who are forty-two inches in height or less; and (3) Persons who are ninety pounds in weight or less.

"Kitchen" means any room or portion of a room within a building designed and intended to be used for the cooking or preparation of food.

"Landscaping" means the finishing and adornment of unpaved yard areas. Materials and treatment generally include naturally growing elements such as grass, trees, shrubs and flowers. This treatment shall be permitted also to include the use of logs, rocks, fountains, water features and contouring of the earth.

"Light commercial" means an establishment or business which generally has retail or wholesale sales, office uses or services that do not generate noise, or other impacts considered incompatible with less-intense uses. Typical businesses in this definition are retail stores, offices, catering services or restaurants.

"Light manufacturing" means the manufacturing, compounding, processing, assembling, packaging or testing of good; or equipment, including research activities, conducted entirely within an enclosed structure, with no outside storage, serviced by a modest volume of trucks or vans and imposing a negligible impact on the surrounding environment by noise, vibration, smoke, dust or pollutants.

"Limited video lottery/keno" means the lottery activity licensed under the authority of Article 22B, Chapter 29 of the Code of West Virginia of 1931, as amended.

"Livestock" means, but is not limited to, horses, bovine animals, sheep, goats, swine, reindeer, donkeys, mules and any other hoofed animals.

"Lot" means a single parcel of land.

"Lot area" means the horizontal area within the lot lines of a lot.

"Lot depth" means the mean horizontal distance between the front and rear lot lines.

"Lot width" means the mean horizontal distance across the lot between the side lot lines measured at right angles to the depth.

"Main building" means a structure in which is conducted the principal use of the lot on which it is situated.

"Major automotive repair" means an establishment primarily engaged in the repair or maintenance of motor vehicles. trailers and similar large mechanical equipment, including paint, body and fender and major engine and engine part overhaul, which is conducted within a completely enclosed building.

"Mansard" means an inclined decorative roof-like projection that is attached to an exterior building facade.

Manufactured home (mobile home)" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet (2438 mm) or more in width or 40 body feet (12 192 mm) in length, or when erected on site is 320 square feet (29.7 m2) or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, airconditioning and electrical systems contained therein.

"Marina" means a facility for storing, servicing, fueling, berthing, and securing and launching of private pleasure craft, including tour boats and river boats, that may include the sale of fuel, food and incidental supplies for the boat owners, crews, passengers and guests.

"Marquee". See "canopy (attached)."

"Marquee sign". See "canopy sign."

"Medium manufacturing" means the manufacturing, compounding, processing, assembling, packaging or testing of good: or equipment within an enclosed structure or an open yard that is capable of being screened from neighboring properties, serviced by a modest volume of trucks or other vehicles.

"menu board" means a free-standing sign oriented to the drive-through lane for a restaurant that advertises the menu items available from the drive-through window, and which has no more that 20 percent of the total area for such a sign utilized for business identification.

"Minor automotive repair" means an establishment primarily engaged in the repair or maintenance of motor vehicles, trailers and similar mechanical equipment, including brake, muffler, upholstery work, tire repair and change, lubrication, tune ups and transmission work, which is conducted within a completely enclosed building, but not including activities specified under "automotive repair, major.".

"Mobile home park" means a tract of land developed and operated as a unit with individual sites and facilities to accommodate two or more mobile homes.

"Model home" means a dwelling temporarily used as a sales office for a residential development under construction; said home being used for on-site sales and not for general real estate business.

"Modular home" means a factory-built home, other than a manufactured home, which meets all of the following

requirements:

- 1. Is designed only for erection or installation on a site-built permanent foundation;
- 2. Is not designed to be moved once so erected or installed;
- 3. Is designed and manufactured to comply with a nationally recognized model building Code or an equivalent local ordinance, or with a state or local modular building ordinance recognized as generally equivalent to building ordinances for site-built housing; or
- 4. To the manufacturer's knowledge, is not intended to be used other than on a site-built permanent foundation.

"Mortuary, funeral home" means an establishment in which the dead are prepared for burial or cremation. The facility shall be permitted to include a chapel for the conduct of funeral services and spaces for funeral services and informal gatherings, and/or display of funeral equipment.

"Motel, hotel or inn" means a building or buildings including rooms rented out to persons as clearly transient and temporary living quarters. Any such use that customarily involves the housing of persons for periods of time longer than 30 days shall be considered a "boarding house" and shall meet the requirements of that use. A hotel, motel or inn may include a restaurant, nightclub, newsstand or tavern, provided that such uses are clearly accessory to the principal use of overnight accommodations.

"Multiple faced sign" means a sign containing three or more faces.

Multiple unit dwelling" means a building or portion thereof designed for occupancy by three or more families living independently in which they may or may not share common entrances and/or other spaces. Individual dwelling units may be owned as condominiums, townhouses, or offered for rent.

"Natural waterways" means those areas, varying in width along streams, creeks, springs, gullies or washes, which are natural drainage channels as determined and identified by the City.

"Neighborhood commercial center" means a completely planned and designed commercial development providing for the sale of general merchandise and/or convenience goods and services. A neighborhood commercial center shall provide for the sales of convenience goods and services, with a supermarket as the principal tenant.

"Net acreage" means the remaining area after all deductions are made; with deductions including streets, easements for access, street dedications and similar areas.

"Net floor area" means the gross floor area exclusive of vents, shafts, courts, elevators, stairways, exterior walls and similar facilities.

"Nonconforming lot" means a lot whose width, area or other dimension did not conform to the regulations when this ordinance became effective.

"Nonconforming sign" means a sign or sign structure or portion thereof lawfully existing at the time this ordinance became effective, which does not now conform.

"Nonconforming structure" means a building or structure or portion thereof lawfully existing at the time this ordinance became effective, which was designed, erected or structurally altered for a use that does not conform to the zoning regulations of the zone in which it is located.

"Nonconforming use" means a use which lawfully occupied a building or land at the time this ordinance became effective, which has been lawfully continued and which does not now conform with the use requirements of this ordinance.

"Off-premises sign". See "outdoor advertising sign."

"On-premises sign" means a sign erected, maintained or used in the outdoor environment for the purpose of the display of messages appurtenant to the use of products sold on, or the sale or lease of, the property on which it is displayed.

"Open space" means land areas that are not occupied by buildings, structures, parking areas, streets, alleys or required yards. Open space shall be permitted to be devoted to landscaping, preservation of natural features, patios, and recreational areas and facilities.

"Ordinance" or "This ordinance" means the City of Nitro, West Virginia Planning and Zoning Ordinance.

"Outdoor advertising sign" means a permanent sign erected, maintained or used in the outdoor environment for the purpose of the display of commercial or noncommercial messages not appurtenant to the use of products sold on, or the sale of lease of the property on which it is displayed.

"Outdoor private swimming pool" means any private swimming pool that is not an indoor swimming pool.

"Outdoor recreation" means an area free of buildings except for restrooms, dressing rooms, equipment storage, maintenance buildings, open-air pavilions, and similar structures used primarily for recreational activities.

"Parapet" means the extension of a building facade above the line of the structural roof.

"Pari-mutual wagering" means the system of wagering occurring at a racing association licensed under the authority of Article 23, Chapter 19 of the Code of West Virginia of 1931, as amended, and includes pari-mutuel wagering on interstate and intrastate horse and dog racing as authorized in the said Article 23.

"Park" means a public or private area of land, with or without buildings, intended for outdoor active or passive recreational uses.

"Park and ride facilities" means parking lots or structures located along public transit routes designed to encourage transfer from private automobile to mass transit or to encourage carpooling for purposes of commuting, or for access to recreation areas.

"Parking lot" means an open area, other than a street, used for the parking of automobiles.

"Permitted use" means any use allowed within a zoning district, subject to the restrictions applicable to that zoning district and is not a conditional use.

"Person" means a natural person, heirs, executors, administrators or assigns, and includes a firm, partnership or

corporation, limited liability company, limited liability partnership, S-corporation, or any other form of business organization, its or their successors or assigns, or the agent of any of the aforesaid.

"Plan" means a written description for the development of land.

"Planned group dwelling" means two or more detached buildings used as dwelling units located on a lot that is in single ownership having yards, courts or facilities in common.

"Planned unit development (PUD)" means a residential or commercial development guided by a total design plan in which one or more of the zoning or subdivision regulations, other than use regulations, shall be permitted to be waived or varied to allow flexibility and creativity in site and building design and location, in accordance with general guidelines.

"Planning Commission" means the Nitro Planning Commission for the City of Nitro, West Virginia.

"Plat" means a map of the land development.

"Plot map" means a plat of a lot, drawn to scale, showing the actual measurements, the size and location of any existing buildings or buildings to be erected, the location of the lot in relation to abutting streets, and other such information.

"Pole sign". See "free-standing sign."

"Political sign" means a temporary sign intended to advance a political statement, cause or candidate for office. A legally permitted outdoor sign shall not be considered a political sign.

"Power safety cover" means a pool cover which is placed over the water area, and is opened and closed with a motorized mechanism activated by a control switch.

"Primary face of building" means the wall of a building fronting on a street or right-of-way, excluding any appurtenances such as projecting fins, columns, pilasters, canopies, marquees, showcases or decorations.

"Private garage" means a building or a portion of a building not more than 1,000 square feet (in area, in which only private or pleasure-type motor vehicles used by the tenants of the building or buildings on the premises are stored or kept.

"Private street" means a right-of-way or easement in private ownership, not dedicated or maintained as a public street, which affords the principal means of access to two or more sites.

"Private swimming pool" means any structure that contains water over 24 inches in depth and which is used, or intended to be used, for swimming or recreational bathing in connection with an occupancy in Use Group R-3 and which is available only to the family and guests of the householder. This includes in-ground, above-ground and onground swimming pools, hot tubs and spas.

"Public swimming pool" means any swimming pool other than a private swimming pool.

"Portable sign" means any sign not permanently attached to the ground or to a building or building surface.

"Preferred development area" means a geographically defined area where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities.

"Principal use" means a use which fulfills a primary function of a household, establishment, institution or other entity.

"Private club" means a business activity licensed under the authority of Article 7, Chapter 60 of the Code of West Virginia of 1931, as amended, where alcoholic beverages are dispensed for consumption on the premises and in which dancing or other forms of entertainment, excluding adult entertainment, are permitted and includes the term "cabaret."

"Professional office" means any office or business conducted that has been determined by the West Virginia Legislature to provide professional services.

"projecting sign" means a sign other that a wall sign that is attached to or projects more than 18 inches from a building or wall or from a structure whose primary purpose is other than the support of a sign.

"Public improvement" means any drainage ditch, storm sewer or drainage facility, sanitary sewer, water main, roadway, parkway, sidewalk, pedestrianway, tree, lawn, off-street parking area, lot improvement or other facility for which the City may ultimately assume the responsibility for maintenance and operation or for which the City responsibility is established.

"Public place" means any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by a governing body or unit of government.

"Public services" means uses operated by a unit of government to serve public needs, such as police (with or without jail), fire service, ambulance, judicial court or government offices, but not including public utility stations or maintenance facilities.

"Public utility station" means a structure or facility used by a public or quasi-public utility agency to store, distribute, or generate electricity, gas, telecommunications, and related equipment, or to pump or chemically treat water. This does not include storage or treatment of sewage, solid waste or hazardous waste.

"Public way" means any street, alley or similar parcel of land essentially unobstructed from the ground to the sky which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

"Quasi-public" means essentially a public use, although under private ownership or control.

"Quorum" means a majority of the authorized members.

"Real estate sign" means a temporary sign advertising the sale, lease or rental of the property or premises upon which it is located.

"Rear yard" means a yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line or ordinary high water line and a line parallel thereto.

"Recreational vehicle" means a vehicular unit as defined in Chapter 17A of the West Virginia Code, other than a mobile home, whose gross floor area is less than 320 square feet, which is designed as a temporary dwelling for travel, recreational and vacation use, and which is either self-propelled, mounted on or pulled by another vehicle.

Examples include, but are not limited to, a travel trailer, camping trailer, truck camper, motor home, fifth-wheel trailer or van.

"Recycling facility" means any location whose primary use is where waste or scrap materials are stored, bought, sold, accumulated, exchanged, packaged, disassembled or handled, including, but not limited to, scrap metals, paper, rags, tires and bottles, and other such materials.

"Regional commercial center" means a completely planned and designed commercial development providing for the sale of general merchandise and/or convenience goods and services. A regional center shall provide for the sale of general merchandise, apparel, furniture, home furnishings, and other retail sales and services, in full depth and variety.

"Rehabilitation center (Halfway house)" means an establishment whose primary purpose is the rehabilitation of persons. Such services include drug and alcohol rehabilitation, assistance to emotionally and mentally disturbed persons, and halfway houses for prison parolees and juveniles.

"Religious, cultural and fraternal activity" means a use or building owned or maintained by an organized religious organization or nonprofit association determined by the Internal Revenue Service as qualified under Section 501(c)(3) or (4) of the Internal Revenue Code, and used for social, civic or philanthropic purposes, or the purpose for which persons regularly assemble for worship.

"Renovation" means interior or exterior remodeling of a structure, other than ordinary repair.

"Required yard" means the minimum setback from the property line as stated within this ordinance.

"Restaurant" means an establishment which sells prepared food for consumption. Restaurants shall be classified as follows:

- 1. Fast food restaurant which is an establishment which sells food already prepared for consumption, packaged in paper, Styrofoam or similar materials, and may include drive-in or drive-up facilities for ordering.
- 2. General restaurant which is an establishment which is used primarily for the on-site preparation, sale, serving and consumption of food and non-alcoholic beverages, and, if also licensed as a private club, where alcoholic beverages by the drink may also be served for consumption on the premises as an accessory to the principal use as a restaurant.
 - 3. Take-out restaurant which is an establishment which sells food only for consumption off the premises.

"Revolving sign" means a sign that revolves 360 degrees about an axis. See also "animated sign, mechanically activated."

"Roof line" means the top edge of a peaked roof or, in the case of an extended facade or parapet, the uppermost point of said facade or parapet.

"Roof sign" means a sign mounted on, and supported by, the main roof portion of a building, or above the uppermost edge of a parapet wall of a building and which is wholly or partially supported by such a building. Signs mounted on mansard facades, pent eaves and architectural projections such as canopies or marquees shall not be considered to be roof signs.

"Salvage yard" means any location whose primary use is where waste or scrap materials are stored, bought, sold, accumulated, exchanged, packaged, disassembled or handled, including, but not limited to, materials such as scrap metals, paper, rags, tires and bottles.

"Setback" means the minimum required distance between the property line and the building line.

Shelter" or "mission" means a facility whose general purpose is to provide temporary food, clothing, or sleeping accommodations to persons, families, or parts of families on a temporary occupancy who are homeless or displaced. Short term counseling during stay may also be provided. The shelter shall have appropriate supervisory personnel. Such facility must meet all applicable standards of the Department of health, State Fire Marshall, and any other federal, state, county or city agency which has regulatory power over said facility.

"Shopping center" means a group of three or more retail business and service uses on a single site with common parking facilities.

"Side yard" means an open, unoccupied space on the same lot with the building and between the building line and the side lot line, or to the ordinary high water line.

"Sign" means any device visible from a public place that displays either commercial or noncommercial messages by means of graphic presentation of alphabetic or pictorial symbols or representations. Noncommercial flags or any flags displayed from flagpoles or staffs will not be considered to be signs.

"Sign area" means the area of the smallest geometric figure, or the sum of the combination of regular geometric figures, which comprise the sign face. The area of any double-sided or "V" shaped sign shall be the area of the largest single face only. The area shall be computed as the area of the circle. The area of all other multiple-sided signs shall be computed as 50 percent of the sum of the area of all faces of the sign.

"Sign copy" means those letters, numerals, figures, symbols, logos and graphic elements comprising the content or message of a sign, exclusive of numerals identifying a street address only.

"Sign face" means the surface upon, against or through which the sign copy is displayed or illustrated, not including structural supports, architectural features of a building or sign structure, nonstructural or decorative trim, or any areas that are separated from the background surface upon which the sign copy is displayed by a distinct delineation, such as a reveal or border.

- 1. In the case of panel or cabinet type signs, the sign face shall include the entire area of the sign panel, cabinet or face substrate upon which the sign copy is displayed or illustrated, but not open space between separate panels or cabinets.
- 2. In the case of sign structures with routed areas of sign copy, the sign face shall include the entire area of the surface that is routed, except where interrupted by a reveal, border or a contrasting surface or color.
- 3. In the case of signs painted on a building, or individual letters or graphic elements affixed to a building or structure, the sign face shall comprise the sum of the geometric figures or combination of regular geometric figures drawn closest to the edge of the letters or separate graphic elements comprising the sign copy, but not the open space between separate groupings of sign copy with the color of the building or structure.

4. In the case of sign copy enclosed within a painted or illuminated border, or displayed on a background contrasting in color with the color of the building or structure, the sign face shall comprise the area within the contrasting background, or within the painted or illuminated border.

"Sign structure" means any structure supporting a sign.

"Sightline" means a three and one-half (3-1/2) foot vertical zone, eye level of the driver of a vehicle, above the finished grade level of the cartway at the center-line of the right-of-way.

"Sight triangle area" means a triangle, two (2) sides of which are formed by the intersection of street centerlines and the third side by the sight line.

"Single-family dwelling" means detached dwelling unit with kitchen and sleeping facilities, designed for occupancy by one family.

"Site plan" means a plan which outlines the use and development of any tract of land.

"Spa". See "Private swimming pool."

"Special care manufactured home" means a home used as a temporary dwelling for a family member who is in need of special, frequent and routine care by reason of advanced age or ill health.

"Sporting event" means any event licensed under the authority of the State Athletic Commission in Article 5A, Chapter 29 of the Code of West Virginia of 1931, as amended, or licensed under the authority of another agency of the State of West Virginia.

"Sprawl" means poorly planned or uncontrolled growth, usually of a low-density nature, within previously rural areas, that is land consumptive, auto-dependent, designed without respect to its surroundings, and some distance from existing development and infrastructure.

"Story" means that portion of building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused underfloor space is more than 6 feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such usable or unused underfloor space shall be considered as a story.

"Street" means a dedicated thoroughfare or public way such as a street, avenue, boulevard, highway, road, lane, alley and is not less than 16 feet in width.

"Street line" means the line defining the edge of the legal width of a dedicated street right-of-way.

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

"Subdivision" or "partition" means the division of a tract, lot or parcel of land into two or more lots, plats, sites or other divisions of land, or the recombination of existing lots, tracts or parcels.

"Swimming pool". See, public swimming pool or private swimming pool.

"Temporary building" means a building used temporarily for the storage of construction materials and equipment incidental and necessary to on-site permitted construction of utilities, or other community facilities, or used temporarily in conjunction with the sale of property within a subdivision under construction.

"Temporary sign" means a sign intended to display either commercial or noncommercial messages of a transitory or temporary nature. Portable signs or any sign not permanently embedded in the ground, or not permanently affixed to a building or sign structure that is permanently embedded in the ground, are not considered temporary signs.

"Temporary use" means a use that is authorized by this ordinance to be conducted for a fixed period of time. Temporary uses are characterized by such activities as the sale of agricultural products, contractors' offices and equipment sheds, fireworks, carnivals, flea markets, and garage sales.

"Theater" means a building used primarily for the presentation of live stage productions, performances or motion pictures.

"Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomena or scenic beauty, a West Virginia crafts or products center or a tourism destination center, but shall not include only a lodging facility unless the lodging facility constitutes a portion of a tourism destination center.

"Town house" means a type of dwelling unit normally having two, but sometimes three, stories, usually connected to a similar structure by a common wall, and commonly sharing and owning in common the surrounding grounds.

"Trailer" means a licensed or unlicensed piece of mobile equipment designed or constructed to be towed by a motor vehicle, on or off the public highways.

"Trailer park" means a lot or premises occupied or designed for occupancy by two (2) or more mobile homes.

"Under canopy sign" or "under marquee sign" means a sign attached to the underside of a canopy or marquee.

"Urban area" means all lands or lots within the jurisdiction of a the Planning Commission.

"Use" means the activity occurring on a lot or parcel for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied, including all accessory uses.

"Utility" means a public or private distribution service to the public that is regulated by the West Virginia Public Service Commission.

"V sign" means a signs containing two faces of approximately equal size, erected upon common or separate structures, positioned in a "V" shape with an interior angle between faces of not more than 90 degrees with the distance between the sign faces not exceeding 5 feet at their closest point.

"Variance" means a deviation from the height, bulk, setback, parking or other dimensional requirements established by this ordinance.

"Vocation school" or "trade school" means a secretarial or business school or college when not publicly owned or conducted by or under the sponsorship of a religious, charitable or non-profit organization, or a school conducted as

a business enterprise for teaching instrumental music, dancing, barbering or hair styling, drafting, or for the teaching of industrial or technical arts.

"Wall sign" or "fascia sign" means a sign that is in any manner affixed to any exterior wall of a building or structure and that projects not more than 18 inches from the building or structure wall, including signs affixed to architectural projections from a building provided the copy area of such signs remains on a parallel plane to the face of the building facade or to the face or faces of the architectural projection to which it is affixed.

"Wholesale warehouse" or "Storage warehouse" means a building or premises in which goods, merchandise or equipment are stored for eventual distribution.

"West Virginia Lottery table games" means the games authorized under Article 22C, Chapter 29 of the Code of West Virginia of 1931, as amended.

"Window sign" means a sign affixed to the surface of a window with its message intended to be visible to and readable from the public way or from adjacent property.

"Wrecking yard" means any place where damaged, inoperable or obsolete machinery such as cars, trucks and trailers, or parts thereof, are stored, bought, sold, accumulated, exchanged, disassembled or handled.

"Yard" means an open, unoccupied space on a lot, other than a court, which is unobstructed from the ground upward by buildings or structures, except as otherwise provided in this ordinance.

"Zero lot line development" means single-family dwellings arranged on individual lots as either detached structures with one or more side walls on a side property line.

"Zoning" means the division of a municipality into districts which specify permitted and conditional uses and development standards for real property within the districts.

"Zoning map" means a map that geographically illustrates all zoning district boundaries within the City, as described within the zoning ordinance, and which is certified as the official zoning map for the municipality or county.

CHAPTER 1303 ZONE DISTRICTS

Section 1303.1 - District classifications

1303.1.(a) Classification. In order to classify, regulate and restrict the locations of uses and locations of buildings designated for specific areas, and to regulate and determine the areas of yards, courts and other open spaces within or surrounding such buildings, property is classified into zoning districts.

Section 1303.2 - Minimum areas for zoning districts

1303.2(a) Minimum areas. The minimum areas that may constitute a separate or detached part of any of the following zoning districts on the zoning map or subsequent amendments to said zoning map shall be as shown in Table 1303.2(a). When a nonresidential district is directly across the street from or abuts the district with the same or less restrictive classification, the area of the land directly across the street or abutting the property may be included in the calculations in meeting the minimum district size requirements.

TABLE 1303.2(a) AREA, YARD REQUIREMENTS, AND BUILDING HEIGHTS MINIMUM YARD REQUIREMENT

			WID	MINIMUN LOT SIZI TH		DEPTH		PRINCIPAL BUILDING	•
CATEGORY	PERMITTED USES	AREA SQ. FT.	FRONT FT.	REAR FT.	FRONT FT.	REAR FT.	SIDE FT.	MAXIMUM STORIES	HEIGHT FEET
R-1	Single family								
	dwelling, Public								
	Quasi public	5000	50	50	20	5	5	2 1/2	30
R-2	Same as R-1								
	and								
	Multi-family	5000	50	50	20_	5	5	2 1/2	30
R-3	Same as R-1 &								
	R-2 Plus								
	Mobile Home	5000	50	50	20	5	5	2 1/2	30_
B-1	Retail & Service							-	
	Establishments,								
	Offices, Shopping								
	Centers	7200	50	20	None	e 20	None	3	40
B-2	Same as B-1,								
	Commercial								
	oriented activity	7200	50	20	None	e 20	None	∍ 3	40
C-1	Same as B-1 and								
	Heavy commercial	ı							
	Wholesale,								
	Warehouses,								
	Distribution centers	7200	50	20	Non	e 20	None	N/A	None
D-1	Destination Tourism								None
I-1	Light Industrial, Same								
	As C-1 and activities								
	Of an industrial								
	Nature	10,00	0 25	20	25	20	Non	e N/A	None

Section 1303.3 - Zoning map

1303.3(a) General. The boundaries of each zoning district are to be indicated upon the official zoning map as approved by the City Council. Said map and subsequent amendments thereto shall be considered as a part of this ordinance and incorporated herein by reference.

Section 1303.4 - Annexed territory

1303.4(a) Classification. Any territory hereafter annexed shall automatically, upon such annexation, be classified as

R-I, residential district and be subject to all conditions and regulations applicable to property in such district: Provided, That the R-1 residential classification may be changed by the Planning Commission at some time subsequent to annexation.

Section 1303.5 - Conditional uses

1303.5(a) General. The principal objective of this ordinance is to provide for an orderly arrangement of compatible buildings and land uses, and for the property location of all types of uses required for the social and economic welfare of the community. To accomplish this objective, each type and kind of use is classified as permitted in one or more of the various use districts established by this ordinance. However, in addition to those uses specifically classified and permitted in each district, there are certain additional uses which it may be necessary to allow because of the unusual characteristics of the service they provide the public. These conditional uses require particular considerations as to their proper location to adjacent, established or intended uses, or to the planned growth of the community. The conditions controlling the locations and operation of such special uses are established by the applicable sections of this ordinance.

CHAPTER 1304 AGRICULTURAL ZONES

Section 1304.1 - Agricultural zones defined

1304.1(a) Agricultural zone. Allowable agricultural (A) zone uses shall be:

- A-1. Any designated open space as set forth in this ordinance.
- A-2. Any agricultural use, including, but not limited to, dwellings, maintenance/storage buildings and other such uses necessary for the principal use.
- A-3. Any public parkland or other similar recreational use, including, but not limited to, playground rides and equipment, office buildings, retail buildings and dwellings necessary for the maintenance of the principal use.

Section 1304.2 - Bulk regulations

1304.2(a) General. The minimum area, setbacks, density and maximum height shall be as prescribed in Table 1304.2(a).

TABLE 1304.2(a) AGRICULTURAL (A) ZONE BULK REGULATIONS (in feet, unless noted otherwise)

Zone Division	Minimum Lot Area (acres)	Maximum Density units/acres	Minimum Lot Width	Minimum Lot Depth	Minimum Setback Front Yard	Minimum Setback Side Yard	Minimum Setback Rear Yard	Maximum Building Height
A-1	20 acres	1DU/20 acres	600	600	30	15	60	35
A-2	10 acres	1DU/10 acres	400	400	30	15	60	35
A-3	5 acres	1DU/5 acres	250	250	30	15	60	35

a. Open spaces and parks can be of a reduced size, if approved.

CHAPTER 1305 RESIDENTIAL ZONES

Section 1305 - Residential Zone. Allowable residential (R) zone uses shall be:

1305.1 "R-1" Single-Family Residence Zone.

1305.1(a) Permitted uses. In R-1 Single-Family Residential Zones, the following uses of buildings may be permitted: 1305.1(a)(1). Single-family detached dwellings.

1305.1(a)(2). Educational, religious and philanthropic uses when not conducted as a gainful business.

1305.1(a)(3). Public parks, playgrounds, play lots, and community centers not conducted as a gainful business

1305.1(a)(4). City administrative buildings or public service buildings, except storage yard or sidings, equipment storage or warehouses.

1305.1(a)(5). Existing railroad rights-of-way, not including switching yards, storage yards or sidings.

1305.1(a)(6). Home gardening without sale of products.

1305.1(a)(7). A Bed and Breakfast facility: Provided, That the parking for a Bed and Breakfast facility shall provide vehicle parking as required in Table 1310.1(b)(1) of this ordinance.

1305.1(b) Permitted uses when authorized by the Board of Zoning Appeals. In R-1 Single-Family Residential Zones, the following uses of buildings may be permitted when authorized by the Board of Zoning Appeals as a special exception:

1305.1(b)(1). Group care facility if adjacent to R-2 District or if part of such project if in R-1 and R-2 Districts.

1305.1(b)(2). Single family residences on lots that do not otherwise satisfy the area requirements for R-1 single family residences.

1305.1(b)(3). Home occupation.

1305.1(b)(4). Cemeteries.

1305.1(b)(5). Kindergartens or nursery schools provided the play lots are suitably fenced or screened in accordance with requirements of the board.

1305.1(b)(6). Essential utilities and equipment.

b. Access storage structures, windmills and similar structures shall be permitted to exceed maximum height when approved by the Code Official.

- 1305.1(b)(7). Private non-profit recreational facilities in the nature of swimming clubs, tennis clubs and other similar activities, when not located less than fifty (50) feet from any other lot in an "R" District and when the facility meets with the parking and fencing requirements of the Board of Zoning Appeals.
- **1305.1(c) Permitted Accessory Uses**. In R-1 Single Family Residential Zones, the following accessory buildings and uses shall be permitted:
- 1305.1(c)(1). Any accessory building 150 square feet or greater in size or that has any utility service installed shall be separated from the main building by 10 feet and shall also be in compliance with all set-back ordinances: Provided, That any accessory building less than 150 square feet in size that is used for storage or other similar use shall be permitted to be located in any portion of the rear yard or side yard. No storage building shall be located in the front yard.
- 1305.1(c)(2). All signs within an R-1 Single Family Residential Zone shall be subject to the restrictions in Chapter 1312 of this Ordinance.
 - 1305.1(c)(3) Other accessory uses customarily incidental to a permitted principal use.
- **1305.1(d).** Lot Areas. In any R-1 Single-Family Residential Zones, the area of lots of record at the time of enactment of this ordinance shall be considered adequate for the erection of permitted buildings and uses, provided that they are not less than 2400 square feet.
- 1305.1(e). Lot Widths. In any R-1 Single-Family Residential Zones, the width of lots of record at the time of enactment of this Ordinance shall be considered adequate, provided that they are not less than forty (40) feet in width. Notwithstanding the limitations imposed by other provisions of the Ordinance, the Board of Zoning Appeals shall permit erection of a dwelling or structure on any lot shown upon a platted record in a R-1 Single Family Residential Zone separately owned or under contract of sale and containing, at the time of passage of this Ordinance, an area or width smaller than that required by this Ordinance: Provided, That the Board of Zoning Appeals shall require yard areas and other restrictions governed by this Ordinance equal to the average of those contained on existing built-upon lots along the street on which is located the lot in question.
- **1305.1(f) Front Yards**. In any R-1 Single-Family Residential Zones, the front yard of any lot of record at the time of enactment of this ordinance shall be equal to the average front yards of existing developed lots on the street on which it is located. In the absence of developed lots along any such streets, the minimum front yard shall be twenty (20) feet.
- 1305.1(g). Side Yards. In any R-1 Single Family Residential Zones, the Side Yards of lots of record at the enactment of this Ordinance shall be equal to the average side yards of developed lots on the street on which they are located, but in no case less than five (5) feet: Provided, That no accessory building or structure shall be closer than three (3) feet from the side yard lot line. This accessory building or structure side yard exception shall not apply to corner lots.
- **1305.1(h).** Rear Yards. In R-1 Single-Family Residential Zones rear yards shall not be less than forty (40) feet in width: Provided, That no accessory building or structure shall be closer than five (5) feet from the rear lot line. This accessory building or structure rear yard exception shall not apply to corner lots.

1305.1(i). Residential structure requirements

1305.1(i)(1). Building Height. In R-1 Single-Family Residential Zones, single-family detached dwelling shall not exceed two and one-half (2-1/2) stories or thirty (30) feet in height. Structures associated with other permissive or excepted uses shall not exceed three (3) stories or fifty (50) feet in height.

1305.1(i)(2). Roof overhang. In R-1 Single-Family Residential Zones, single-family detached dwelling, roof overhang and eaves shall be designed for a minimum of six inches as measured from the vertical side of the building

and not including rain gutters, which are required.

1305.1(i)(3). Building width. In R-1 Single-Family Residential Zones, single-family detached dwelling, no housing unit shall be less than twenty-four feet in width.

1305.1(j). Factory built housing units. The value of any factory built home sited in a R-1 Single-Family Residential Zone shall be equal to the average value of all existing homes located within 350 feet in each direction from the factory built home site: Provided, That the burden of establishing the value of existing homes located within 350 feet of the factory built home site shall be upon the owner of the factory built home.

1305.1(k). **Off-street Parking and Loading Requirements**. In R-1 Single-Family Residential Zones, off-street parking and loading requirements be scheduled according to the provisions of Chapter 1310 of this ordinance.

1305.2 "R-2" General Residential Zones.

1305.2(a). Permitted Uses.

1305.2(a)(1). All uses permitted in R-I Single-Family Residential Zones.

1305.2(a)(2). Duplex and multi-family dwellings.

1305.2(a)(3). Rooming house.

1305.2(a)(4). Bed and breakfast, if located adjacent to a State road

1305.2(a)(5). Congregate residence

1305.2(a)(6). General hospital, or a sanitarium or nursing home not for contagious diseases: Provided, That such buildings shall be not less than fifty (50) feet from any other lot in any "R" District.

1305.2(a)(7). Public library.

1305.2(a)(8). Professional office in conjunction with a residence, when no more than two (2) individuals are employed.

1305.2(b). When Authorized by the Board of Zoning Appeals. In R-2 General Residential Zones, the following uses and buildings may be permitted when authorized by the Board of Zoning Appeals as a special exception:

1305.2(b)(1). Group care facilities, half-way houses or group homes for drug or alcoholic addicts; and institutions not for penal, corrective or behavioral health purposes.

1305.2(b)(2). Private clubs, lodges and fraternal organizations, social or recreational buildings or properties when not conducted as a gainful business.

1305.2(c). Permitted Accessory Uses. In R-2 General Residential Zones, the following accessory buildings and uses shall be permitted:

1305.2(c)(1). All "R-1" Single Family Residential Zones accessory uses.

1305.2(c)(2). Other accessory uses customarily incidental to a permitted principal use, including signs, subject however, to the provisions of Chapter 1312 if this ordinance.

1305.2(d). Lot Areas.

1305.2(d)(1). In R-2 General Residential Zones, no lot shall be less than 4800 square feet in area, subject however, to the provision that this minimum area shall be increased by 1200 additional square feet for each dwelling unit more than one that is contained in the structure.

1305.2(d)(2). In areas in excess of twenty five (25) per cent slope, the above stated minimum lot areas shall be increased by fifteen (15) per cent.

1305.2(e). Lot Widths. In R-2 General Residential Zones, lot widths shall not be less than sixty (60) feet. Notwithstanding the limitations imposed by other provisions of the Ordinance the Board of Zoning Appeals shall

permit erection of a dwelling or structure on any lot shown upon a platted record in a R-2General Residential Zone separately owned or under contract of sale and containing, at the time of passage of this Ordinance, an area or width smaller than that required by this Ordinance: Provided, That the Board of Zoning Appeals shall require yard areas and other restrictions governed by this Ordinance equal to the average of those contained on existing built-upon lots along the street on which is located the lot in question.

1305.2(f). Front Yards. In R-2 General Residential Zones, front yards shall be subject to the same provisions as specified for "R-1" Single Family Residential Zones.

1305.2(g). Side Yards. In R-2 General Residential Zones, side yards shall be subject to the same provisions as specified for "R-1" Single Family Residential Zones.

1305.2(h). Rear Yards. In R-2 General Residential Zones, rear yards shall not be less than forty (40) feet in width, provided however, that for any structure in excess of three (3) stories in height, the rear yard shall be increased by five (5) additional feet for each story.

1305.2(i). Residential structure requirements.

1305.2(i)(1). Building Heights. In R-2 General Residential Zones, residential structures shall not exceed two and one-half (2 1/2) stories or thirty (30) feet in height. Structures associated with other permissive or excepted uses shall not exceed six (6) stories.

1305.2(i)(2). Roof overhang. In R-2 General Residential Zones, roof overhang and eaves shall be designed for a minimum of six inches as measured from the vertical side of the building and not including rain gutters, which are required.

1305.1(i)(3). Building width. In R-2 General Residential Zones, no housing unit shall be less than twenty-four feet in width.

1305.2(j). Factory built housing units. The value of any factory built home sited in a R-2 General Zone shall be equal to the average value of all existing homes located within 350 feet in each direction from the factory built home site: Provided, That the burden of establishing the value of existing homes located within 350 feet of the factory built home site shall be upon the owner of the factory built home.

1305.2(k). **Off-street Parking and Loading Requirements**. In R-2 General Residential Zones, off-street parking and loading requirements shall be scheduled according to the provisions of Chapter 1310 of this Ordinance.

1305.3. "R-3" General Residential, Mobile Home and Mobile Home Parks

1305.3(a). Permitted Uses. In R-3 General Residential, Mobile Home and Mobile Home Parks Zones, the following buildings and uses are permitted:

1305.3(a)(1). All uses permitted in R-1 Single-Family Residential Zones and R-2 General Residential Zones.

1305.3(a)(2). Mobile home parks when established and operated in accordance with published standards of either Kanawha County or Putnam County, whichever is applicable for the location of the mobile home park, and the State of West Virginia: Provided, That the following are additional requirements:

1305.3(a)(2)(A). A mobile home park site shall be comprised of a minimum of two (2) acres, and shall provide a minimum of five thousand (5,000) square feet of net area per mobile home unit;

1305.3(a)(2)(B). Off-street parking for two (2) automobiles for each mobile home unit;

1305.3(a)(2)(C). Setbacks for residential areas shall prevail, but no part of this open space shall be used for any of the mobile home site functions;

1305.3(a)(2)(D). Mobile home parks will be enclosed on side yards and rear lot lines, unless

extending from one street to another. A six (6) foot wall or barrier of fire resistant material or a strip of trees or shrubs at least two (2) feet wide and three (3) feet high at the time of planting which will form a year round dense screen at least six (6) feet high within three (3) years must be provided;

1305.3(a)(2)(E). No spot or flood lights shall be used for lighting or advertising purposes. No lighting shall shine on adjacent properties;

1305.3(a)(2)(F). All points of entrance or exit for motor vehicles shall be located no less than one hundred twenty-five (125) feet from the intersection of two streets.

1305.3(a)(3). Individual single-wide mobile homes, double-wide mobile homes, single family dwellings and multiple family dwellings located in a R-3 General Residential, Mobile Home and Mobile Home Parks Zones or in other than a R-3 General Residential, Mobile Home and Mobile Home Parks Zone shall be subject to the requirements stated in Table 1303.2(a) of this ordinance.

1305.3(a)(4). Notwithstanding the limitations imposed by other provisions of the Ordinance the Board of Zoning Appeals shall permit erection of a dwelling or structure on any lot shown upon a platted record in a R-3General Residential Zone separately owned or under contract of sale and containing, at the time of passage of this Ordinance, an area or width smaller than that required by this Ordinance: Provided, That the Board of Zoning Appeals shall require yard areas and other restrictions governed by this Ordinance equal to the average of those contained on existing built-upon lots along the street on which is located the lot in question.

CHAPTER 1306 BUSINESS ZONES

Section 1306.1. "B-1" Local or Neighborhood Business Zones.

1306.1(a). Permitted Uses. In any Local or Neighborhood Business Zone, the use of land and buildings shall be limited to any neighborhood retail business or service establishment, supplying commodities or performing services intended primarily for residents of the surrounding neighborhood, such as:

1306.1(a)(1). Barber or beauty shop,

1306.1(a)(2). Business or professional office,

1306.1(a)(3). Clothes cleaning or laundry pick up station,

1306.1(a)(4). Self-service laundry,

1306.1(a)(5). Delicatessen,

1306.1(a)(6). Drug store,

1306.1(a)(7). Grocery store,

1306.1(a)(8). Meat market,

1306.1(a)(9). Convenience and neighborhood commercial centers (excluding wholesale sales),

1306.1(a)(10). Family and group day-care,

1306.1(a)(11). Libraries,

1306.1(a)(12). Places of worship,

1306.1(a)(13). Police and fire stations, and other government services.

1306.1(a)(14). Bed and breakfast facility, and

1306.1(a)(15). Similar activities.

1306.1(b). Along State and Federal Highways.

1306.1(b)(1). Along State or Federal highways, the above permissive uses may be permitted but shall not be limited to supplying commodities or performing services for residents of the neighborhood.

1306.1(b)(2). Other permitted uses along State and federal highways, such as:

1306.1(b)(2)(A). Antique or gift shop,

1306.1(b)(2)(B). Gasoline service stations,

1306.1(b)(2)(C). Automobile sales,

1306.1(b)(2)(D). Automobile service garages, see Table 1310.1(b)(1) of this ordinance for required

1306.1(b)(2)(E). Automobile or trailer sales lot,

1306.1(b)(2)(F). Commercial parking lot,

1306.1(b)(2)(G). Drive-in eating or drinking establishment,

1306.1(b)(2)(H). Motel and hotel,

1306.1(b)(2)(l). Tourist home, and

1306.1(b)(2)(J). Similar businesses.

1306.1(b)(3). Automobile body repair shops, but see Table 1310.1(b)(1) of this ordinance for required vehicle parking,

1306.1(b)(4). Mortuary and funeral homes,

1306.1(b)(5). Public utility stations, and

1306.1(b)(6). Restaurants.

vehicle parking,

1306.1(b)(7). Business or financial services,

1306.1(b)(8). Light commercial (excluding wholesale sales),

1306.1(b)(9). Group care facilities,

1306.1(b)(10). Physical fitness centers,

1306.1(b)(11). Cultural and fraternal activities,

1306.1(b)(12). Rehabilitation centers,

1306.1(b)(13). Schools and colleges operated for profit (including commercial), and

1306.1(b)(14). Vocational and trade schools,

1306.1(b)(15). Self-storage warehouses,

1306.1(b)(16). Commercial printing and publishing, and

1306.1(b)(16). Similar businesses.

1306.1(c). Permitted Accessory Uses. In Local or Neighborhood Business Zones, including those along State and Federal Highways, the following accessory buildings and uses shall be permitted.

1306.1(c)(1). Accessory parking areas.

1306.1(c)(2). Other accessory uses customarily incidental to a principal permitted use, including signs attached flat against a building, and elevated signs not exceeding fifty (50) square feet in area per face, provided that these are at least fifteen (15) feet from any street right-of-way.

1306.1(d). Prohibited Uses. Any residential or industrial use except that which is clearly necessary for and incidental to the conduct of a permitted retail business or service of the premises.

1306.1(e). Lot Areas. In any Local or Neighborhood Business Zone, no lot shall be less than 7,200 square feet.

1306.1(f). Lot Widths. In any Local or Neighborhood Business Zone, no lot shall be less than fifty (50) feet in width.

1306.1(g). Front Yards. In any Local or Neighborhood Business Zone, no lot shall have a front yard of less than twenty (20) feet.

1306.1(h). Side Yards. In any Local or Neighborhood Business Zone, common walls shall be permitted and no side yards shall be required; Provided, That where a non-residential use abuts a residential district, residential

requirements must be observed where the property abuts.

1306.1(i). Rear Yards. In Local or Neighborhood Business Zone, rear yards shall not be less than twenty (20) feet in width.

1306.1(j). Building Height. In any Local or Neighborhood Business Zone, no building or structure shall exceed three (3) stories.

1306.1(k). Off-Street Parking and Loading Requirements. In any Local or Neighborhood Business Zone, off-street parking and loading requirements shall be scheduled according to the provisions of Table 1310.1.

Section 1306.2. "B-2" Central Business Zone.

1306.2(a). Permitted Uses. In any Central Business Zone, the following buildings and uses only are permitted:

1306.2(a)(1). All uses permitted in "B-1" Local or Neighborhood Business Zones.

1306.2(a)(2). Stores and shops for the conducting of any retail business.

1306.2(a)(3). Personal service shops.

1306.2(a)(4). Banks, offices, and studios.

1306.2(a)(5). Shops for custom work, and shops for making articles or products to be sold at retail on the premises.

1306.2(a)(6). Restaurants, cafes, and similar establishments.

1306.2(a)(7). Theaters, assembly halls, bowling alleys, amusement centers, golf driving ranges, miniature golf courses, ice rinks, pool and billiard halls (and similar recreational uses), and other public recreation uses.

1306.2(a)(8). Retail building materials supply sales (wholesale and retail),

1306.2(a)(9). Cultural institutions (such as museums and art galleries),

1306.2(a)(10). Community commercial centers (including wholesale and retail sales),

1306.2(a)(11). Health and medical institutions (such as hospitals).

1306.2(a)(12) Hotels and motels (excluding other residential occupancies),

1306,2(a)(13). Commercial printing and publishing.

1306.2(a)(14). Taverns and cocktail lounges,

1306.2(a)(15). Regional commercial centers (including wholesale and retail sales), and

1306.2(a)(15). Other service establishments or retail or wholesale businesses similar in nature to those listed above.

1306.2(b). Permitted Accessory Uses. In any Central Business Zone, the following accessory uses shall be permitted:

1306.2(b)(1). All uses permitted in "B-1" Local or Neighborhood Business Zone.

1306.2(b)(2). Other accessory uses customarily incidental to a permitted principal use.

1306.2(b)(2)(A). All signs overhanging public ways shall conform to general ordinances of the City and Chapter 1312 of this Ordinance, now or hereinafter adopted.

1306.2(b)(2)(B). Signs, parking areas, and buildings may be illuminated providing the use of such illumination does not confuse, blind, or distract vehicle operators on the highways or streets.

1306.2(c). Prohibited Uses. In any Central Business Zone, the following uses and buildings are prohibited.

1306.2(c)(1). Except for uses permitted in Section 1306.2(a) of this Ordinance, all uses prohibited in "B-1" Local or Neighborhood Business Zones.

1306.2(c)(2). Any residential commercial or industrial use, which in the opinion of the Board of Appeals may become noxious or offensive in a "B-2" Central Business Zones.

- 1306.2(d). Front Yards. In any Central Business Zone, no front yard shall be required.
- 1306.2(e). Side Yards. Common wall shall be permitted and no side yards are required.

CHAPTER 1307 HEAVY COMMERCIAL ZONE

1307.1. "C-1" Heavy Commercial Zone

- 1307.1(a). Permissive Uses. In any C-1 Heavy Commercial Zone, the following buildings and uses are permitted:
 - 1307.1(a)(1). Wholesale business, warehouses, storage areas and self-storage warehouses.
 - 1307.1(a)(2). Wholesale building material sales, not including stone crushing and concrete mixing.
- 1307.1(a)(3). Distribution plants, parcel delivery hubs, ice and cold storage plants and locker service, and beverage distributors and bottling plants.
 - 1307.1(a)(4). Cleaning and dyeing works.
 - 1307.1(a)(5). Major garage, including gasoline service station and automobile body repair.
 - 1307.1(a)(6). Major automotive repair,
 - 1307.1(a)(7). Industrial bakeries,
 - 1307.1(a)(8). Plastic products design,
 - 1307.1(a)(9). Molding and assembly,
 - 1307.1(a)(10). Small metal products design,
 - 1307.1(a)(11). Casting,
 - 1307.1(a)(12). Fabricating & processing,
 - 1307.1(a)(13). Manufacturing and finishing,
 - 1307.1(a)(14). Storage yards, and
 - 1307.1(a)(15). Wood products manufacture and finishing but not including hand crafted items,
- **1307.1(b). Permitted Accessory Uses.** In any C-1 Heavy Commercial Zone, the following accessory buildings and uses shall be permitted:
 - 1307.1(b)(1). Accessory parking areas.
 - 1307.1(b)(2). Other accessory uses customarily incidental to a permitted principal use.
 - 1307.1(b)(3). All signs shall conform to the requirements of Chapter 1312 of this Ordinance.
- **1307.1(c). Prohibited Uses**. Any residential, commercial or industrial use which, in the opinion of the Board of Appeals, may become offensive or noxious in a "C-1" Heavy Commercial Zone.
- 1307.1(d). Lot Widths. In any Heavy Commercial Zone no lot shall be less than fifty (50) feet
- **1307.1(e)**. Front Yards. In any Heavy Commercial Zone, no front yard shall be less than fifteen (1.5) feet on major streets. A ten (10) foot front yard shall be required on minor streets. Major and minor streets shall be identified as shown on the Major Thoroughfare Plan.
- **1307.1(f). Side Yards**. In any Heavy Commercial Zone; side yards shall be subject to the same provisions as specified "B-1" Local or Neighborhood Business Zones.
- **1307.1(g). Rear Yards**. In any Heavy Commercial Zone rear yards shall be subject to the same provision as specified for "B-2" Central Business Zones.

1307.1(h). Building Height. In any Heavy Commercial Zone, building heights shall be subject to the same provisions as specified for "B-2" Central Business Zones.

1307.1(i). Off-Street Parking and Loading Requirements. In any Heavy Commercial Zone, off-street parking and loading requirements shall be scheduled according to the provisions of Section 1310.6 of this Code of Ordinances.

CHAPTER 1308 INDUSTRIAL ZONE

Section 1308.1. "I-1" Light Industrial Zone.

1308.1(a). Permitted Uses. In any I-1 Light Industrial Zone, the following buildings and uses only are permitted:

1308.1(a)(1). All uses permitted in "C--1" Heavy Commercial Zone.

1308.1(a)(2). Activities of an industrial nature are permitted except uses or industrial processes that may be noxious or injurious by reason of the production of emission of dust, smoke, refuse matter, odor, gas fumes, noise, vibration or similar substance conditions. Any use may be permitted if approved by the Board of Appeals and subject to such conditions, restrictions and safe guards as may be deemed necessary by such Board.

1308.1(a)(3). Junk yards or automobile wrecking yards, scrap iron, scrap paper or rag storage, sorting or hailing, provided that such enterprises are conducted within a building or entirely within enclosure or fence of a type which will conceal from public view.

1308.1(a)(4). Sewage disposal plant, when operated by the municipality, all operations and storage.

1308.1(b). Permitted Accessory Uses. In any I-1 Light Industrial Zone, the following accessory buildings and uses shall be permitted:

1308.1(b)(1). All uses permitted in a C-1 Heavy Commercial Zone.

1308.1(b)(2). Other accessory uses customarily incidental to a permitted principal use including signs: Provided, that the provisions for the erection of signs in B-1 and B-2 Zones shall apply in a I-1 Light Industrial Zone.

1308.1(c). Prohibited Uses. Any residential, commercial, or industrial use, which in the opinion of the Board of Appeals may become offensive or noxious in an I-1 Light Industrial Zone.

1308.1(d). Lot Areas. In any I-1 Light Industrial Zone, no lot shall be less than 10,000 square feet

1308.1(e). Lot Widths. In any I-1 Light Industrial Zone, no lot shall be less than one hundred (100) feet in width.

1308.1(f), Front Yards. In any I-1 Light Industrial Zone, no front yard shall be less than twenty-five (25) feet.

1308.1(g). Side Yards. In any I-1 Light Industrial Zone, side yards shall be subject to the same provisions as specified for C-I Heavy Commercial Zones.

1308.1(h). Rear Yards. In any I-1 Light Industrial Zone, rear yards shall be subject to the same provisions as specified for C-1 Heavy Commercial Zones.

1308.1(i). Off-Street Parking. In any I-1 Light Industrial Zone, off-street parking and loading requirements shall be scheduled according to the provisions of Chapter 1310 of this Ordinance.

CHAPTER 1309

DESTINATION TOURISM ZONE

1309.1, "D-1" Destination Tourism Zone

- **1309.1(a). Permissive Uses.** In any Destination Tourism Zone, the buildings and uses permitted include, but are not limited to the following:
 - 1309(a)(1). Restaurants;
 - 1309(a)(2). Hotels and motels;
 - 1309(a)(3). Live entertainment (but not including adult entertainment);
 - 1309(a)(4). Multiplex theaters;
 - 1309(a)(5). Family entertainment centers;
 - 1309(a)(6). Concert halls;
 - 1309(a)(7). Interactive games;
 - 1309(a)(8). Amusement attractions;
 - 1309(a)(9). Cultural and leisure time activities;
 - 1309(a)(10). West Virginia Lottery table games;
 - 1309(a)(11). West Virginia Lottery video lottery games;
 - 1309(a)(12). Dog racing;
 - 1309(a)(13). Pari-mutuel wagering;
 - 1309(a)(14). Retail stores;
 - 1309(a)(15). Private clubs;
 - 1309(a)(16). Sporting events;
 - 1309(a)(17). Marina;
 - 1309(a)(18). Heliport;
 - 1309(a)(19). Convention centers; and
 - 1309(a)(20). Police, fire and ambulance facilities.
- **1309.1(b)**. **Permitted Accessory Uses**. In any Destination Tourism Zone, the following accessory buildings and uses shall be permitted:
 - 1309(b)(1). Accessory parking;
- 1309(b)(2). Other accessory uses customarily incidental to a principal permitted use, including signs attached flat against a building; and elevated signs not exceeding eighty (80) square feet in area per face; Provided, That these elevated signs are at least fifteen (15) feet from any street right-of-way.
- **1309.1(c). Prohibited Uses.** Any residential or industrial use except that which is clearly necessary for and incidental to the conduct of a permitted business or service of the premises.
- 1309.1(d). Lot Areas. In any Destination Tourism Zone, no lot shall be less than 20,000 square feet.
- **1309.1(e).** Lot Widths. In any Destination Tourism Zone, there is no minimum lot width.
- 1309.1(f). Front Yards. In any Destination Tourism Zone, there is no front yard required.
- 1309.1(g). Side Yards. In any Destination Tourism Zone, there is no side yard required.
- 1309.1(h). Rear Yards. In any Destination Tourism Zone, there is no rear yard required.
- 1309.1(i). Building Height. In any Destination Tourism Zone, no building shall be greater in height than the level of

fire protection that can be provided through a combination of engineering and construction technology and the fire protection capabilities of the City.

1309.1(j). Off-Street Parking and Loading Requirements. In any Destination Tourism Zone, off-street parking and loading requirements shall be scheduled according to the provisions of Table 1310.1 of this Code of Ordinances.

CHAPTER 1310 GENERAL PROVISIONS

Section 1310.1 Off-street Parking

1310.1(a) General. There shall be provided at the time of erection of any main building or at the time such buildings are altered, enlarged, converted or increased in capacity minimum off-street parking space with adequate provision for ingress and egress by standard-sized vehicles in accordance with the requirements of this ordinance.

1310.1(b) Parking space requirements.

1310.1(b)(1). Required number. The off-street parking spaces required for each use permitted by this ordinance shall not be less than that found in Table 1310.1(b)(1) of this ordinance, provided that any fractional parking space be computed as a whole space. Every business, commercial facility and industrial facility, to the extent permitted by the physical characteristics of the facility and the surrounding property, shall provide for safe and proper ingress to and egress from the facility for delivery vehicles. Every newly constructed business, commercial facility and industrial facility shall provide for safe and proper ingress to and egress from the facility for delivery vehicles.

TABLE 1310.1(b)(1) OFF-STREET PARKING SCHEDULE

USE					
Dwelling Units	1/DU				
Office	1/300 gross square feet				
Retail	1/200 gross square feet plus 1 for every 2 employees				
Restaurant	1/each 4 seats				
Health Club	1/100 gross square feet				
Warehouse	1/500 gross square feet				
Assembly, churches, auditorium	1/each 4 seats plus 1 for every 2 employees				
Medical Office	1/200 gross square feet plus 1 for each doctor & 1 for each 2 employees including nurses				
Schools	1/3.5 seats in class rooms plus 1/faculty member/employee				
Hotels/Motels	1/guest room plus 1/500 square feet of common area				
Industry	1/400 square feet				
Bed and Breakfast	1/guest room plus 2/owner-occupant				
Automobile repair and body shop	3/each work/repair bay + 1 for each 2 employees				
Automobile and trailer sales facility	1 for each 2 employees				
Funeral homes	100				

1310.1(b)(2). Combination of uses. Where there is a combination of uses on a lot, the required number of parking spaces shall be the sum of that found for each use.

1310.1(b)(3). Location of lot. The parking spaces required by this ordinance shall be provided on the same lot as the use or where the exclusive use of such is provided on another lot not more than 500 feet radially from the subject lot within the same or less-restrictive zoning district.

1310.1(c) Parking space dimension.

1310.1(c)(1). Width. A minimum width of 9 feet shall be provided for each parking space: Provided, That the following exceptions shall apply.

1310.1(c)(1)(A). Parking spaces for compact vehicles shall be permitted to be 8 feet wide.

1310.1(c)(1)(B). Parallel parking spaces shall be permitted to be 8 feet wide.

1310.1(c)(1)(C). The width of a parking space shall be increased 10 inches for obstructions located on either side of the space within 14 feet of the access aisle.

1310.1(c)(2). Length. A minimum length of 20 feet shall be provided for each parking space: Provided, That the following exceptions shall apply.

1310.1(c)(2))A). Compact parking spaces shall be permitted to be 18 feet in length.

1310.1(c)(2)(B). Parallel parking spaces shall be a minimum 22 feet in length.

1310.1(d) Design of parking facilities.

1310.1(d)(1). Driveway width. Every parking facility shall be provided with one or more access driveways, the width of which shall be the following:

1310.1(d)(1)(A). Private driveways at least 9 feet.

1310.1(d)(1)(B). Commercial driveways:

1310.1(d)(1)(B)(i). Twelve feet for one-way enter/exit.

1310.1(d)(1)(B)(ii). Twenty-four feet for two-way enter/exit.

1310.1(d)(2). Driveway and ramp slopes. The maximum slope of any driveway or ramp shall not exceed 20 percent: Provided, That the restriction that the maximum slope of any driveway or ramp shall not exceed 20 percent shall not apply to private driveways used for single family residential structures. Transition slopes in driveways and ramps shall be provided in accordance with the standards set by the Code Official.

1310.1(d)(3). Parking space accessibility. Each required parking space shall be individually and easily accessible.

1310.1(d)(4). Compact to standard space ratio. The maximum ratio of compact spaces to standard spaces in any parking area shall not exceed I to 2.

1310.1(d)(5). Striping. All hard surface parking spaces installed after the enactment of this ordinance shall be striped, except a private garage or parking area for the exclusive use of a single-family dwelling is not subject to this requirement.

1310.1(d)(6). Lighting. All lights illuminating a parking area shall be designed and located so as to reflect away from any street and adjacent property.

Section 1310.2. Fence Heights

1310.2(a) General. Notwithstanding any other provisions of this Ordinance, fences, walls, and hedges may be permitted in any required yard, or along the edge of any yard: Provided, That, no fence, wall, or hedge shall exceed the height stated in Table 1310.2(a): Provided however, That a wall that does not exceed three feet in height is not classified as a retaining wall.

TABLE 1310.2(a) MAXIMUM FENCE HEIGHTS

YARDS	HEIGHT (feet)
Front	3.5
Rear	6
Lot Side	6
Street Side	3.5

1310.2(b) Privacy fences. A privacy fence may not interfere with the line of sight at an angle of 90 degrees from the front door of the primary structure on the adjoining lot, and may not exceed a height of six feet: Provided, That, a privacy fence may be eight feet in height if the top two feet of the fence does not interfere with the free flow of air through the fenced enclosure.

1310.2(c) Sight line (Visibility at Intersections). All fences, walls, hedges, screens, signs and other structures or plantings shall be set back from a corner a sufficient distance so as to not create an unsafe condition for purposes of automobile traffic. No fence, wall, hedge, screen, sign or other structure or planting shall be higher than three and one-half (31/2) feet in any district within the triangle area (sight triangle) formed by the intersection of the center line of each street; the line measured along each center line will be one hundred (100) feet along major streets and eighty (80) feet on minor streets. When a major and a minor street intersect, each shall retain their respective footage requirements along the center line to form the sight triangle. Trees may be planted in this triangle area provided the lowest foliage is eight (8) feet or higher from the ground.

Section 1310.3. Location of Accessory Buildings, Storage Buildings and Private Garages

1310.3(a) General. Accessory buildings shall occupy the same lot as the main use or building.

1310.3(b) Separation from main building. Any accessory building 150 square feet or greater in size or that has any utility service installed shall be separated from the main building by 10 feet and shall also be in compliance with all set-back ordinances: Provided, That any accessory building less than 150 square feet in size that is used for storage or other similar use shall be permitted to be located in any portion of the rear yard or side yard. No storage building shall be located in the front yard.

1310.3(c) Private garages. An accessory building used as a private garage shall be permitted to be located in the rear yard or side yard provided that setbacks are maintained and the structures do not encroach into any recorded easements. The building shall be permitted to be located in the front yard of a sloping lot if the lot has more than a 10 foot difference in elevation from midpoint of the front lot line to a point 50 feet away midway between the side lot lines.

Section 1310.4. Allowable Projections into Yards

1310.4(a) General. Eaves, cornices, chimneys, new HVAC equipment and other similar architectural features shall not be permitted to project into a required yard: Provided, that HVAC equipment that is replacing HVAC equipment may be installed at the location of the equipment being replaced.

1310.4(b) Front yards. Open, unenclosed ramps, porches, platforms or landings, not covered by a roof, shall not be permitted to extend into the required front yard, and such porch may not extend above the first level and may be no more than 6 feet above grade at any point.

1310.4(b)(1). In any R-1 Single-Family Residential Zones, the front yard of any lot of record at the time of enactment of this ordinance shall be equal to the average front yards of existing developed lots on the street on which it is located. In the absence of developed lots along any such streets, the minimum front yard shall be twenty (20) feet.

1310.4(c) Rear yards. Windows shall be permitted to project into a required rear yard no more than 6 inches.

SECTION 1310.5. Landscaping Requirements

1310.5(a) General. Landscaping is required for all new buildings and additions over 500 square feet as defined in this section. Basic landscaping, such as sowing grass, shall be completed within one year from the date of occupancy of the building.

1310.5(b) Front yards. Front yards required by this ordinance shall be landscaped, except for those areas occupied by access driveways, walls and structures.

1310.5(c) Street-side side yards. All flanking street-side side yards shall be landscaped, except for those areas occupied by utilities, access driveways, paved walks, walls and structures.

1310.5(d) Maintenance. All live landscaping required by this ordinance shall be properly maintained. All dead or dying landscaping shall be replaced immediately and all sodded areas mowed, fertilized and irrigated on a regular basis.

SECTION 1310.6. Loading Spaces

1310.6(a) General. Loading spaces shall be provided on the same lot for every building in the C or L-I zones. No loading space is required if prevented by an existing lawful building. In all zoning districts covered by this Ordinance, the loading and unloading of trucks and all other vehicles shall be conducted in such a manner that no part of said truck or vehicle, or the operations of the loading and unloading shall extend onto the adjacent sidewalk or roadway or in any other manner hinder or impede the use thereof. The Code Official may waive this requirement on unusual lots.

1310.6(b) Size. On new construction, each loading space shall have a clear height of 14 feet and shall be directly accessible through a usable door not less than 3 feet in width and 6 feet 8 inches high. The minimum area of a loading space shall be 400 square feet and the minimum dimensions shall be 20 feet long and 10 feet deep.

SECTION 1310.7. Passageways

1310.7(a) Residential entrances. There shall be a passageway of not less than 10 feet in width leading from the public way to the exterior entrance of each dwelling unit in every residential building. The passageway shall be increased by 2 feet for each story over two.

1310.7(b) Separation between buildings. There shall be at least 10 feet of clear space between every main building and accessory building on a lot. There shall be at least 20 feet of clear space between every residential building and another main building on the same lot.

1310.7(c) Location of passageways. Passageways shall be permitted to be located in that space set aside for required yards. Passageways shall be open and unobstructed to the sky and shall be permitted to have such projections as allowed for yards, provided the users of said passageway have a clear walk-way to the public way. Any space between buildings or passageways that has less width than that prescribed herein shall not be further reduced.

SECTION 1310.8. Approval for and Availability of Essential Services

1310.8(a) General. All projects that require the additional use or new facilities of essential services, such as sewers, storm drains, fire hydrants, potable water, public streets, street lighting and similar services, shall obtain such approval as required by the agency providing such service prior to project approval. Fire hydrants shall be no more than 1,000 feet apart, no more than 500 from any structure, approved by the Nitro Fire Department, and readily accessible by a fire truck.

1310.8(a)(1). Nonavailability of essential services shall be permitted to be grounds for denying permits for additional development until such services are available. The City is not obligated to extend or supply essential services if capacity is not available. If capacity is available, the extension of services shall be by and at the cost of the developer, unless the City agrees otherwise. All service extensions shall be designed and installed in full conformance with the City's standards for such service, and shall be subject to review, permit and inspection as required by other policies or ordinances of the City.

CHAPTER 1311 SPECIAL REGULATIONS

SECTION 1311.1 Home Occupations

1311.1(a) General. Home occupations shall be permitted in all zones, provided the home occupation is clearly and obviously subordinate to the main use of the dwelling unit for residential purposes. Home occupations shall be conducted wholly within the primary structure on the premises.

1311.1(b) Conditions.

- 1311.1(b)(1)The home occupation shall not exceed 15 percent of the floor area of the primary structure.
- 1311.1(b)(2) Only those related by blood, marriage or adoption may be employed in the home occupation.
- 1311.1(b)(3) Inventory and supplies shall not occupy more than 50 percent of the area permitted to be used as a home occupation.
 - 1311.1(b)(4) There shall be no exterior display or storage of goods on said premises.
 - 1311.1(b)(5) All home occupations shall require a conditional use permit.
- 1311.1(b)(6) Sales and services to patrons shall be arranged by appointment and scheduled so that not more than one patron vehicle is on the premises at the same time.
- 1311.1(b)(7) Two additional off-street parking spaces shall be provided on the premises, except only one need be provided if the home occupation does not have an employee. Said off-street parking shall comply with the parking requirements in Section 1310 of this ordinance.

SECTION 1311.2 Private Clubs

1311.2(a) General. A conditional use permit shall be obtained for all private clubs.

1311.2(b) Provisions.

- 1311.2(b)(1) No private clubs shall be located within 1,000 feet of a park, school, day-care center, library or religious or cultural activity.
 - 1311.2(b)(2) No private clubs shall be located within 500 feet of any other private clubs or any agricultural or

residential zone boundary.

1311.2(b)(3) Such distances shall be measured in a straight line without regard to intervening structures, topography and zoning.

1311.2(b)(4) Private clubs shall not be located in R-1 or R-2 zones and shall not be permitted as a home occupation.

CHAPTER 1312 SIGN REGULATIONS

SECTION 1312.1 Purpose. The purpose of this chapter is to protect safety and orderly development of the community through the regulation of signs and sign structures.

SECTION 1312.2. RESERVED.

SECTION 1312.3. RESERVED

SECTION 1312.4. General Provisions.

- **1312.4(a).** Conformance to ordinances. Any sign hereafter erected shall conform to the provisions of this ordinance and any other ordinance or regulation within this City.
- **1312.4(b).** Signs in rights-of-ways. No sign other than an official traffic sign or similar sign shall be erected within 2 feet of the lines of any street, or within any public way, unless specifically authorized by other ordinances or regulation of this City or by specific authorization of the code official.
- **1312.4(c).** Projections over public ways. Signs projecting over public walkways shall be permitted to do so only subject to the projection and clearance limits either defined herein or, if not so defined, at a minimum of 8 feet from grade level to the bottom of the sign. Signs, architectural projections or sign structures projecting over vehicular access areas must conform to the minimum height clearance limitations imposed by the City for such structures.
- **1312.4(d). Traffic visibility**. No sign or sign structure shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision, nor at any location where by its position, shape or color it may interfere with or obstruct the view of or be confused with any authorized traffic sign, signal or device.
- **1312.4(e).** Computation of frontage. If a premises contains walls facing more than one property line or encompasses property frontage bounded by more than one street or other property usages, the sign area(s) for each building wall or property frontage will be computed separately for each building wall or property line facing a different frontage. The sign area(s) thus calculated shall be permitted to then be applied to permitted signs placed on each separate wall or property line frontage.
- **1312.4(f). Animation and changeable messages.** Animated signs, except as prohibited in section 1312.6 of this chapter, are permitted in all nonresidential zones. Changeable signs, manually activated, are permitted for nonresidential uses in all zones. Changeable signs, electrically activated, are permitted in all nonresidential zones.
- 1312.4(g). Maintenance, repair and removal. Every sign permitted by this ordinance shall be kept in good condition and repair. When any sign becomes insecure, in danger of falling or is otherwise deemed unsafe by the code official, or if any sign shall be unlawfully installed, erected or maintained in violation of any of the provisions of this chapter, the owner thereof or the person or firm using same shall, upon written notice by the code official immediately in the

case of immediate danger, and in any case within not more than 10 days, make such sign conform to the provisions of this chapter, or shall remove it. If within 10 days the order is not complied with, the code official shall be permitted to remove or cause such sign to be removed at the expense or the owner and/or the user of the sign.

1312.4(h). Obsolete sign copy. Any sign copy that no longer advertises or identifies a use conducted on the property on which the sign is erected must have the sign copy covered or removed within 30 days after written notification from the code official and upon failure to comply with such notice, the code official is hereby authorized to cause removal of such sign copy, and any expense incident thereto shall be paid by the owner of the building, structure or ground on which the sign in located.

1312.4(i). Nonconforming signs. Any sign legally existing at the time of the passage of this ordinance that does not conform in use, location, height or size with the requirements of the zone in which such sign is located, shall be considered a legal nonconforming use or structure and shall be permitted to continue in such status until such time as it is either abandoned or removed by its owner, subject to the following limitations:

1312.4(i)(1). Structural alterations, enlargement or re-erection are permissible only where such alterations will not increase the degree of nonconformity of the signs.

1312.4(i)(2). Any legal nonconforming sign shall be removed or re-built without increasing the existing height or area if it is damaged, or removed if allowed to deteriorate to the extent that the cost of repair or restoration exceeds 50 percent of the replacement cost of the sign as determined by the code official.

SECTION 1312.5. Exempt Signs.

1312.5(a). Exempt signs. The following signs shall be exempt from the provisions of this chapter: Provided, That no sign shall be exempt from the provisions of section 1312.4(d) of this chapter.

1312.5(a)(1). Official notices authorized by a court, public body or public safety official.

1312.5(a)(2). Directional, warning or information signs authorized by federal, state, county or municipal governments.

1312.5(a)(3). Memorial plaques, building identification signs and building cornerstones when cut or carved into a masonry surface or when made of noncombustible material and made an integral part of the building or structure.

1312.5(a)(4). The flag of a government or noncommercial institution, such as a school.

1312.5(a)(5). Religious symbols and seasonal decorations within the appropriate public holiday season.

1312.5(a)(6). Works of art displayed in conjunction with a commercial enterprise where the enterprise does not receive direct commercial gain.

1312.5(a)(7). Street address sign and combination nameplate and street address signs that contain no advertising copy and which do not exceed 6 square feet in area.

SECTION 1312.6. Prohibited Signs.

1312.6(a). Prohibited signs. The following devices and locations shall be specifically prohibited.

1312.6(a)(1). Signs located in such a manner as to obstruct or otherwise interfere with an official traffic sign, signal or device, or obstruct or interfere with a driver's view of approaching, merging or intersecting traffic.

1312.6(a)(2). Except as provided elsewhere in this chapter, signs encroaching upon or overhanging a public right-of-way. No sign shall be attached to any utility pole, light standard, street tree or any other public facility located within the public right-of-way.

1312.6(a)(3). Signs which blink, flash or are animated by lighting in any fashion that would cause such signs to have the appearance of traffic safety signs and lights, or municipal vehicle warnings from a distance.

1312.6(a)(4). Portable signs except as allowed for temporary signs.

1312.6(a)(5). Any sign attached to, or placed on, a vehicle or trailer parked on public or private property, except for signs meeting the following conditions:

1312.6(a)(5)(A). The primary purpose of such a vehicle or trailer is not the display of signs;

1312.6(a)(5)(B). The signs are magnetic, decals or painted upon an integral part of the vehicle or equipment as originally designed by the manufacturer and do not break the silhouette of the vehicle; or

1312.6(a)(5)(C). The vehicle or trailer is in operating condition, currently registered and licensed to operate on public streets when applicable, and actively used or available for use in the daily function of the business to which such signs relate.

1312.6(a)(6). Vehicles and trailers are not used primarily as static displays, advertising a product or services, not utilized as storage, shelter or distribution points for commercial products or services for the general public.

1312.6(a)(7). Balloons, streamers or pinwheels except those temporarily displayed as part of a special sale, promotion or community event. For purposes of this subsection, "temporarily" means no more than 20 days in any calendar year.

SECTION 1312.7. Permits.

1312.7(a). Permits required. Unless specifically exempted, a permit must be obtained from the code official for the erection and maintenance of all signs erected or maintained within the City and in accordance with other ordinances of this city. Exemptions from the necessity of securing a permit, however, shall not be construed to relieve the owner of the sign involved from responsibility for its erection and maintenance in a safe manner and in a manner in accordance with all the other provisions of this chapter.

1312.7(b). Construction documents. Before any permit is granted for the erection of a sign or sign structure requiring such permit, construction documents shall be filed with the code official showing the dimensions, materials and required details of construction, including loads, stresses, anchorage and any other pertinent data. The permit application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected and by engineering calculations signed and sealed by a registered design professional.

1312.7(c). Changes to signs. No sign shall be structurally altered, enlarged or relocated except in conformity to the provisions herein, nor until a proper permit, if required, has been secured. The changing or maintenance of moveable parts or components of an approved sign that is designed for such changes, or the changing of copy, business names, lettering, sign faces, colors, display and/or graphic matter, or the content of any sign shall not be deemed a structural alteration.

1312.7(d). Permit fees. Permit fees to erect, alter or relocate a sign shall be in accordance with the fee schedule adopted by the city.

SECTION 1312.8. Specific Sign Requirements.

1312.8(a). Identification signs. Identification signs shall be in accordance with subsections 1312.8(a)(1) through 1312.8(a)(3).

1312.8(a)(1). Wall signs. Every single-family residence, multiple-family residential complex, commercial or industrial building, and every separate nonresidential building in a residential zone may display wall signs per street

frontage subject to the limiting standards set forth in Table 1312.8.a(1). For shopping centers, planned industrial parks or other multiple occupancy nonresidential buildings, the building face or wall shall be calculated separately for each separate occupancy.

1312.8(a)(2). Free-standing signs. In addition to any allowable wall signs, every single-family residential subdivision, multiple-family residential complex, commercial or industrial building and every free-standing or combination signs per street frontage subject to the limiting standards set forth in Table 1312.8.a(2).

1312.8(a)(3). Directional signs. No more than two directional signs shall be permitted per street entrance to any lot. There shall be no limit to the number of directional signs providing directional information interior to the lot. In residential zones, the maximum area for directional signs shall be 4 square feet. For all other zones, the maximum area for any directional sign visible from adjacent property or rights-of-way shall be 4 square feet. Not more than 25 percent of the area of any directional sign shall be permitted to be devoted to business identification or logo, which area shall not be assessed as identification sign area.

TABLE 1312.8a(1) IDENTIFICATION SIGN STANDARDS - WALL SIGNS AGGREGATE AREA(square feet)

Single-family residential (R-1)	6
Multiple-family residential (R-2 & R-3)	6
Nonresidential in a residential	
zone (churches, schools, etc.)	12
Commercial and industrial	80

LAND USE

1312.8(b). Temporary signs. Temporary signs shall be in accordance with subsections 1312.8(b)(1) through 1312.8(b)(6).

1312.8(b)(1). Real estate signs. Real estate signs shall be permitted in all zoning districts, subject to the following limitations:

1312.8(b)(1)(A). Real estate signs located on a single residential lot shall be limited to one sign, not greater than 3 feet in height and 4 square feet in area.

1312.8(b)(1)(B). Real estate signs advertising the sale of lots located within a subdivision shall be limited to one sign per entrance to the subdivision, and each sign shall be no greater the 32 square feet in area nor 7 feet in height. All signs permitted under this section shall be removed with 10 days after sale of the last original lot.

1312.8(b)(1)(C). Real estate signs advertising the sale or lease of space within commercial or industrial buildings shall be no greater than 32 square feet in area nor 7 feet in height and shall be limited to one sign per street front.

1312.8(b)(1)(D). Real estate signs advertising the sale or lease of vacant commercial or industrial land shall be limited to one sign per street front and each sign shall be no greater than 7 feet in height, and 32 square feet for property of 10 acres or less, or 100 square feet for property exceeding 10 acres.

1312.8(b)(1)(E). Real estate signs shall be removed not later than 10 days after execution of a lease agreement in the event of a lease, or the closing of the sale in the event of a purchase.

1312.8(b)(2). Development and construction signs. Signs temporarily erected during construction to inform the public of the developer, contractors, architects, engineers, the nature of the project or anticipated completion dates, shall be permitted in all zoning districts, subject to the following limitations:

1312.8(b)(2)(A). Such signs on a residential lot shall be limited to one sign, not greater than 8 feet in height and 16 square feet in area.

1312.8(b)(2)(B). Such signs for a residential subdivision or multiple residential lots shall be limited to one sign, at each entrance to the subdivision or on one of the lots to be built upon, and shall be no greater than 10

feet in height and 32 square feet in area.

1312.8(b)(2)(C). Such signs for nonresidential uses in residential districts shall be limited to one sign, and shall be no greater than 5 feet in height and 16 square feet in area.

1312.8(b)(2)(D). Such signs for commercial and industrial projects shall be limited to one sign per street front, not to exceed 10 feet in height and 32 square feet, regardless of the number of acres in the project.

1312.8(b)(2)(E). Development and construction signs may not be displayed until after the issuance of construction permits by the building official, and must be removed not later than 24 hours following issuance of an occupancy permit for all portions of the project.

1312.8(b)(3). RESERVED

1312.8(b)(4). Special event signs in public ways. Signs advertising a special community event shall not be prohibited in or over public rights-of-way, subject to approval by the code official as to size, location and method of erection. The code official shall not approve any special event signage that would impair the safety and convenience of use of public rights-of way, or obstruct traffic visibility.

1312.8(b)(5). Portable signs. Portable signs shall be permitted only in the B-1, B-2, C-1 and I-1 zones, as designated in this ordinance, subject to the following limitations:

1312.8(b)(5)(A). No more than one such sign may be displayed on any property, and shall not exceed a height of 4 feet nor an area of 32 square feet.

1312.8(b)(5)(B). Such signs shall be displayed not more than 20 days in any calendar year.

1312.8(b)(5)(C). Any electrical portable signs shall comply with the ICC Electrical Code, as adopted by the City.

1312.8(b)(6). RESERVED.

1312.8(c). Requirements for specific sign types. Signs of specific type shall be in accordance with sections 1312.8(c)(1) through 1312.8(c)(7).

1312.8(c)(1). Canopy and marquee signs.

1312.8(c)(1)(A). The permanently-affixed copy area of canopy or marquee signs shall not exceed an area equal to 75 percent of the face area of the canopy, marquee or architectural projection upon which such sign is affixed or applied.

1312.8(c)1)(B). Graphic striping, patterns or color bands on the face of a building, canopy, marquee or architectural projection shall not be included in the computation of sign copy area.

1312.8(c)(2). Awning signs.

1312.8(c)(2)(A). The copy area of awning signs shall not exceed an area equal to 25 percent of the background area of the awning or awning surface to which such sign is affixed or applied, or the permitted area for wall or fascia signs, which ever is less.

1312.8(c)(2)(B). Neither the background color of an awning, nor any graphic treatment or embellishment thereto such as striping, patterns or valances, shall be included in the computation of sign copy area.

1312.8(c)(3). Projecting signs.

1312.8(c)(3)(A). Projecting signs shall be permitted in lieu of free-standing signage on any street frontage limited to one sign per occupancy along any street frontage with public entrance to such an occupancy, and shall be limited in area to 16 square feet.

1312.8(c)(3)(B). Such signs shall maintain a clear vertical distance above any public sidewalk a minimum of 10 feet.

1312.8(c)(4). Under canopy signs.

1312.8(c)(4)(A). Under canopy signs shall be limited to no more than one such sign per public entrance to any occupancy, and shall be limited to an area not to exceed 1 square foot.

1312.8(c)(4)(B). Such signs shall maintain a clear vertical distance that is a minimum of 9 feet above any sidewalk or pedestrian way.

1312.8(c)(5). Roof signs.

1312.8(c)(5)(A). Roof signs shall be permitted in commercial and industrial districts only.

1312.8(c)(5)(B). Such signs shall be limited to a height above the roofline on the elevation parallel to the sign face of no more than 25 percent of the height of the roofline in commercial and industrial districts.

1312.8(c)(6). Window signs. Window signs shall be permitted for any nonresidential use in a residential district, and for all commercial and industrial districts, subject to the following limitations:

1312.8(c)(6)(A). The aggregate area of all such signs shall not exceed 25 percent of the window area on which such signs are displayed. Window panels separated by muntins or mullions shall be considered as one continuous window area.

1312.8(c)(6)(B). Window signs shall not be assessed against the sign area permitted for other sign types.

1312.8(c)(7). Menu boards. Menu boards shall not be permitted to exceed 50 square feet.

CHAPTER 1313 NONCONFORMING STRUCTURES AND USES

SECTION 1313.1 General

1312.1(a) Continuance. Except as otherwise required by law, a structure or use legally established prior to the adoption date of this Ordinance may be maintained unchanged. In other than criminal proceedings, the owner, occupant or user shall have the burden to show that the structure, lot or use was lawfully established.

SECTION 1313.2 Discontinuance

1313.2(a) Vacancy. Any lot or structure, or portion thereof, occupied by a nonconforming use, which is or hereafter becomes vacant and remains unoccupied by a nonconforming use for a period of six continuous months shall not thereafter be occupied, except by a use which conforms to this Ordinance.

1313.2(b) Damage. If any nonconforming structure or use is, by any cause, damaged to the extent of 50 percent of its value as determined by the Code Official, it shall not thereafter be reconstructed as such unless such reconstruction is first approved as a variance by the Zoning Board of Appeals.

SECTION 1313.3 Additions and Modifications

1313.3(a) Maintenance and repair. Maintenance, repairs and structural alterations shall be permitted to be made to nonconforming structures or to a building housing a nonconforming use with valid permits.

1313.3(b) Changes of nonconforming use. A change of use of a nonconforming use of a structure or parcel of land shall not be made except to that of a conforming use. Where such change is made, the use shall not thereafter be changed back to a nonconforming use.

1313.3(c) Additions. All additions to nonconforming structures shall conform to the requirements of this ordinance. Additions to structures housing nonconforming uses that increase the area of a nonconforming use shall not be made unless first authorized as a variance by the Zoning Board of Appeals.

CHAPTER 1314 CONDITIONAL USES

1314.1 General

1314.2 Conditional use permit. A conditional use permit shall be obtained for certain uses which may be harmonious under special conditions and in specific locations within a zone, but shall not be allowed under the general conditions of the zone as stated in this Ordinance.

1314.2(a) Submittal. All conditional use permit applications shall be submitted to the Code Official who in turn will forward the application to the Zoning Board of Appeals. All applications shall be accompanied by maps, drawings, statements or other documents in accordance with the provisions of Section 1301.7(f)(4) of this Ordinance. A fee established by ordinance shall be collected at the time of submittal of any amendment to an approved conditional use permit as determined by the City.

1314.3 Public hearing

1314.3(a) Hearing and action. Prior to the approval, amending or denial of a conditional use permit, a public hearing shall be held in accordance with the provisions of Section 1301.9 of this Ordinance. Upon the completion of said public hearing, the Zoning Board of Appeals shall render a decision within a time limit as required by law.

1314.4 Determination

1314.4(a) Authorization. The Zoning Board of Appeals, shall have the authority to impose conditions and safeguards as deemed necessary to protect and enhance the health, safety and welfare of the surrounding area. The authorization of a conditional use permit shall not be made unless the evidence presented is such as to establish:

1314.4(a)(1) That such use will not, under the specific circumstances of the particular case, be detrimental to the health, safety or general welfare of the surrounding area and that the proposed use is necessary or desirable and provides a service or facility that contributes to the general well being of the surrounding area;

1314.4(a)(2) That such use will comply with the regulations and conditions specified in this ordinance for such use; and

1314.4(a)(3) The Zoning Board of Appeals shall itemize, describe or justify, then have recorded and filed in writing, the conditions imposed on the use.

1314.5 Expiration and revocation

1314.5(a) General. Any granted conditional use permit shall become null and void within one year of the date of approval if not exercised. A conditional use permit shall be considered exercised when the use has been established or when a building permit has been issued and substantial construction accomplished. If the permit is abandoned or discontinued for a period of one year, it may not be reestablished unless authorized by the Zoning Board of Appeals.

1314.5(a)(1). A conditional use permit may be revoked if the applicant fails to comply with the imposed conditions by the Zoning Board of Appeals.

1314.6 Amendments

1314.6(a) General. An amendment to an approved conditional use permit shall be submitted to the Code Official accompanied by supporting information, and the Code Official shall in turn forward the amendment to the Zoning Board of Appeals. The Zoning Board of Appeals shall hold a public hearing in accordance with the requirements established by subsection 1314.3(a) of this Ordinance and shall review the amendment and shall be permitted to grant, deny or amend such amendment and impose conditions deemed necessary.

1314 7 Conditional use review criteria

1314.7(a) General. A request for a conditional use shall be permitted to be approved, approved with conditions or denied. Each request for a conditional use approval shall be consistent with the criteria listed below:

- 1314.7(a)(1) The request is consistent with all applicable provisions of the comprehensive plan.
- 1314.7(a)(2) The request shall not adversely affect adjacent properties.
- 1314.7(a)(3) The request is compatible with the existing or allowable uses of adjacent properties.
- 1314.7(a)(4) The request can demonstrate adequate public facilities, including roads, drainage, potable water, sanitary sewer, and police and fire protection exist or will exist to serve the requested use at the time such facilities are needed.
- 1314.7(a)(5) The request can demonstrate adequate provision for maintenance of the use and associated structures.
- 1314.7(a)(6) The request has minimized, to the degree possible, adverse affects on the natural environment.
 - 1314.7(a)(7) The request will not create undue traffic congestion.
 - 1314.7(a)(8) The request will not adversely affect the public health, safety or welfare.
 - 1314.7(a)(9) The request conforms to all applicable provisions of this ordinance.

CHAPTER 1315 PLANNED UNIT DEVELOPMENT

1315.1 General

1315.1(a) Planned unit developments. Planned unit developments (PUDS) shall be allowed by Planning Commission approval in any zoning district. No planned unit development permit shall be granted unless the development will meet the use limitations of the zoning district in which it is located and meet the density and other limitations of such districts, except as such requirements may be lawfully modified as provided by this ordinance. Compliance with this ordinance in no way excuses the developer from the applicable requirements of a subdivision

ordinance, except as modifications thereof are specifically authorized in the approval of the application for the planned unit development.

The requirements of this ordinance relating to a PUD provides a means for effecting desirable and quality development by permitting greater flexibility and design freedom than may otherwise be permitted under the ordinance, and seeks to accomplish a well-balanced, aesthetically satisfying city and economically desirable development of building sites within a PUD. The requirements of this ordinance relating to a PUD are established to permit latitude in the development of the building site if that development is found to be in accordance with the purpose, spirit and intent of this ordinance and is found not to be hazardous, harmful, offensive or otherwise adverse to the environment, property values or the character of the neighborhood or the health, safety and welfare of the City. The requirements of this ordinance relating to a PUD are intended to permit and encourage diversification, variation and imagination in the relationship of uses, structures, open spaces and heights of structures for developments conceived and implemented as comprehensive and cohesive unified projects, and to encourage more rational and economic development with relationship to public services, and to encourage and facilitate preservation of open lands.

1315.2 Conditions

1315.2(a) Area. No planned unit development shall have an area less than that approved by the Planning Commission as adequate for the proposed development.

1315.2(b) Uses. A planned unit development which will contain uses not permitted in the zoning district in which it is to be located will require a change of zoning district and shall be accompanied by an application for a zoning amendment, except that any residential use shall be considered a permitted use in a planned unit development which allows residential uses and shall be governed by density, design and other requirements of the planned unit development permit.

Where a site is situated in more than one use district, the permitted uses applicable to such property in one district may be extended into the adjacent use district.

1315.2(c) Ownership. The development shall be in single or corporate ownership at the time of application, or the subject of an application filed jointly by all owners of the property.

1315.2(d) Design. The Planning Commission shall require the arrangement of structures and open spaces within the site development plan as necessary to ensure that adjacent properties will not be adversely affected.

1315.2(d)(1) Density. Density of land use shall in no case be more than 15 percent higher than allowed in the zoning district.

1315.2(d)(2) Arrangement. Where feasible, the least height and density of buildings and uses shall be arranged around the boundaries of the development.

1315.2(d)(3) Specific requirements. Lot area, width, yard, height, density and coverage requirements shall be determined by approval of the site development plan.

1315.2(e) Open spaces. Preservation, maintenance and ownership of required open spaces within the planned unit development shall be accomplished by either:

1315.2(e)(1) Dedication of the land as a public park or parkway system, or

1315.2(e)(2) Creating a permanent, open space easement on and over the said private open spaces to

guarantee that the open space remain perpetually in recreational use, with ownership and maintenance being the responsibility of an owners' association established with articles of association and bylaws which are satisfactory to the City Council.

1315.2(f) Landscaping. Landscaping, fencing and screening related to the uses within the site and as a means of integrating the proposed development into its surroundings shall be planned and presented to the Planning Commission for approval, together with other required plans for the planned unit development. A planting plan showing proposed tree and shrubbery plantings shall be prepared for the entire site to be developed. A grading and drainage plan shall also be submitted to the Planning Commission with the application.

1315.2(g) Signs. The size, location, design and nature of signs, if any, and the intensity and direction of area or floodlighting shall be detailed in the application.

1315.2(h) Desirability. The proposed use of the particular location shall be shown as necessary or desirable, to provide a service or facility which will contribute to the general well being of the surrounding area. It shall also be shown that under the circumstances of the particular case, the proposed use will not be detrimental to the health, safety or general welfare of persons residing in the vicinity of the planned unit development.

1315.3 Planning Commission Determination

1315.3(a) Considerations. In carrying out the intent of this section, the Planning Commission shall consider the following principles:

1315.3(a)(1) It is the intent of this section that site and building plans for a planned unit development shall be prepared by a designer or team of designers having professional competence in urban planning as proposed in the application. The Planning Commission shall be permitted to require the applicant to engage such professional expertise as a qualified designer or design team.

1315.3(a)(2) It is not the intent of this section that control of the design of a planned unit development by the Planning Commission be so rigidly exercised that individual initiative be stifled and substantial additional expense incurred; rather, it is the intent of this section that the control exercised be the minimum necessary to achieve the purpose of this section.

1315.3(a)(3). The Planning Commission may approve or disapprove an application for a planned unit development. In an approval, the Planning Commission shall be permitted to attach such conditions as it may deem necessary to secure compliance with the purposes set forth in this chapter. The denial of an application for a planned unit development by the Planning Commission shall be permitted to be appealed to the City Council.

1315.4 Required Contributions

1315.4(a) General. The City Council, as part of the approval of a planned unit development, shall be permitted to require an applicant to make reasonable contributions including, but not limited to, any combination of the following:

1315.4(a)(1) Dedication of land for public park purposes.

1315.4(a)(2) Dedication of land for public school purposes.

1315.4(a)(3) Dedication of land for public road right-of-way purposes.

1315.4(a)(4) Construction of or addition to roads serving the proposed project when such construction or addition is reasonably related to the traffic to be generated.

1315.4(a)(5) Installation of required traffic safety devices.

1315.4(a)(6) Preservation of areas containing significant natural, environmental, historic, archeological or

similar resources.

1315.5 Planning Commission Action

1315.5(a) Approval. In order that it may approve a planned unit development, the Planning Commission shall have authority to require that the following conditions (among others it deems appropriate) be met by the applicant:

1315.5(A)(1) That the proponents intend to start construction within one year of either the approval of the project or of any necessary zoning district change, and intend to complete said construction, or approved stages thereof, within four years from the date construction begins; and,

1315.5(a)(2) That the development is planned as one complex land use rather than as an aggregation of individual and unrelated buildings and uses.

1315.5(b) Limitations on application.

Fla Coy, Récorder

1315.5(b)(1).Upon approval of a planned unit development, construction shall proceed only in accordance with the plans and specifications approved by the Planning Commission and in conformity with any conditions attached by the City as to its approval.

1315.5(b)(2) Amendment to approved plans and specifications for a planned unit development shall be obtained only by following the procedures herein outlined for first approval.

1315.5(b)(3) The Code Official shall not issue any permit for any proposed building, structure or use within the project unless such building, structure or use is in accordance with the approved development plan and with any conditions imposed in conjunction with its approval.

NI TY COUNCIL M. G MINUTES MARCH 4, 2008

Mayor Rusty Casto called the meeting to order at 7:30 pm. Attending along with Mayor Casto were Recorder Rita Cox, Councilmen Bill Javins, Bill Racer, A. A. "Joe" Savilla, and Bill Clark, Councilwomen Gertie Estep and Brenda Tyler, Treasurer John Young and Attorney Phil Scort.

Councilman Savilla led the Invocation following a moment of silence for Dr. John Stewart and Pat Van Buren. The Pledge of Allegiance was led by Councilman Racer:

Mayor Casto announced the future dates of Council as March 18, April 1, and April 15, 2008.

AGENDA ITEMS:

APPROVAL OF MINUTES OF FEBRUARY 19, 2008: COUNCILWOMAN BRENDA TYLER MOVED THAT THE MINUTES OF FEBRUARY 19, 2008 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN CLARK. THE MOTION CARRIED WELL COUNCILMAN RACES, ABSTAINING AND ALL OTHER COUNCIL MEMBERS VOTING FOR THE MOTION.

CITIZEN OF THE MONTH: Mayor Casto announced that the March Citizen at the Month is Seth Easter who has won four WV wrestling titles while a student at Nitro High School. The Experience coached and his brothers have also won State titles.

BROWNFIELD RAPORA: Councilman Bill Clark announced there was to be a meeting was loom for ignal at 9:00 am on March 18, 2008 in Council Chambers to discuss plans for some of the Brownfield Assessment area. The meeting is open to the public.

ATTORNEY REPORT: Attorney Phil Sword who attended in place of City Attorney Troy Giatras said there was no news to report but would be glad to carry any questions to Troy Giatras. He said that there is someone working on the Smith St. Landfill property that had been sold for taxes and would have a response on that in April. Councilman Clark said that he would request that the question of the gas line easement on Broadway Avenue be addressed again. He said the issue was brought up about two years ago but tabled, the Tennessee Gas Company uses the line and he thinks the City maybe entitled to compensation on the easement. Councilman Clark requested that Troy Giatras look into the possibility of getting compensation for the easement.

FINANCIAL REPORT: Treasurer John Young said the new accounts payable computer system will be up and running soon. He said that the projected budget he supplied to Council was only what was requested by the departments and in no way reflected the final budgets. Mayor Casto announced that Council would meet at 5:00 pm Friday, March 7 in Council Chambers to discuss with the head of each department the budget. Treasurer Young said all departments had been very cooperative in budget discussions.

WARD THREE COUNCIL REPLACEMENT: Mayor Casto said he would check with Attorney Troy Giatras to see if Council was required to replace the Councilman who had resigned. Recorder Cox said that no one had come forward requesting the position.

COUNCIL COMMENTS:

Mayor Casto said work on the Smith St. Boat Ramp would begin in June or July.

Council Bill Javins said that a public meeting will be held and then bids will be opened for the project at the boat launch.

Councilman Savilla thanked Recorder Cox and Treasurer Young for the work that had done on

changing liability carriers on the city insurance.

Councilwoman Estep thanked Treasurer Young on the budget information presented.

Councilman Clark thanked Recorder Cox and Treasurer Young on the insurance savings. He said that the amount being paid had been too costly. He said he thought the department heads do a good job.

Gouncilwoman Tyler thanked everyone for the prayers for her son Jeff. She said he would be coming home on Saturday and would continue with rehabilitation.

PUBLIC COMMENT:

Laura Mallett said she was told the City of Nitro did not have a nuisance ordinance. Councilman Savilla said that we currently do and found it in the code book. Recorder Cox said that we do have an ordinance and Mrs. Mallett may have been told that it is not stringent enough. Councilman Clark said we are not the enforcers of ordinances.

Hazel Casto asked if Chief Jordan influences Council. Councilwoman Tyler said she values his opinion but makes her own decisions. Councilman Savilla said he is influenced by anyone whose opinion respects but he makes the final decision. Councilman Clark said he has a lot of respect for Chief Jordan but makes his own decisions.

ADJOURNMENT:

COUNCILMAN CLARK MOVED FOR ADJOURNMENT WITH A SECOND BY COUNCILMAN RACER. THE MOTION CARRIED.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

Nitro City Council Meeting Minutes Tuesday, March 18, 2008

Mayor Rusty Casto called the meeting to order at 7:30 pm. Attending along with Mayor Casto were Recorder Rita Cox, Councilwomen Brenda Tyler and Gertie Estep, Councilmen Bill Javins, Bill Racer, A. A. "Joe" Savilla, and Bill Clark, Treasurer John Young, and Attorney Phil Sword. Absent was City Attorney Troy Giatras. The Invocation was given by Councilwoman Brenda Tyler and the Pledge of Allegiance was led by Recorder Rita Cox.

AGENDA ITEMS:

Council Minutes - March 4, 2008: COUNCILMAN A. A. "JOE" SAVILLA MOVED THE MINUTES OF MARCH 4, 2008 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILWOMAN BRENDA TYLER. VOTE WAS UNANIMOUS FOR THE MOTION. THE MOTION PASSED.

Citizen of the Month: Mayor Rusty Casto introduced Seth Easter, Nitro High senior, who is a four year state wrestling champion and winner of the Dutton award. He was accompanied by his father who is also his coach.

Financial Report/Budget 2008-2009: Treasurer John Young presented Council with a copy of the budget. He thanked all the Department Heads who had cooperated to make it possible. Councilman Savilla commented that all of the Council members had attended the budget meetings. Councilwoman Estep said she did not see the calendars on the budget. Mayor Casto said that this was next years budget and Treasurer Young said the calendar was to pay for itself by advertising. COUNCILMAN SAVILLA MOVED THE BUDGET BE ACCEPTED AS PRESENTED. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

Treasurer Young said that by staying tight within the budget he hoped for city to end the year in the black. Councilwoman Estep asked about paving and Mr. Young said he hoped to begin paying that in the spring. Councilman Javins asked if all expenses still went through the Mayor or Treasurer and Mr. Young said that was true. He said that the Board of Risk is paid in full.

Brownfield Update: Councilman Clark reported that a proposed cross doc hub for rail, truck and barge is being planned for the old Solutia property according to information he had received at a meeting earlier in the day. He said an off ramp from I64 may be a part of it. It is still in the development stages. He said that Solutia would not help with the landfill project and he felt they had a responsibility to help. He stated that he thought this property should be annexed into the city before the development is done. Recorder Cox said that her main concern was that no one from the current administration had been consulted about the development. John Adams of the Nitro Development Authority was consulted by the WV Port Authority. Councilman Clark said that he would like to have more information about annexation of this area and the "doughnut hole" area. Recorder Cox said he would have to consult with an attorney concerning annexation because she was not prepared to answer questions about it. COUNCILMAN CLARK MOVED THAT THE CITY PURSUE WITH THE CITY ATTORNEY THE VIABILITY OF PURSUING ANNEXATION OF THE 26 ACRES. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTING FOR THE MOTION WAS COUNCILMEN JAVINS, RACER, SAVILLA, CLARK, COUNCILWOMAN TYLER, AND RECORDER RITA COX. VOTING IN OPPOSITION WAS COUNCILWOMAN ESTEP. THE MOTION CARRIED.

WV Ethics Commission: Councilman Savilla referred to the letter from the WV Ethics Commission concerning his offer of a loan of \$50,000.00. The Ethics Commission has requested the city withdraw the request. Councilman Savilla said he had gotten a ruling that he could return his checks from the city.

Treasurer John Young said that the Police Dept. had been approached by the town of Sophia to purchase two-way radios that Nitro no longer uses. They have offered \$4500.00 for the radios. Councilman Savilla said we should check on the legality. Mayor Casto said that since it was to a sister agency the usual bidding practices may not be necessary. COUNCILMAN SAVILLA MOVED THAT PENDING A RULING ON THE LEGALITY THE POLICE DEPARTMENT BE ALLOWED TO SELL THE 17 TWO-WAY RADIOS NO LONGER USED BY THE CITY. THE MOTION WAS SECONDED BY

COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

Treasurer Young said that the mechanic for Public Works had recently retired. The current mechanic that is shared by the Police and Fire Department would be willing to take on the maintenance of the equipment for Public Works at the rate of \$15.50 per hour. Councilman Savilla asked if the mechanic would have time to do all three jobs. He questioned what would take priority. Captain Javins said he thought the departments could work it out. Captain King said the department heads and mechanics could prioritize the jobs. Councilman Savilla said that the three departments work very well together. John Young said in an emergency outside help could be called in to work on equipment. COUNCILMAN SAVILLA MOVED THE CITY MECHANIC BE PAID \$15.50 PER HOUR TO SERVICE VEHICLES FOR PUBLIC WORKS, FIRE DEPT. AND POLICE DEPT. WITH A SECOND BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Attorney Report: Attorney Phil Sword attended in place of City Attorney Troy Giatras. He said it was his understanding the gas line issue was still be looked at. The landfill situation was being taken care of by Mayor Casto. Councilman Clark said that the land lease on the gas line was not valid and needs to be addressed. He thinks the city should be compensated for the gas line and the city needs to enter negotiation with Tennessee Gas. He said the city should receive a lump sum payment and then work on a agreement. He said it has been three years since this first came up.

Councilwoman Estep asked if Mr. Giatras had determined whether Council needed to replace the Ward 3 Council seat left vacant by the resignation of Tim Harrison. Mayor Casto said that he thought it was alright to leave it vacant since the election was less than three months away. Councilman Savilla said that people in that Ward were well represented by the three at-large Council members. Councilwoman Estep said the Secretary of State's Office said it should be replaced to give eight Council members.

Planning Commission - Comprehensive Plan: Recorder Cox announced the Planning Commission will meet March 27, 2008 at 10:00 am in Council Chambers with Mark Felton and Michael Dougherty to get instruction on how to write a Comprehensive Plan for the City of Nitro. The public is invited.

COUNCILWOMAN TYLER MOVED CROSS LANES-NITRO LITTLE LEAGUE BE GRANTED PERMISSION TO PARADE AT 10:00 AM, APRIL 12, 2008 FROM PICKENS ROAD TO NITRO CITY PARK. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCIL COMMENTS:

Councilman Javins thanked all who helped make the budget process successful.

Councilman Racer also thanked those who helped with the budget. He also said he wanted the city to proceed with annexation.

Councilman Savilla thanked Councilwoman Tyler for the chocolate Easter egg. He said the show of cooperation in the budget process had encouraged him to run again for office.

Councilwoman Estep said they had a successful cantata and wished all a Happy Easter.

Councilman Clark thank Councilwoman Tyler for the Easter Eggs.

Councilwoman Tyler said she wants annexation to go on the ballot.

Recorder Cox said she had all the papers for filing for election.

PUBLIC COMMENTS:

Laura Mallett said she was concerned about the building inspector leaving.

COUNCIL WOMAN TYLER MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

Revenues LGS 12:20	Nitro	Municipality	Page 4
	01 GENERAL FUND REVENUE SUMMARY Revenu 2008-20		Approved Revisions
280	Reserve for Encumbrances		
299	Unencumbered Fund Balance (July 1)		152,075
301-01	Property Tax - Current Expense (pg. 3-NET)	638,514	
301-02-05	Prior Year Taxes		
301-06	Supplemental Taxes		
301-07	Tax Loss Restoration		
301-90	Property Tax - Excess Levy (pg 4-NET)	369,440	
302	Tax Penalties & Interest		
303	Gas & Oil Severance Tax	1,000	
304	Excise Tax on Utilities	286,368	
305	Business & Occupation Tax	921,642	
306	Wine & Liquor Tax	28,162	
307	Animal Control Tax		
308	Hotel Occupancy Tax		
309	Amusement Tax		
311	Insurance Premium Surtax		
312	Motor Vehicle Operator's Tax		
313	Horse & Dog Racing Tax		
320	Fines, Fees & Court Costs	53,732	
321	Parking Violations		
322	Regional Jail Operations Partial Reim.		
325	Licenses	40,000	
326	Building Permit Fees	429,944	
327	Miscellaneous Permits		
328	Franchise Fees	15,000	
329	Inspection Fees	1,950	········
330	IRP Fees (Interstate Reg. Plan)	12,300	
335	Private Liquor Club Fee		
336	Cemetery Revenues		
337	Dog Pound Fees		
338	Emergency Communication Fee		
339	Emergency Service Fee		
340	Parks & Recreation	31,086	
341	Municipal Service Fee	824,968	
342	Parking Meter Revenues		
343	Off Street Parking		
344	Collection of Delinquent Accounts		
345	Rents & Concessions	39,400	
346	Airport Revenues		
347	Jail Fees	132	
348	Special Assessments		
350	Refuse Collection		
351	Police Protection Fees		
352	Fire Protection Fees		

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	Budgeted			
01	GENERAL FUND REVENUE SUMMARY	Revenues	Approved	
		2008-2009	Revisions	
353	Planning Commission Revenue			
354	Landfill/Incinerator Fees			
355	Street Fees			
357	Housing Program Revenues			
358	Civic Center/Coliseum			
359	Floodwall Fees			
361	Charges For Services			
362	Charges to other Entities			
363	Ambulance Fees			
365	Federal Government Grants	168,000		
366	State Government Grants			
367	Other Grants	150,000		
368	Contributions from other Entities			
369	Contributions from other Funds			
370	Charges to other Funds			
371	Payment in-Lieu of Taxes			
372	Federal Payment in-Lieu of Taxes			
373	Flood Reimbursement			
374	Payroll Reimbursement			
375	Transfer from Rainy Day Funds			
376	Gaming Income			
377	Capital Lease Revenue			
378	Map Sales			
379	Gain/Loss Sale of Fixed Assets			
380	Interest Earned on Investment	313		
381	Reimbursements	408,378		
382	Refunds			
383	Sale of Fixed Assets			
384	Sale of Materials			
385	Commissions			
386	Insurance Claims			
387	Filing Fees			
388	Library Fees			
389	Accident Reports			
390	Bingo Revenue			
391	Recycling Program			
392	Property Rehabilitation			
393	Interest on Special Assessment			
394	Confiscated Property			
395	Employees Retirement Cont. (Police & Fire)	174,625		
396	Fair Market Value			
397	Video Lottery	223,620		
398	Proceeds from Sale of Bonds			
399	Miscellaneous Revenue			
	Grand Total	4 040 574	4E9 07E	
	01 General Fund Revenues	4,818,574	152,075	

Nitro

COAL SEVERANCE TAX FUND

02 COAL SEVERANCE FUND REVENUE SUMMARY		Budgeted Revenues 2008-2009	Approved Revisions
280	Reserve for Encumbrances		
299	Unencumbered Fund Balance (July 1)		
310	Coal Severance Tax	8,000	
380	Interest Earned on Investments		
381	Reimbursements		
382	Refunds		
	Grand Total		
	02 Coal Fund Revenues	8,000	

468 F	GENERAL GOVERNMENT	General	Fund	Coal Seve	rance Fund
	EXPENDITURES Account #401-#699	General Budget 2008-2009	Approved Revisions	Coal Budget 2008-2009	Approved Revisions
401	Open				
402	Economic Development				
403	Federal Grants				
404	State Grants				
405	Zoning Board				
406	Consumer Protection				
407	Civil Service			<u> </u>	
408	Insurance Program (Self-Insured)			<u> </u>	
409	Mayor's Office	42,690			
410	City Council	19,093			
411	Recorder's Office	40,676	5,000		
412	City Manager's Office		3,300		
413	Treasurer's Office	203,210			
414	Finance Office				
415	City Clerk's Office				
416	Police Judge's Office	6,000			
417	City Attorney	30,000			
418	City Auditor				
419	Main Street Program				
420	Engineering				
421	Community Development				
422	Personnel Office				
423	Purchasing Department				
424	Contribution to Commissions,				
	Boards, Authorities & Other Entities				
425	Enforcement Agency	53,959			
426	Litigation Reserve				
427	Rehabilitation of Property				
428	Acquisition of Property				
429	Clearance				
430	Program Planning				
431	Printing				
432	Other Grants				
433	Custodial				
434	Housing Authority				
435	Regional Development Authority				
436	Building Inspection	47,362			
437	Planning & Zoning				
438	Elections				
439	Data Processing				
440	City Hall	1,162,176	130,405		

Nitro	Municipality

	GENERAL GOVERNMENT	General Fund		Coal Severance Fund	
	EXPENDITURES (CONTINUED) Account #401-699	General Budget 2008-2009	Approved Revisions	Coal Budget 2008-2009	Approved Revisions
41	Other Buildings				
442	Internal Audit				
443	Charter Board	·			
444	Contributions and/or Transfers				
	to Other Funds				
565	Electrical Services				
566	Public Works Department	615,484			
567	Public Grounds				
568	Complaint Department				
569	Local Government Access Channel				
571	Parking				
590	Market House				
698	Transfers and/or Reimbursements				
	for Auditor Findings Only				
699	Contingencies**	5,709	4,562		
	ppropriate account prior to the expendi	ture of such funds			
					
G	Total General Government Expenditures	2,226,359	9,562		

Expenditures

LGS 12	:20 PUBLIC SAFETY	Genera	al Fund	Coal Severance Fund	
	EXPENDITURES Account #700-#749	General Budget 2008-2009	Approved Revisions	Coal Budget 2008-2009	Approved Revisions
700	Police Department	1,286,892	VeAISIOIIS	2000-2003	1/641910119
701	DARE Grant	1,200,032			
702	COPS Grant				
703	Investigative Services & Control				
704	Police -Special Duty				
705	City Jail				
706	Fire Department	733,995	12,108	8,000	
707	Dog Warden/Humane Society	7 000,000	12,100	0,000	
708	Watershed Project				
709	Ambulance Authority				
710	Dams & Dredging				
711	Comm. Center/Central Dispatch				
712	Traffic Engineering				
713	Civil Defense				
714	Flood Control/Soil Conservation				
15	Fire Hydrants				
716	Emergency Services				
717	Juvenile Justice Diversion Program				
718	Drug & Violent Crime Control Grant				
719	Local law Enforcement Block Grant				
720	Local law Enforcement Block Grant				
721	Local law Enforcement Block Grant				
722	Local law Enforcement Block Grant				
723	Local law Enforcement Block Grant				
724	Fire Distribution Fee				
	Total		1		
	Public Safety Expenditures	2,020,887	12,108	8,000	

Nitro

Municipality

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LGS 12:20 STR	EETS & TRANSPORTATION	Genera	l Fund	Coal Severance Fund	
	EXPENDITURES Account #750-#799	General Budget 2008-2009	Approved Revisions	Coal Budget 2008-2009	Approved Revisions
750 St	reets & Highways	35,000			
	reet Lights	57,000			
	gns & Signals				
	now Removal				
	entral Garage				
	reet Construction				
756 St	reet Cleaning				
757 Si	dewalks				
758 Ai	rports				
759 Pi	ıblic Transit				
760 Po	rt Authority				
	TOTAL				
	Streets & Transportation	92,000		1	

	HEALTH'S SANTATION	General Fund		Coal Severance Fund	
	EXPENDITURES Account #808-899	General Budget 2008-2009	Approved Revisions	Coal Budget Appro 2008-2009 Revision	
800	Garbage Department				
801	Landfill & Incinerator Department	177,000			
802	Recycling Center				
803	Local Health Department				
804	Other Health Programs				
805	Storm Sewer				
306	Water & Sewer				
307	Sewer-Source of Supply				
808	Water-Source of Supply				
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	T				
	Total lealth & Sanitation Expenditures	177,000		1	

Expenditures

Municipality

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LGS 12:20 **General Fund** Coal Severance Fund **CULTURE & RECREATION** General Coal **EXPENDITURES** Budget **Approved Budget Approved** 2008-2009 Revisions 2008-2009 Revisions Account #900-949 900 Parks & Recreation 901 Visitors Bureau Travel Council 902 Fair Associations/Festival 903 Swimming Pools 95,458 904 905 Community Center 906 Arts & Humanities 907 Youth Program 908 Playgrounds 909 Museum Commission Civic Center-Municipal Auditorium 910 911 Historical Commission 912 Civic Promotions 913 4-H CAMP 914 Rails to Trails 915 Ice Arena 72,868 916 Library 917 Law Library **Golf Course** 918 919 Stadium Total **Culture & Recreation Expenditures** 168,326

LGS 12	SOCIAL SERVICES	Genera	l Fund	Coal Severance Fund	
	EXPENDITURES Account #958-974	General Budget 2008-2009	Approved Revisions	Coal Budget 2008-2009	Approved Revisions
950	Beautification				
951	Aging Program (Senior Citizens)	20,000			
952	Cemeteries				
—— 953	Social Services				
954	Human Rights/Affirmative Action				
955	Human Resources				
956	Community Council				
957	Bingo Expenses				
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	Total	l	ł	1	
	Social Services Expenditures	20,000	,		

Nitro

Municipality

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General Fund Coal Severance Fund CAPITAL PROJECT **EXPENDITURES** General Coal Approved Revisions Budget 2008-2009 **Approved** Budget Revisions 2008-2009 Account #975-999 975 General Government 70,152 976 Public Safety 43,650 977 Streets and Transportation Health and Sanitation 978 200 Culture and Recreation 979 980 Social Services Total Capital Project Expenditures 114,002

Expenditures LGS 12:20

Nitro

Municipality

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EXPENDITURE RECAP

	General Fund		Coal Severance Fund	
SUMMARY	General Budget 2008-2009	Approved Revisions	Coal Budget 2008-2009	Approved Revisions
General Government Expenditures	2,226,359	139,967		
Public Safety Expenditures	2,020,887	12,108	8,000	
Street & Transportation Expenditures	92,000			
Health & Sanitation Expenditures	177,000			
Culture & Recreation Expenditures	168,326			
Social Services Expenditures	20,000			
Capital Project Expenditures	114,002			
GRAND TOTAL ALL EXPENDITURES	4,818,574	152,075	8,000	
GRAND TOTAL ALL REVENUES	4,818,574	152,075	8,000	
BUDGET OUT OF BALANCE PLEASE MAKE NECESSARY CORRECTIONS	0			

NITRO CITY COUNCIL MEETING MINUTES APRIL 1, 2008

Mayor Rusty Casto called the meeting to order at 7:30 pm. Attending along with Mayor Casto were Recorder Rita Cox, Councilmen A. A. "Joe" Savilla, Bill Javins, Bill Racer and Bill Clark, Councilwomen Gertie Estep and Brenda Tyler, and City Attorney Troy Giatras. City Treasurer John Young was not in attendance.

AGENDA ITEMS:

COUNCILWOMAN TYLER MOVED THAT THE MINUTES OF MARCH 18, 2008 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

First Reading - Bond Ordinance Authorizing the Design of Certain Extensions, Additions, Betterments and Improvements to Existing Public Sewerage Facilities of the City of Nitro and the Financing of the Cost Thereof, not Otherwise Provided, Through The Issuane By the City Not More Than \$314,000.00 in Original Aggregate, Principal Amount of Sewerage System Design Revenue Bonds. Series 2008 a (WV Water Development Authority): Providing for the Rights and Remedies of and Security for the Rights and Remedies of and Security for the Registered Owners of Such Bonds, Authorizing Execution and Delivery of All Documents Relating To the Issuance of Such Bonds; Approving, Ratifying and Confirming a Loan Agreement Relating to Such Bonds; Authorizing the Sale and Providing for the Terms and Provisions of Such Bonds: And Adopting other Provisions Relating Thereto. Danny Lewis of the Nitro Sanitary Board introduced Dennis Vaughn, attorney for the Sanitary Board. Dennis Vaughn presented Council with copies of the information for first reading of the ordinance. The Nitro Regional Wastewater Utility adopted the petition at it's last regularly scheduled meeting to request that Council issue up to \$314,000.00 in design revenue bonds. He said that bonds are purchased through the Water Development Authority at a rate of 3% and can escalate to 5% if not taken out in a two year time period. He stated there will be no increase in rates and will be within the current rate structure. He said they are not paid out of any taxes of the city and are paid for out of the utility. Councilman Racer asked if rates will be raised and Mr. Vaughn stated they would not. COUNCILMAN SAVILLA MOVED THAT COUNCIL APPROVE THE FIRST READING OF THE BOND ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSTIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF NITRO. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. THE MOTION PASSED.

RC and D Board: Mayor Casto explained to Council that with the resignation of former City Code Enforcement Officer Brian Casto, the city was left without a representative to the Greater Kanawha Resource Conservation & Development Board. COUNCILWOMAN TYLER MOVED THAT IVAN MEADOWS BE APPOINTED AS THE NITRO REPRESENTATIVE TO THE RC&D BOARD. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION'S PASSAGE.

Longevity Pay/Fire Department: Councilman Savilla said that he wanted to confirm that the Fire Department would receive the longevity pay due them as stated in the April 3, 2007 minutes and it would date back to 2003 when the Police Dept. began receiving it. COUNCILMAN SAVILLA MOVED THAT PAST DUE LONGEVITY PAY BE GIVEN TO FIRE DEPARTMENT EMPLOYEES WHEN FUNDS BECAME AVAILABLE AS MOVED SECONDED AND PASSED COUNCIL APPROVAL IN THE APRIL 3, 2008 COUNCIL MEETING. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. THE MOTION PASSED WITH A UNANIMOUS VOTE BY COUNCIL.

Sale of Police two-way radios to Sophia, WV Police Department: Recorder Cox reported that Capt. Javins had talked with the WV Auditor's Office and was given approval to proceed with the sale of the two-way radios to Sophia, WV. The fact that it was a sister agency and each item was valued at

less that \$1000.00 each, the sale could proceed as Council had approved at the last meeting pending a decision from the Auditor's Office.

Treasurer's Report: Treasurer John Young was not present. Mayor Casto reported that the City of Nitro was currently on about a 30 days out on unpaid bills. He said if there were any questions to call him or Mr. Young. He thanked Dept. Heads, Council and Mr. Young.

Attorney's Report: Troy Giatras reported to Council that as a result of the court ordered mediation between Tifney Terry and the City of Nitro, subject to ratification by Council, the agreement stated Tifney Terry was to pay a \$550.00 civil penalty to the City of Nitro, each party would pay their own attorney fees, and Ms. Terry would release the City of Nitro from any and all claims concerning her employment. COUNCILMAN SAVILLA MOVED THAT COUNCIL RATIFY THE TERMS OF THE MEDIATION AS OUTLINED BY ATTORNEY GIATRAS. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. Councilwoman Estep said it was her understanding the fine was to be paid to the court. Attorney Giatras read the section that said the civil penalty was \$550.00 and was to be paid to the city. THE MOTION PASSED WITH A UNANIMOUS VOTE.

Sanitary Board Budget: Danny Lewis presented Council with a copy of the 2008-2009 budget for the Nitro Regional Wastewater Utility. COUNCILMAN CLARK MOVED THAT A COPY OF THE WASTEWATER UTILITY BUDGET FOR 2008-2009 BE MADE A PART OF THE MINUTES WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Certification of Candidates: Recorder Cox introduced Leonard Womble and Bess Stahl as appointed Ballot Commissioner for the 2008-2009 election. Recorder Cox said there were 5 candidates for mayor. The first addressed was Councilwoman Gertie Estep who is a candidate for Mayor. Recorder Cox said that she did not have the required 25 signatures of registered voters to qualify. COUNCILWOMAN TYLER MOVED THAT COUNCIL ACCEPT THE PETITIONS AND RECONVENE THE FOLLOWING TUESDAY, APRIL 8 AT 7:30 PM TO CERTIFY PENDING CONFIRMATION OF SIGNATURES AT WHICH TIME COUNCIL WOULD DRAW FOR BALLOT POSITION. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. City Attorney Giatras gave the opinion that Council could accept the petitions without certifying at this date. He thought an updated voters registration list would lend more clarity. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS. Recorder Cox gave the names of all candidates and the number of signatures on each petition.

Council Comments: Councilman Javins said that Chris Amick and David Hight should be attending the next Council Meeting to give an update on the Boat Launch. He said that everything was still on track to break ground on the boat launch.

Councilman Savilla thanked all the candidates who are running and participating in the election process.

Councilman Clark said he welcomed all the new candidates.

Recorder Cox thanked those who stayed with her while she stayed open till midnight to wait for late filers for offices.

Councilman Clark asked about the status of the gas line right of way. Attorney Giatras said he will be working on it.

Public Comments: Bob Schamber said he would buy vacuum cleaners for the library and courtroom. Recorder Cox said that Treasurer Young had approved the purchase of two new tires for the Senior Van today.

Adjournment: COUNCILWOMAN TYLER MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

CITY OF NITRO CERTIFIED CANDIDATES JUNE 3, 2008 ELECTION

<u>MAYOR</u>

RUSTY CASTO 2187 21ST ST. 755-0705

DON KARNES 101 HOLLY ST. 727-2142

JOHN MONTGOMERY 214 BOOKHAVEN DR. 776-6458

GERTIE ESTEP 902 MAIN AVENUE 755-4365 RECORDER

KAREN FRITZ 100 TEA TABLE RD. 755-3453

RITA COX 3519 B 2ND AVE. 755-0707

COUNCIL AT LARGE

ROBERT (B0B) FIELDS 2109 3RD AVE. 539-4900

JAMES "JIM" MCKAY 1120 BENAMATI AVE. 727-8514

SHANE MCCOMAS 1121 WEST 11TH ST. 755-1568

BRENDA TYLER 106 OKEY AVENUE 755-3561 DOUG MEADOWS 210 DUPONT AVE. 881-8780

DAVE CASEBOLT 1529 115TH STREET 419-3322

BILL CLARK 178 40TH ST. 755-3003

WARD 1 COUNCIL

LAURA N. MALLETT 112 FAIRVIEW DR. 776-1413

A. A. "JOE" SAVILLA 4034 4OTH ST. 755-3284 541-1039

WARD 2 COUNCIL

BILL RACER 516 5TH ST. 982-0551

WARD 3 COUNCIL

CRAIG A. MATTHEWS 110 DUPONT AVE. 755-3117

RALPH E. MCKINNEY JR. 612 DUPONT AVE. 755-1536

WARD 4 COUNCIL

FRANK GROVER 1323 VALENTINE CIRCLE 727-8850

BILL JAVIN'S 1122 MAIN AVENUE 539-5211

NITRO REGIONAL WASTEWATER UTILITY

Fiscal Year Budget 2008-2009

ACOUNT NAME	ACOUNT NO.	BUDGET	MONTHLY BUDGET
DOMESTIC SERVICE	3101	\$1,854,634	\$154,552.83
INDUSTRIAL SERVICE	3131	\$6,000	\$500.00
PENALTIES	3170	\$54,636	\$4,553.00
INTEREST INCOME	3201	\$45,408	\$3,784.00
UTILITY TAX INCOME	3300	\$50,000	\$4,166.67
PUTNAM PSD		\$48,000	\$4,000.00
MISCELLANEOUS INCOME	3162	\$49,380	\$4,115.00
TOTAL INCOME		\$2,108,058	\$175,672
BILLING COLLECT/ACCT.	7951	\$60,000	\$5,075.00
EQUIPMENT RENTAL	7036	\$1,500	\$125.00
LABOR & RELATED EXPENSES	8007	\$729,743	\$60,811.92
MISC. GENERAL EXP.	8010	\$30,000	\$2,500.00
PLANT OPERATING EXPENSE	7461	\$4,800	\$400.00
PROPERTY & LIABILITY INS.	7980	\$160,000	\$13,333.33
RENT	8030	\$8,400	\$700.00
SHOP & LAB	7246	\$19,000	\$1,583.33
SLUDGE RELATED	7441	\$13,000	\$1,083.33
SPECIAL SERVICES	7970	\$50,000	\$4,166.67
SUPPLIES	7930	\$31,662	\$2,638.50
SYSTEM MAINT. & REPAIR	7952	\$96,000	\$6,648.00
UTILITIES	7934	\$135,000	\$11,250.00
VEHICLE EXPENSES	7931	\$42,000	\$3,500.00
DEBT SERVICE		\$456,866	\$38,072.17
RESERVE & REPLACEMENT		\$270,087	\$22,507.25
TOTAL EXPENSE		\$2,108,058	\$175,672

PETITION OF THE NITRO REGIONAL WASTEWATER UTILITY TO THE COUNCIL OF THE CITY OF NITRO

Whereas, the City of Nitro (the "City") owns a wastewater collection and treatment system, (the "System") which System is under the operation and control of the City of Nitro Regional Waste Water Utility (the "Utility"), and

Whoreas, the System requires the following.

- 1. Replace pre-treatment hardworks at the plant.
- 2. An additional garage/maintenance building to house equipment needs to be built.
- 3. Replace existing flowmeters with one master flowmeter for officient monitoring.
- 4. Replacement of Pump Station No. 7.
- 5 Realignment of an 8" sewer between an alley and Washington avenue; and

Whereas, S & S Engineers Inc., consulting engineers for the Utility has advised that the foregoing items constituting the project (the "Project") will cost an estimated \$2,250,000. Further such Engineers have advised that the West Virginia Infrastructure and Jobs Development Council will provide a design loan for the Project in an amount up to \$313,929 to be funded by the State of West Virginia Water Development Authority founded upon the City of Nitro issuing its Sewerage System Development Bonds in such amount.

Whereas, pursuant to the provisions of Chapter 16, Article 13. Section 5 of the West Verginia (lode of 1931, as amended the Utility of the City hereby petitions the Council of the governing body of the City (the "Council") to enact an ordinance to authorize the issuance of not more than \$314,000 of the City's Sewerage System Design Revenue Bonds. Senies 2008 A (the "Series 2008 A Bonds"), to pay the engineering design costs and related fluancing costs associated therewith relating to the wastewater treatment plant upgrade consisting of new headworks, garage/maintenance building, and flowmeter, design the pump station #7 replacement and to reimburse Nitro for costs incurred for an emergency sewer line replacement along Washington Avenue (the "Project"); and

Whereas, it has been determined by the Utility that such design improvements involving certain additions, improvements and betterments to the System are necessary and desirable for the Project, and the costs of such design improvements are approximately \$314,000.00; and

Whereas, the Utility has determined that the costs for the additions, improvements and betterments to the system should be paid from the issuance of bends payable from the revenues of the system to be purchased initially by the West Virginia Water Development Authority and any additional balance through other financial sources.

Now Therefore Be It Resolved By the Nitro Regional Wastewater Utility.

1. That the City Council is requested to issue its sewer system design revenue bonds (the "Sewer System Design Revenue Bonds") in an amount not to exceed \$314,000.00 in order to finance certain costs of making the additions, improvements and betterments to the system, and

0065

the Project hereinbefore defined, as the same will be later more specifically defined by the ordinance authorizing the issuance of the Series 2008 A Bonds

2. That the City Council take such other action as may be required in order to issue the

CITY OF NITRO

BOND ORDINANCE

ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS. ADDITIONS. **BETTERMENTS** IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF NITRO AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY NOT MORE THAN \$314,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR REGISTERED **OWNERS** OF SUCH BONDS: AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS: AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF 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 enacted pursuant to the provisions of Chapter 16, Article 13, and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

- A. The City of 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 sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain extensions, additions, betterments and improvements to the existing public sewerage facilities of the Issuer (the design of such herein known as the "Project") and at the costs estimated in Section 2.01 hereof.
- C. In order to complete the Project, the Issuer has entered into a Contract with the Consulting Engineer for the engineering services. The Issuer intends to temporarily

finance a portion of the costs of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority") pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewerage System Design Revenue Bonds in one single series, being the Sewerage System Design Revenue Bonds, Series 2008 A (West Virginia Water Development Authority), in the aggregate principal amount of not more than \$314,000 (the "Series 2008 A Bonds"); to temporarily finance a portion of the costs of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2008 A Bonds prior to and during a period not exceeding 6 months after completion of the Project; amounts which may be deposited in the Reserve Account (as hereinafter defined) for the Series 2008 A Bonds; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority; discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2008 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the Project and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2008 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that its Series 2008 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, in form satisfactory to the respective parties, to be approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2008 A Bonds as to liens, pledge and source of and security for payment being the Issuers: (i) Sewer Revenue Bonds, Series 1995 A, dated July 27, 1995, issued in the original aggregate principal amount of \$373,000 (the "Series A 1995 Bonds") and held by the State of West Virginia Water Development Authority; (ii) Sewer Revenue Bonds, Series 1996, dated December 10, 1996 issued in the original aggregate principal amount of \$4,575,502 (the "Series A 1996 Bonds") and held by the State of West Virginia Water Development Authority; (iii) Sewer Revenue Bonds, Series 2000 A dated June 28, 2000, issued in the original aggregate principal amount of \$2,050,000 (the "Series A 2000 Bonds") and held by the State of West Virginia Water Development Authority; (iv) Sewer Revenue Bonds, Series 2001 A dated June 5, 2001, issued in the original aggregate principal amount of \$543,900 (the "Series A 2001 Bonds") and held by the State of West Virginia Water Development Authority; (collectively, the "Prior Bonds"). The Series 2008 A Bonds shall be issued on a parity with the Prior Bonds. Prior to the issuance of the Series 2008 A Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Holders of the Prior Bonds to the issuance of the Series 2008 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

- H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Series 2008 A Bonds and the Prior Bonds and to make payments into all funds and accounts and other payments provided for herein.
- I. The Issuer has complied with all requirements of West Virginia law, the Loan Agreement (hereinafter defined) relating to authorization of the Project and the System and issuance of the Series 2008 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the Authority.
- J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board and the Sanitary Board has petitioned the Governing Body to issue the Series 2008 A Bonds for the purposes set forth herein.
- K. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.
- Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2008 A Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2008 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.
- Section 1.04. <u>Definitions</u>. The following terms shall have the following meanings herein unless the context expressly requires otherwise:
- "Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.
- "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2008 A Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.
- "Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.
 - "Board" or "Sanitary Board" means the Sanitary Board of the Issuer.

"Bondholder", "Holder of the Bonds", "Holder", "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

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

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 2008 A Bonds and the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Closing Date" means the date upon which there is an exchange of the Series 2008 A Bonds for all or a portion of the proceeds of the Series 2008 A Bonds from the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

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

"Consulting Engineers" means S & S Engineering, Inc., Charleston, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Contract" means the Contract for preconstruction engineering services for the Project by and between the Issuer and the Consulting Engineer.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the costs of the Project.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

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

"Governing Body" means the City Council of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

"Herein", "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Issuer" means the City of Nitro, a municipal corporation and political subdivision of the State of West Virginia, 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 heretofore entered, or to be entered into, by and between the Issuer and the Authority providing for the purchase of the Series 2008 A Bonds from the Issuer by the Authority, the form of which shall be approved and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2008 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2008 A Bonds Reserve Account.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance

expenses (other than those capitalized as part of the Costs), fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding" when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond cancelled by the Bond Registrar, at or prior to said date; (ii) any Bond, for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Parity Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority.

"Prior Bonds" means collectively the Series 1995 Bonds, the Series 1996, the Series 2000 Bonds, and the Series 2001 Bonds.

"Prior Ordinances" means the ordinances of the Issuer, as supplemented, authorizing the Prior Bonds.

"Project" means the Project as described in Section 1.02B hereof.

"Qualified Investments" means and includes the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America:
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;
- (f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;
- (g) Repurchase agreements or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above or fully insured by the FDIC, with member banks of the Federal Reserve system or banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;
- (h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended, including, without limitation, authorized pools of investments operated by such State Board of Investments; and
- (i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"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 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 the this Ordinance.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Series 2008 A Bonds and the Prior Bonds.

"Reserve Requirement" means the amounts required to be on deposit in any Reserve Account.

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

"Series 1995 A Bonds" means the Sewer Revenue Bonds, Series A 1995, dated July 27, 1995, issued in the original aggregate principal amount of \$373,000 and held by the State of West Virginia Water Development Authority

"Series 1996 A Bonds" means the Sewer Revenue Bonds, Series A 1996, dated December 10, 1996, issued in the original aggregate principal amount of \$4,575,502 and held by the State of West Virginia Water Development Authority

"Series 2000 A Bonds" means the Sewer Revenue Bonds, Series A 2000, dated June 28, 2000, issued in the original aggregate principal amount of \$2,050,000 and held by the State of West Virginia Water Development Authority

"Series 2001 A Bonds" means the Sewer Revenue Bonds, Series A 2001, dated June 5, 2001 issued in the original aggregate principal amount of \$543,800 and held by the State of West Virginia Water Development Authority.

"Series 2008 A Bonds" means the Sewerage System Design Revenue Bonds. Series 2008 A (West Virginia Water Development Authority), of the Issuer, authorized by this Ordinance.

"Series 2008 A Bonds Project Trust Fund" means the Series 2008 A Bonds Project Trust Fund established by Section 5.01 hereof.

"Series 2008 A Bonds Reserve Account" means the Series 2008 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2008 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 2008 A Bonds in the then current or any succeeding year.

"Series 2008 A Bonds Sinking Fund" means the Series 2008 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the sinking funds established for the Prior Bonds and the Series 2008 A Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2008 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2008 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

"System" means the complete existing public sewerage system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever.

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

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations: and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF THE PROJECT

Section 2.01. <u>Authorization of the Project</u>. There is hereby authorized and ordered the Project at an estimated cost of not to exceed \$314,000, which will be paid in part from proceeds of the Series 2008 A Bonds. The proceeds of the Series 2008 A Bonds hereby authorized shall be applied as provided in Article VI hereof.

The cost of the Project is estimated not to exceed \$314,000 of which approximately \$314,000 will be obtained from the proceeds of the Series 2008 A Bonds and \$______ as deferral from the Consulting Engineers.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2008 A Bonds, funding the reserve account for the Series 2008 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2008 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2008 A Bonds of the Issuer. The Series 2008 A Bonds shall be issued in one series, as a single bond, designated as "Sewerage System Design Revenue Bonds, Series 2008 A (West Virginia Water Development Authority)", in the principal amount of not more than \$314,000, which shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2008 A Bonds remaining after funding of the Series 2008 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2008 A Bonds Project Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 2008 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2008 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2008 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2008 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a debt service schedule attached, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2008 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest as specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2008 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2008 A Bonds shall cease to be such officer of the Issuer before the Series 2008 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. The Series 2008 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2008 A Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on the Series 2008 A Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2008 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2008 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2008 A Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2008 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging or transferring the registered Series 2008 A Bonds are exercised, Series 2008 A Bonds shall be delivered in

accordance with the provisions of this Bond Legislation. All Series 2008 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2008 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of any Series 2008 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2008 A Bonds or, in the case of any proposed redemption of such Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Series 2008 A Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2008 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2008 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2008 A Bonds shall be secured by a first lien on the Net Revenues derived from the System on a parity with the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2008 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2008 A Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 2008 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may

reasonably require;

- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2008 A Bonds to the original purchasers;
 - C. An executed and certified copy of the Bond Legislation;
 - D. An executed copy of the Loan Agreement; and
- E. The unqualified approving opinion of bond counsel on the Series 2008 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2008 A Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2008 A BOND)

UNITED STATES OF AMERICA STATE OF WEST VIRGINIA CITY OF NITRO SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. AR-1 \$	
KNOW ALL MEN BY THESE PRESENTS: That on this the day of 2008, the CITY OF NITRO, a municipal corporation and political subdivision of the State of West Virginia in Calhoun County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, a hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY the "Authority") or registered assigns the sum of DOLLARS (\$	on ue as Y of chally nd he ril rst est he
Principal installments of this Bond are payable in any coin or currency which, on the lates of payment of such installments, is legal tender for the payment of public an orivate debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent" The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The City National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof. This Bon 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 prescribe by, and otherwise in compliance with, the Loan Agreement by and between the Issue and the Authority dated	nd est "). he nal he be nd he
This Bond is issued (i) to pay a portion of the costs of design related to the acquisition and construction of certain extensions, additions, betterments an improvements to the public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public sewerage system of	nd ay

the Issuer, the Project, and any further extensions, additions, betterments or

improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on _______, 2008, and a Supplemental Resolution duly adopted by the Issuer on _______, 2008 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS WITH THE ISSUER'S (1) SEWER REVENUE BONDS, SERIES 1995 A, DATED JULY 27, 1995. ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$373,000 (THE "SERIES 1995 A BONDS"): (2) SEWER REVENUE BONDS, SERIES 1996 A, DATED DECEMBER 10, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,502 (THE "SERIES a 1996 BONDS"); (3) SEWER REVENE BONDS, SERIES 2000 A, DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2.050,000 (THE "SERIES 2000 A BONDS"); AND (4) SEWER REVENE BONDS, SERIES 2001 A, DATED JUNE 5, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$543,800 (THE "SERIES 2001 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2008 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 monies in the Series 2008 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds; provided however, that, so long as there exists in the Series 2008 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here

made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time. form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the CITY OF 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 the day and year first written above.

[SEAL]		
ATTEST:	Mayor	
Recorder		

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

Bond Legislati		ries 2008 A Bonds described in the within-mentioned y registered in the name of the registered owner set below.
Date:	, 2008.	
		THE CITY NATIONAL BANK, as Registrar
		By:

EXHIBIT A

RECORD OF ADVANCES

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

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

within	Bond	and	does		irrevocabl				
WILLIAM	Dona	and	does	Hereby		, Attorney			
	n the book of substitut		U		the within	Bond of the	e said Issi	aer with	full
	Dated:			_,					
In the p	resence of	<u>:</u>							

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2008 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 it to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, is hereby approved and incorporated in this Bond Legislation.

Section 3.12. Filing of Amended Schedule. Upon completion of the Project, the Issuer will file with the Authority a schedule of the Series 2008 A Bonds, the form of which will be provided by the Authority, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund (established by Prior Ordinance):
- (2) Renewal and Replacement Fund; and
- (3) Series 2008 A Bonds Project Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 2008 A Bonds Sinking Fund; and
- (2) Series 2008 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation. All monies in the Revenue Fund shall be disposed of only in the following manner and order of priority:

- (1) The Issuer shall first, each month, transfer from the Revenue Fund to pay current Operating Expenses of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission the amount required by Prior Ordinances to pay interest on the Prior Bonds; and (ii) remit to the Commission commencing 3 months prior to the first date of payment of interest on the Series 2008 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2008 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2008 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 2008 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.
 - (3) The Issuer shall next, on the first day of each month, transfer from the

Revenue Fund and simultaneously (i) remit to the Commission the amounts as required by Prior Ordinances to pay principal on the Prior Bonds; and (ii) remit to the Commission commencing 3 months prior to the first date of payment of principal of the Series 2008 A Bonds, for deposit in the Series 2008 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2008 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2008 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission the amounts as required by Prior Ordinances to be deposited in the Prior Bonds Reserve Accounts; and (ii) remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2008 A Bonds, if not fully funded upon issuance of the Series 2008 A Bonds, for deposit in the Series 2008 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2008 A Bonds Reserve Requirement; provided that, no further payments shall be made into the

Series 2008 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 2008 A Bonds Reserve Requirement. Monies in the Series 2008 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2008 A Bonds as the same shall come due, when other monies in the Sinking Fund are insufficient therefor, and for no other purpose.

(5) The Issuer shall next, on the first day of each month, from the monies remaining in the Revenue Fund, simultaneously transfer (i) to the Commission for deposit to the Depreciation Reserve Funds until there has been accumulated therein the sum of \$5,000; and (ii) 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 any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Funds.

Monies in the Series 2008 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2008 A Bonds as the same shall become due. Monies in the Series 2008 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2008 A Bonds as the same shall come due, when other monies in the Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2008 A Bonds Sinking Fund shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during the Project, as applicable, be deposited in the Series 2008 A Bonds Project Trust Fund, and following completion thereof, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2008 A Bonds.

Any withdrawals from the Series 2008 A Bonds Reserve Account, which result in a reduction in the balance of such account to below the Reserve Requirement thereof, shall be restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2008 A Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective Reserve Accounts in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2008 A Bonds Sinking Fund, or the Series 2008 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of

the Series 2008 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2008 A Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2008 A Bonds Sinking Fund, and the Series 2008 A Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2008 A Bonds, under the conditions and restrictions set forth herein.

- B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.
- C. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 2008 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

- D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.
- E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.
- F. The monies in excess of the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.
- G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as herein above provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; <u>provided</u>, <u>however</u>, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.
- H. The Gross Revenues of the System shall only be used for purposes of the System.

ARTICLE VI

APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2008 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

- A. From the proceeds of the Series 2008 A Bonds, there shall first be deposited with the Commission in the Series 2008 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2008 A Bonds for the period commencing on the date of issuance of the Series 2008 A Bonds and ending 6 months after the estimated date of completion of the Project.
- B. Next, from the proceeds of the Series 2008 A Bonds, there shall be deposited with the Commission in the Series 2008 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2008 A Bonds Reserve Account.
- C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2008 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2008 A Bonds Project Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 2008 A Bonds.
- D. After completion of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2008 A Bonds shall be expended as approved by the Authority.

Section 6.02. Disbursements of Bond Proceeds.

The Issuer shall each month provide the Authority with a requisition for the costs incurred for the Project, together with such documentation as the Authority shall require. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of the proceeds of the Series 2008 A Bonds from the Series 2008 A Bonds Project Trust Fund shall be made only after submission to, and approval from, the Authority of a certificate, signed by an Authorized Officer stating that:

- (1) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
- (2) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
 - (3) Each of such costs has been otherwise properly incurred; and
 - (4) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2008 A Bonds Project Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2008 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2008 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2008 A Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2008 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2008 A Bonds shall ever have the right to compel the exercise fo the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues: Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2008 A Bonds shall be secured by a first lien on the Net Revenues derived from the System on a parity with each other and with the lien on Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted February 15, 2005, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2008 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rate and charges initially established for the System in connection with the Series 2008 A Bonds shall prove to be insufficient to produce the amounts required by this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the amounts required by this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, lease, mortgage or in any manner dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances and with the written consent of the Authority.

So long as the Series 2008 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 2008 A Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2008 A Bonds in accordance with Article X hereof. Any balance remaining after the payment of the Series 2008 A Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Revenue Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$200,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Governing Body may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$200,000, shall be deposited by the Issuer into the Renewal and Replacement Fund. Such payments of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said fund by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the source fiscal year for such sales, leases or other dispositions of such properties, shall be in excess of \$200,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for

the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2008 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2008 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2008 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2008 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2008 A Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations of parity obligations set forth in the Prior Ordinances shall be applicable. In addition no additional Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2008 A Bonds pursuant to this Ordinance, without the prior written consent of the Authority and without complying with the conditions and requirements herein provided.

No such additional Parity Bonds shall be issued except for the purposes of financing the costs of, additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

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

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which has expired (without successful appeal) prior to the issuance of such Parity Bonds.

All covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and account created in this Ordinance required for and on account of such Parity Bonds, in addition to the payments required for the Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to the lien on and source of and security for payment from such revenues, with the Bonds.

No Parity Bonds shall be issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance with respect to the Bonds then Outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of issuance of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of

this Ordinance.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority such documents and information as they may reasonably require in connection with the Project; the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time

following commencement of the Project.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Authority, or any other original purchaser of the Series 2008 A Bonds and shall mail in each year to any Holder or Holders of the Series 2008 A Bonds, requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any Bonds, notes or other obligations outstanding. The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent

legally required) in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof, and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2008 A Bonds and shall submit the report to the Authority, or any other original purchaser of the Series 2008 A Bonds. Such audit report submitted to the Authority shall include a statement that notes whether the results of test disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Prior to, during and after completion of the Project, the Issuer shall also provide the Authority, or its agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2008 A Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Recorder of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, (i) to provide for all Operating Expenses of the System; (ii) so long as the Prior Bonds are Outstanding, always provide revenues on each fiscal year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Bonds and to make the payments required into Reserve Account; and (iii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 2008 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2008 A Bonds including the Prior Bonds; provided that, in the event that, an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2008 A Bonds, if applicable, are funded at least at the requirement therefor, such sum need only equal 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2008 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2008 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04.

The Issuer hereby covenants to commence enactment of such ordinance or

restituants on, obol per oceanised et a increase at the rates age to harpest for the services and they it is entitled states of the expension of the increase of the increase

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF Section? THE Overstime Budget and Montelle Forms to be listure shall appeally, not least Anadamore of direction in the company of the conference conduction acattailed coal growth understant than estimated meanues and white the the operation and maintenance is sithe System during the interested in Eris cally savened shall pribrit comprendent hours of the interior with the structure of the struct thepsychithmen fortherian eration and envintenance of the Systems had be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation be ore pistered perfessional as usincer, which finding approve of the isscentiaendetionsisted betete he details be prepase effected in secretary for such increased unt anpandeturas fortibe captration anchere insteam of afther systems and any such insteased expenditures shall be made until the Issuer shall have approved such finding and recommendation by parsonaling buty adopted and paintees ade expenditures interess of designated especial the first and the special charther pertificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annumbourder susultation reconstitution countries in an annumbourder susultation such annumbourder susultation and annumbourder rendomaline to the 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 therewithing as her conthibution days not adapting the reof and shall while is essailable such budgets and all resolutions authorizing increased expenditures for comfort. saperation and inacipation of the System at all reasonable itimes to any different of any of the ressuer any ane or atting far and in behalf of such Holder of any Boards water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenammencing pant he day house, conversely be the system. Accordingly every owner, tenammencing pant he day house, conversely be completed by the system of the system, to the system of the sy Service Commission of West Virginia, shall connect with and use the System and shall cease the Section 7111. Engineering Services and Operating Personnel. The Issuer shall cease the use of all other means to the contection, treatment and disposal of sewage and wastel manual fred sperations personnel properly certified by the State to operate the transportation by such rother 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, testation occupant sharif, anter a sweather the availability of the System, pay the water allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the Aproviding 86 any decrines which would compete with services provided by the System. matter and which is not so connected with the System is hereby declared and found to be a hazard to the health; safety connected with the System is hereby declared and found to be a hazard to the health; safety connected wethers of the linearity of the listuer and a problechall affect which shall be a charge the the september of the linear the system and ptakenal by proceedings and proceedings for the jenforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized than the Actorifications of the Charles and Actorifications of the Charles and Actorifications of the Actorification of t complete in the part of the pa

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of the System or the water system until all delinquent

charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water system is not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders thereof.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. The Issuer hereby covenants and agrees that so long as the Series 2008 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not

less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

- (3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.
- (4) FIDELITY BONDS will be provided as to every officer and employee of the Issuer having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.
- (5) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.
- (6) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

<u>Section 7.16. Mandatory Connections.</u> 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 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 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a

revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the Project, all orders and approvals from the West Virginia Infrastructure and Jobs Development Council necessary for the Project and the operation of the System and all approvals of issuance of the Series 2008 A Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, or other state, federal or local bodies in regard to the Project and the operation, maintenance and use of the System.

Section 7.19. Reserved

<u>Section 7.20</u>. <u>Securities Law Compliance</u>. The Issuer will provide the Authority. in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

<u>Section 7.21</u>. <u>Contracts; Public Releases</u>. A. The Issuer has entered into a contract with the Consulting Engineer for the Project.

B. The Issuer shall list the funding provided by the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any dedication of the Project.

ARTICLE VIII

INVESTMENT OF FUNDS: NON ARBITRAGE

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Resolution, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, The Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2008 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and to assure the exclusion of interest, if any, on the Series 2008 A Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate and Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2008 A Bonds as a condition to issuance of the Series 2008 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2008 A Bonds as may be necessary in order to maintain the status of the Series 2008 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2008 A Bonds which would cause any bonds, the interest, if any, on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority from which the proceeds of the Series 2008 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from

ARTICLE VIII

INVESTMENT OF FUNDS: NON ARBITRAGE

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Resolution, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, The Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2008 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and to assure the exclusion of interest, if any, on the Series 2008 A Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate and Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2008 A Bonds as a condition to issuance of the Series 2008 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2008 A Bonds as may be necessary in order to maintain the status of the Series 2008 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2008 A Bonds which would cause any bonds, the interest, if any, on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority from which the proceeds of the Series 2008 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from

taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2008 A Bonds and any additional information requested by the Authority.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2008 A Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2008 A Bonds; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on their respective parts relating to the Series 2008 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2008 A Bonds, and such default shall have continued for a period of 30 days after the Issuer, as appropriate, shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or
 - (4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner or Bondholder of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners or Bondholders including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners or Bondholders of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners, provided that all rights and remedies of Holders of the Series 2008 A Bonds shall be on a parity with those of the Holders of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates,

rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

Such receiver, in the performance of the powers herein above conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

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

ARTICLE X

PAYMENT OF BONDS AND DEFEASANCE

Section 10.01. Payment of Series 2008 A Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holders of the Series 2008 A Bonds, the principal of and interest due or to become due thereon at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2008 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2008 A Bonds from gross income for federal income tax purposes.

Section 10.02. Defeasance of Series 2008 A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all of the Series 2008 A Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2008 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2008 A Bonds from gross income for federal income tax purposes.

Series 2008 A Bonds for the payment of which either monies in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide monies which, together with the monies, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 2008 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 2008 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either monies in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide monies which, together with other monies, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 2008 A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor monies deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 2008 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and

in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2008 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2008 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2008 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2008 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2008 A Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2008 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended with the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2008 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2008 A Bonds.

<u>Section 11.04</u>. <u>Headings, Etc.</u> The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed; Prior Ordinance. 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, provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive) so long as the Prior Bonds are outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the 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.

<u>Section 11.07</u>. <u>Effective Date</u>. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in Charleston Gazette, a qualified newspaper published and of general circulation in the City of Nitro, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2008 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: April \$\frac{9}{2}\$, 2008

Passed on Second Reading: April \$\frac{2}{2}\$, 2008

Passed on Final Reading May 20, 2008

Following Public Hearing:

Mayor

ARTICLE VIII INVESTMENT OF FUNDS, NON ARBITRAGE\

Section 8.01 Inve	stments
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Section 8.02 Arbitrage and Tax Exemption

ARTICLE IX DEFAULT AND REMEDIES

Section 9.01	Events of Default
Section 9.02	Remedies
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ARTICLE X PAYMENT AND DEFEASANCE OF BONDS

Section 10.01 Payment of Series 2008 A Bonds

ARTICLE XI MISCELLANEOUS

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Section 11.03	Severability of Invalid Provisions
Section 11.04	Headings, Etc.
Section 11.05	Conflicting Provisions Repealed; Prior Ordinance
Section 11.06	Covenant of Due Procedure, Etc.
Section 11.07	Effective Date
Section 11.08	Statutory Notice and Public Hearing
	SIGNATURES
	CERTIFICATION
	EXHIBIT A

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Governing Body of the City of Nitro on the 20 H day of May, 2008.

Dated: May <u>2008</u>, 2008.

[SEAL]

EXHIBIT A

Loan Agreement included in bond transcript as Document 3.

CITY OF NITRO

SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

BOND ORDINANCE

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NITRO CITY COUNCIL MEETING MINUTES TUESDAY, APRIL 15, 2008

Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. In attendance with Mayor Casto were Treasurer John Young, Attorney Troy Giatras, Recorder Rita Cox, Councilmen A. A. "Joe" Savilla, Bill Javins, Bill Clark, and Bill Racer, Councilwomen Brenda Tyler and Gertie Estep.

The Invocation was given by Councilwoman Brenda Tyler and the Pledge of Allegiance was led by Councilman Bill Clark.

Mayor Casto announced the next meetings of Council will be Tuesday, May 6. 2008 and Tuesday May 20, 2008. The meetings are at 7:30 pm in Council Chambers.

AGENDA ITEMS:

FIRST READING - THF SETTLEMENT AGREEMENT: City Attorney Troy Giatras reported that a settlement agreement was reached with the THF, Nitro Development Authority and the City of Nitro. Approximately \$312,000.00 that was used by the city prior to the escrow account being established will not have to be repaid and the approximately \$250,000.00 that was in the escrow account will go to the city. In addition the city will receive quarterly B & O from the Nitro Marketplace of approximately \$39,000.00 and he stated that the amount going to the NDA will increase. COUNCILMAN SAVILLA MOVED THAT COUNCIL PASS ON FIRST READING ORDINANCE NO. 08-05 AN ORDINANCE APPROVING FIRST AMENDMENT TO AMENDED DEVELOPMENT AGREEMENT RELATING TO TAX INCENTIVES AND REMITTANCES, APPROVING THE SETTLEMENT AGREEMENT AND FURTHER AUTHORIZING THE MAYOR TO EXECUTE EACH. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. Councilman Racer said he did not like the idea of giving them their money back. Attorney Giatras said that it amounts to approximately \$590,000.00 that the city was going to get back and also the money per each quarter represented an increased amount. Also Council nan Clark pointed out that the city would be getting money in each quarter rather that having to wait till the third quarter like they had to do under the original amended agreement. Councilman Savilla said that the discussion began approximately 8 years ago to do something about this agreement. He said a lot of people worked on the amended agreement. He thanked Mr. Staenburg, and the Allen Law Firm with Bob Allen and Dee Price. He felt it was time to sign on this and move forward. He said Mayor Casto, Rita Cox, John Young and himself helped work out this deal on behalf of Council. Recorder Cox indicated that there was a typo and the NDA should be receiving \$1500.00 per quarter. COUNCILMAN SAVILLA AMENDED HIS MOTION TO INCLUDE THAT CHANGE. COUNCILMAN CLARK SECONDED THE AMENDMENT. Mr. Kniceley asked about the money that had been withheld from the NDA during this time. Troy Giatras said that had not been addressed by the attorney for the NDA. Treasure John Young said that the city was going to pay the attorney fees for the NDA. VOTING FOR THE MOTION WERE RECORDER COX, COUNCILWOMAN TYLER, COUNCILMEN JAVINS, SAVILLA, AND CLARK, AND MAYOR CASTO. VOTING AGAINST THE MOTION WERE COUNCILMAN RACER AND COUNCILWOMAN ESTEP. THE MOTION PASSED.

SECOND READING - BOND ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS, ADDITION, BETTERMENTS AND IMPROVEMENTS OF THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF NITRO: ORDINANCE 08-04 - Danny Lewis and City Attorney Troy Giatras presented Council with the second reading of the Bond Ordinance for the Nitro Wastewater. He stated that Attorney Dennis Vaughn could not be present for the second reading as he had for the first reading. He said he was prepared to answer questions by Council. COUNCILMAN CLARK MOVED THAT THE ORDINANCE FOR THE BOND BE PASSED ON SECOND READING BY TITLE ONLY. COUNCILWOMAN TYLER SECONDED THE MOTION. Councilman Savilla asked if there was to be an increase in rates. Attorney Giatras said there would not be. Councilman Racer asked if

this was for improvements and Mayor Casto stated that one of the improvements is a pump station in Ward 4. He also stated that their would be approximately \$2,000,000.00 in improvements. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

LAY PROPERTY TAX LEVY RATES - City Treasurer John Young presented Council with two levy sheets, one containing the current levy and the other was for the excess bond levy along with a letter of approval from the WV Auditor's Office. COUNCILMAN SAVILLA MOVED THAT COUNCIL LAY THE LEVY RATES. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

NITRO POLICEMAN AND FIREMAN APPRECIATION DAY - Recorder Cox announced that the Nitro Ministerial Association would have a ceremony at 7:00 pm April 27, 2008 to honor the firefighters and policemen at Holy Trinity Catholic Church.

APPROVAL OF 2008 POOL AND SHELTER RATES - RECORDER COX MOVED THAT COUNCIL APPROVED RATES FOR THE POOL AS FOLLOWS: SEASONS PASS FAMILY UP TO FIVE, \$200.00/\$5.00 EACH PERSON OVER FIVE; INDIVIDUAL PASS \$125.00; DAILY RATES SENIORS- \$3.00; ADULTS- \$4.00; CHILDREN 5 - 12 YRS. OLD - \$2.00; UNDER FIVE FREE; SHELTER RATES: LARGE \$75.00/ SMALL \$25.00. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Councilwoman Estep stated that she thought the free water aerobics offered by the City should have a charge of \$3.00 because swimmers are coming from other towns. Councilwoman Tyler said the heater for the pool was paid for by grant money and one of the stipulations was the aerobics be offered for no charge. Pool Director Debra Jordan said that the grant was for \$20,000.00 and it paid or chemicals for the pool, a walking trail, pool heater, and lifeguards and instructor for aerobics and first aid safety. Councilman Clark asked when the grant could be reapplied for and Councilwoman Tyler said this year. VOTING FOR THE MOTION WAS COUNCILMEN JAVINS, RACER, SAVILLA, AND CLARK, COUNCILWOMAN TYLER AND RECORDER COX. VOTING AGAINST THE MOTION WAS COUNCILWOMAN ESTEP. THE MOTION PASSED.

Councilman Javins complimented the work being done by Danny Lewis and workers in the Sanitary Board whose work he saw recently first hand. He also commented on a house on Main Ave. that was empty but someone was still feeding cats. He said he had received several complaints. He stated that Sandy Saunders had been addressing the problem. He said he was glad the THF settlement had been reached.

Councilman Racer thanked the Woman's Club for hosting Meet The Candidate.

Councilman Savilla said he wanted to be sure the Ordinance addressing location of video lottery machines was being addressed. He thanked Council for the patience they showed in working through the THF settlement.

Councilwoman Estep said that she was glad the THF settlement had been reached but she wished the city had gotten more money.

Councilman Clark said he was satisfied with the settlement with THF. He felt the city was better off because of it. He thanked the Woman's Club for the Meet The Candidates.

Councilwoman Tyler said she was happy there had been a settlement with THF. She said that the original arrangement was the reason she ran for Council originally and had worked with the same situation at the NDA. She said there was a water leak in front of Thomas Tire and she was concerned that the road was being eroded. Sandy Saunders said it may even be leaking farther up the hill.

Councilman Clark thanked Sandy Saunders for all the work she has been doing for the city. He said she had been working to clean up the city. Councilman Clark asked that the gas line on Broadway Ave. be on the agenda for the next meeting.

Recorder Cox thanked Ken Knicely and Olaf Walker for their work on behalf of the NDA and the THF Settlment. She announced the city wide clean up on May 2 & 3. Recorder Cox commended Sandy Saunders on the work she has done and she commended Capt. Javins and Robin Smith for the help they gave recently to Sandy Saunders in addressing a potentially bad situation.

Mayor Casto said Recorder Cox will clean up First Avenue and he will clean up 40th St. The Key Club will clean up Ridenour Lake. This will be done during the city wide clean up.

ADJOURNMENT: COUNCILWOMAN TYLER MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA ČOX, RECORDER

the "First Amendment to Amended Development Agreement" between with the City of Nitro, the Nitro Development Authority, and THF Nitro Development Limited Liability Company, as well as the Settlement Agreement in the forms attached hereto, be and are hereby approved.

BE IT FURTHER ORDAINED that	t the Mayor of the City of Nitro is directed to
sign both the "First Amendment to Amendo	ed Development Agreement" and the
"Settlement Agreement" on behalf of the C	ity of Nitro.
Motion made by	, seconded by,
to have first reading of this Ordinance.	
Motion made by	, seconded by,
to have second and final reading and adopti	on of this Ordinance, notice of which was
duly published in accordance with West Vir	rginia law.
FIRST READING	Date:
SECOND READING:	Date:
	Effective Date:
	MAYOR
CITY RECORDER	

THF/Nitro/Ordinance 4-7-08

Ordinance No. 08-_____5

ORDINANCE APPROVING FIRST AMENDMENT TO AMENDED DEVELOPMENT AGREEMENT, RELATING TO TAX INCENTIVES AND REMITTANCES, APPROVING THE SETTLEMENT AGREEMENT AND FURTHER AUTHORIZING THE MAYOR TO EXECUTE EACH

WHEREAS, by Ordinance No. 96-08, passed on Second Reading on January 7, 1997, this Council duly adopted an Ordinance authorizing the Mayor of the City of Nitro to enter into that certain "Amended Development Agreement" providing for tax incentives for THF-Cross Lanes Limited Liability Company; and,

WHEREAS, THF-Cross Lanes Limited Liability Company subsequently transferred its interest in the Amended Development Agreement to THF Nitro Development Limited Liability Company;

WHEREAS, the Amended Development Agreement was implemented and the parties performed according to its terms until the City of Nitro ceased making payments to THF pursuant to the Amended Development Agreement;

WHEREAS, as a result of the cessation of payments by Nitro, THF filed suit in the Circuit Court of Kanawha County, West Virginia, styled "THF Nitro Development Limited Liability Company v. The City of Nitro, et al., Civil Action No. 6-C-2196";

WHEREAS, the parties have agreed upon a resolution of the aforesaid civil action, the terms of which are set forth in the First Amendment to Amended Development Agreement, as well as the Settlement Agreement, true copies of which are attached hereto and made a part hereof.

NOW, THEREFORE, pursuant to lawful authority vested in the municipality known as the City of Nitro, West Virginia, be it ordained by the Council of the City, that

the "First Amendment to Amended Development Agreement" between with the City of Nitro, the Nitro Development Authority, and THF Nitro Development Limited Liability Company, as well as the Settlement Agreement in the forms attached hereto, be and are hereby approved.

BE IT FURTHER ORDAINED that the Mayor of the City of Nitro is directed to sign both the "First Amendment to Amended Development Agreement" and the "Settlement Agreement" on behalf of the City of Nitro.

Settlement Agreement on benan of the C	ny of Nato.
Motion made by Councilman	Quille seconded by Councilman (Kark.
to have first reading of this Ordinance. Motion made by Councilman	Sangla Cruckmon Clark
to have second and final reading and adopti	on of this Ordinance, notice of which was
duly published in accordance with West Vir	rginia law.
FIRST READING	Date: Oyur 15, 2008
SECOND READING:	Date: May 6, 2008 Effective Date:
	MAYOR

THF/Nitro/Ordinance 4-7-08

NOTICE

CITY OF NITRO

Notice is hereby given that the City of Nitro, West Virginia, a municipal corporation, will have its second and final reading of a proposed ordinance, the principal object of which is to authorize the Mayor to execute the First Amendment to the City's Amended Development Agreement with THF Nitro Development Limited Liability Company and to enter into a Settlement Agreement of Civil Action No. 06-6-2196 between THF Nitro Development Limited Liability Company v. The City of Nitro, et al. The title of such ordinance is "Ordinance Approving First Amendment to Amended Development Agreement, Relating to Tax Incentives and Remittances, Approving the Settlement Agreement and Further Authorizing the Mayor to Execute Each." The final vote on the adoption of the proposed ordinance shall be held at the Nitro Community Center, 20th Street and 2nd Avenue, Nitro, West Virginia on _________, 2008 at 7:30 p.m. Interested parties may appear and be heard at such time with respect to passage of the proposed ordinance. Copies of the proposed ordinance are available at the Office of the City Clerk, Nitro, 20th Street and 2nd Avenue, Nitro, West Virginia 25143.

THF/Nitro/Notice2ndReading 4-7-08

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THF NITRO DEVELOPMENT, LIMITED LIABILITY COMPANY, a West Virginia limited liability company, as Successor-in-Interest to THF CROSS LANES DEVELOPMENT LIMITED LIABILITY COMPANY,

Plaintiff,

v.

CIVIL ACTION NO. 06-C-2196

CITY OF NITRO, a West Virginia municipal corporation, JOHN YOUNG, in his official capacity as Treasurer of the City of Nitro, and NITRO DEVELOPMENT AUTHORITY, an agency of the City of Nitro,

Defendants.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

WHEREAS, THF Cross Lanes Development Limited Liability Company, the City of Nitro ("City"), and the Nitro Development Authority, an agency of the City of Nitro ("NDA"), entered into that certain Amended Development Agreement dated the 8th day of January, 1997 ("ADA"); and,

WHEREAS, THF Nitro Development, Limited Liability Company, a West Virginia limited liability company ("THF"), is the Successor-in-Interest to THF Cross Lanes Development Limited Liability Company; and,

WHEREAS, the City, the NDA and THF entered into the ADA pursuant to Ordinances duly enacted by the City; and,

WHEREAS, pursuant to the ADA and a predecessor agreement, the City annexed certain property into the City and THF constructed a shopping center thereon, hereinafter referred to as the "Nitro Marketplace"; and,

WHEREAS, disputes arose between THF, the City and NDA as to various provisions of the ADA; and

WHEREAS, as a result of such disputes, THF initiated Civil Action No. 06-C-2196 in the Circuit Court of Kanawha County, West Virginia against the City, Tiffany Terry, then Treasurer of the City of Nitro and the NDA; and,

WHEREAS, NDA has filed an Answer to the Complaint of THF; and,

WHEREAS, the City of Nitro and Tiffany Terry have filed an Answer and Counterclaims to the Complaint of THF; and,

WHEREAS, Tiffany Terry is no longer the Treasurer of the City of Nitro and John Young, in his official capacity as Treasurer of the City of Nitro, has been substituted for Tiffany Terry in such civil action; and,

WHEREAS, the City, John Young, Treasurer of the City of Nitro, the NDA and THF have negotiated, each with the other, seeking a compromise of any and all claims and disputes.

NOW, THEREFORE, the City, John Young, Treasurer, NDA and THF, in consideration of the mutual promises contained in this Settlement Agreement and Mutual Release (the "Settlement Agreement"), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. <u>The Escrow.</u> Pursuant to the terms of the ADA, the City, Tiffany Terry and NDA were obligated to periodically pay certain monies to THF as more particularly provided for and described in the ADA. After commencement of the above-entitled action, the parties entered

into that certain Escrow Agreement dated the 1st day of December, 2006 which provided, <u>interalia</u>, that the City, its Treasurer and NDA would deposit into the Escrow Account any and all monies due and owing under the ADA to THF pursuant to the terms of the ADA, and continue to deposit such monies as may be due and owing to THF under the ADA during the pendency of this action. The parties now agree as follows:

- (a) As of March 31, 2008, the Escrow Account consists of a total of \$1,045,813.90 of which \$26,914.66 is interest on said funds. In contravention of the terms of the Escrow Agreement, the City, Tiffany Terry in her capacity as Treasurer, and NDA, did not deposit approximately \$312,000 in the Escrow Account.
- (b) Until Implementation, as defined below, the City and Treasurer will deposit in said Escrow Account all Business and Occupation Taxes received by the City arising from sales and services at Nitro Marketplace, as well as Business and Occupation taxes paid to the City by THF on account of rental income from Nitro Marketplace, collectively hereinafter referred to as "Nitro Marketplace B & O Receipts" or "NMBOR". The Treasurer represents that all NMBOR since January 1, 2008 have been deposited in such Escrow Account.
- \$312,000 which was not deposited into the Escrow Account as aforesaid is released. The City shall not be required in any fashion to deposit said monies into the Escrow Account or otherwise pay them to THF. Furthermore, upon Implementation, from the aforesaid sum of \$1,045,813.90, the amount in the Escrow Account as of March 31, 2008, the City will receive the sum of \$250,000. as well as \$26,914.66 which is the interest earned on the Escrow Account through March 31, 2008. Upon Implementation, the City will be paid from the Escrow Account such additional interest as may be earned from March 31, 2008 to the date of Implementation.

- (d) Contemporaneously with the payment of the aforesaid monies to the City, the balance of the Escrow Account, \$768,899.21, as of March 31, 2008 and any other NMBOR deposited in the Escrow Account for taxes accruing for periods prior to March 31, 2008 will be paid to THF.
- (e) All NMBOR received by the City from and after April 1, 2008 for taxes accrued for the first Quarter of 2008 shall be deposited to the Escrow Account. Upon Implementation, such NMBOR deposited from and after April 1 until the date of Implementation, shall be transferred to the City Special Allocation Account as defined in the ADA, as amended, and disbursed in accordance with the provisions of the ADA, as amended. Upon disbursement of the Escrow monies to the City and THF as aforesaid, the parties will mutually cooperate to close the Escrow Account and terminate the Escrow Agreement.
- 2. The parties have agreed to amend the terms of the ADA by execution and enactment of the "First Amendment to the Amended Development Agreement", a copy of which is attached hereto as Exhibit A and incorporated by this reference as fully and completely as if fully set forth in this Settlement Agreement. With respect to such First Amendment, the parties have further agreed as follows:
- (a) The execution of the First Amendment, as well as this Settlement
 Agreement, by the City shall be authorized by a duly adopted Ordinance of the City of Nitro in
 form and substance as attached herewith as Exhibit B and incorporated by this reference as fully
 and completely as if fully set forth herein. The execution of the First Amendment and
 Settlement Agreement by the President of NDA shall be duly authorized by appropriate
 resolution, in form and substance as attached herewith as Exhibit C.

- Settlement Agreement, in substantial part, because of and relying upon the terms of the First Amendment. Therefore, the parties agree that the Settlement Agreement shall be filed with the Court and that the Circuit Court of Kanawha County shall retain jurisdiction of this case throughout the term of the ADA, as amended, and the parties may apply to this Court for such further orders and directions as may be necessary and appropriate for the interpretation and enforcement of the Settlement Agreement or ADA, as amended. In the event any party hereto shall fail to comply with and adhere to the terms of the ADA, as amended, or this Settlement Agreement, any other party may promptly notify the non-complying party in writing of the alleged non-compliance. If the alleged non-compliance is not cured within thirty days, the aggrieved party may apply to the Circuit Court of Kanawha County for injunctive relief requiring the non-complying party to in fact comply with the terms of the ADA, as amended, or this Settlement Agreement, whichever the case may be, including an application for injunctive relief and such damages as may be warranted.
- 3. <u>Mutual Release</u>. In consideration for the Implementation of the First Amendment and this Settlement Agreement, each of the parties hereto mutually release each other party as follows:
- (a) THF does **HEREBY RELEASE**, **ACQUIT**, **EXONERATE**, **DISCHARGE AND FOREVER HOLD HARMLESS** the City, its Treasurer and NDA, and each of them, their council members, officers, agents, servants, employees, attorneys, successors and successors-in-interest, of and from all manner of action and actions, cause and causes of action, suits, judgments, damages, claims for damages, losses, compensation, costs, expenses, attorneys fees, and any and all claims and demands of whatsoever name and nature, known or

unknown, in law, equity or otherwise including but not limited to any claims for monies not paid to THF pursuant to the ADA and any other claims that were or could have been brought as part of the lawsuit captioned THF Nitro Development, Limited Liability Company, a West Virginia limited liability company, as Successor-in-Interest to THF Cross Lanes Development Limited Liability Company v. City of Nitro, a West Virginia municipal corporation, John Young, in his official capacity as Treasurer of the City of Nitro, and Nitro Development Authority, an agency of the City of Nitro, Civil Action No. 06-C-2196, in the Circuit Court of Kanawha County, West Virginia.

(b) The City, the Treasurer of the City of Nitro, and NDA, and each of them do HEREBY RELEASE, ACQUIT, EXONERATE, DISCHARGE AND FOREVER HOLD HARMLESS THF, its divisions, subsidiaries, sister corporations, parent corporations, related entities, directors, officers, agents, servants, employees, attorneys, successors and successors-in-interest of and from all manner of action and actions, cause and causes of action, suits, judgments, damages, claims for damages, losses, compensation, costs, expenses, attorneys fees, and any and all claims and demands of whatsoever name and nature, known or unknown, in law, equity or otherwise including but not limited to any claims for the failure to file any tax returns or failure to pay any taxes, fees, interest, penalties or other monies to the City of Nitro, including but not limited to Business and Occupation taxes on sales, services, construction or rentals, or any other claims that were or could have been brought as part of the lawsuit captioned THF Nitro Development, Limited Liability Company, a West Virginia limited liability company, as Successor-in-Interest to THF Cross Lanes Development Limited Liability Company v. City of Nitro, a West Virginia municipal corporation, John Young, in his official capacity as Treasurer

of the City of Nitro, and Nitro Development Authority, an agency of the City of Nitro, Civil Action No. 06-C-2196, in the Circuit Court of Kanawha County, West Virginia.

- 4. <u>Effective Date, Conditions Precedent and Implementation</u>. The Effective Date of this Settlement Agreement is, as of April 1, 2008, provided Implementation as herein defined thereafter occurs. "Implementation" shall mean the implementation or carrying out of the terms of the First Amendment and Settlement Agreement, provided, however, before Implementation can occur, each of the following Conditions Precedent must have occurred within the time hereinbelow provided. The Conditions Precedent are the following:
- (i) the City of Nitro has duly enacted an Ordinance, in form and substance as attached herewith as Exhibit B, and pursuant to such enactment the "First Amendment to the Amended Development Agreement," Exhibit A, and this Settlement Agreement have been duly executed; and
- (ii) the NDA has duly adopted a Resolution, in form and substance as attached herewith as Exhibit C, and pursuant to such adoption the "First Amendment to the Amended Development Agreement" and this Settlement Agreement have been duly executed; and
- (iii) the parties have jointly moved the Circuit Court of Kanawha County to enter an Order in the above-styled suit, in form and substance as attached hereto as Exhibit D; and
- (iv) the aforesaid Ordinance and Resolution shall have been duly adopted, and the Order shall have been entered by the Circuit Court of Kanawha County, West Virginia on or before May 23, 2008, or at such other later date as all of the parties by written agreement find acceptable. May 23, 2008, or such later mutually agreed-upon extension date, is hereinafter referred to as the "Implementation Date".

- (a) On Implementation Date, the First Amendment and this Settlement Agreement shall become final and binding upon the parties and they shall mutually cooperate to comply with the terms of each. Promptly on said date, the City, the City Treasurer and THF shall terminate the Escrow Account and distribute the funds as provided above.
- (b) If the Implementation Date is reached and by 5:00 p.m. EDT on that date the Conditions Precedent have not been satisfied, this Settlement Agreement shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by the duly authorized officers as of the date first stated above.

	City of Nitro, West Virginia
Nitro Recorder	By: Rusty Casto Title: Its Mayor
	Nitro Development Authority
	By: Title: Its President
	THF Nitro Development Limited Liability Company by THF Cross Lanes Development Limited Liability Company, Its Manager
	By: Michael H. Staenberg, Manager
	John Young Treasurer of the City if Nitro

FIRST AMENDMENT TO THE AMENDED DEVELOPMENT AGREEMENT

This First Amendment to the Amended Development Agreement (the "First Amendment") is made and entered into this ____ day of ______, 2008 by and among the City of Nitro, a State of West Virginia municipal corporation (the "City"), THF Nitro Development Limited Liability Company, a West Virginia Limited Liability Company ("THF") and the Nitro Development Authority, a public agency established by the City pursuant to the laws of the State of West Virginia ("NDA").

WITNESSETH

WHEREAS, the City, NDA, THF Cross Lanes Development Limited Liability Company, Solco, Inc. ("Solco") and Par-Com Associates Limited Partnership ("Par-Com") entered into that certain Amended Development Agreement ("ADA") on the 8th day of January 1997; and,

WHEREAS, Par-Com and Solco were entitled to certain rights, privileges and benefits pursuant to the ADA for the first seven years of the term of the ADA; and,

WHEREAS, said seven years having expired, Par-Com and Solco are no longer entitled to rights, privileges or benefits under the ADA. and therefore are not parties to this First Amendment; and,

WHEREAS, THF Nitro Development Limited Liability Company is the successor-ininterest to THF Cross Lanes Development Limited Liability Company; and,

WHEREAS, disputes arose between THF, the City and NDA as to various provisions of the ADA; and,

WHEREAS, as a result of such disputes, THF initiated a suit in the Circuit Court of Kanawha County, West Virginia, Civil Action No. 06-C-2196; and,

WHEREAS, pursuant to its powers as a municipal corporation, the City has the power to defend against such suit and also has the power to enter into contracts; and,

WHEREAS, each of the parties to this First Amendment recognize the expense of litigation as well as the uncertainty of the outcome of such litigation and have elected to resolve their disputes by a Settlement Agreement and a mutually acceptable modification of the ADA as set forth in this First Amendment.

NOW, THEREFORE, each of the parties to this Agreement deem it in their best interest to amend the ADA for and in consideration of the mutual promises and covenants set forth below.

- 1. <u>First Amendment Incorporation</u>. The ADA will continue in full force and effect, according to its terms, except as specifically amended by the First Amendment. The amendments herein agreed upon, from and after the Effective Date are incorporated into and are a part of the ADA as fully and completely as if set forth therein.
 - 2. Section 1.1 of the ADA be and is hereby amended as follows:
- (a) The definition "Additional Sales or Services Business and Occupation Taxes" is hereby deleted and the following definition substituted in its place and stead:
 - "Additional Sales or Services Business and Occupation Taxes" means the amount of Business and Occupation Taxes from: (i) sales or services income on the Development Property, and (ii) rents of the Company from the Development Property, received by the City during each Qualifying Year in excess of the Adjusted Year Business and Occupation Taxes."
- (b) The definition "Company Share" on page 4 of the ADA, be and is hereby deleted and the following definition substituted in its place and stead:
 - "'Company Share' means after \$38,500 is received by the City each quarter as provided in Section 4.2(a)(ii), and \$1,500 is received by NDA each quarter as provided in Section 4.3(b), one hundred percent (100%) of

- all other Additional Sales or Services Business and Occupation Taxes paid to the City in such quarter."
- (c) The definition of "Qualifying Years" on page 5 of the ADA be and is hereby deleted and the following definition is substituted in its place and stead:
 - "'Qualifying Years' means each twelve (12) month period from the date of execution of this Agreement through and including the term of this Agreement. Each Qualifying Year is composed of four Quarters: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31."
- (d) The following definition shall be inserted on page 5 of the ADA after "Qualifying Years" and before "Storage Property":
 - "'Quarter' means each of the three-month periods of time described in the definition of 'Qualifying Years'."
- (e) The definition "Term" on page 5 of the ADA be and is hereby deleted and the following definition inserted in its place and stead:
 - "'Term' means a term commencing with the full execution of this Agreement on January 8, 1997 and ending after twenty (20) Qualifying Years. The term of this Agreement ends in the first Quarter of 2017, upon payment to the Company of the Tax Credits due the Company for NMBOR (as defined below) received in the first Quarter of 2017 for the preceding Quarter ending December 31, 2016."
- 3. The section entitled "Section 4.2 Receipt, Deposit, and Accounting of the Tax

 Credits by the City and Payment to the Company" and its subparts be and are hereby amended as follows:
- (a) Section 4.2(a) on page 11 of the ADA be and is hereby deleted and the following paragraph substituted in its place and stead:
 - "(a) Each Quarter of each Qualifying Year, the City shall collect and receive the Business and Occupation Taxes described in Sections 4.1(a), (b) and (c), and deposit and disburse such funds as provided hereafter. Upon receipt, the City shall initially deposit such funds into the Special

Allocation Account described below and account for such funds (the "Tax Accounting") as follows:"

- (b) Section 4.2(a)(i) on page 11 of the ADA be and is hereby deleted and the following paragraph substituted in its place and stead:
 - "(i) The receipts from the Business and Occupation Taxes described in Sections 4.1(a), (b) and (c), collectively referred to as 'Nitro Marketplace B&O Receipts' (or "NMBOR") are, by Nitro Ordinance, due and payable to the City in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The City shall promptly deposit such receipts in the Special Allocation Account. When received by the City, the receipts shall be recorded on a Tax Accounting Report, showing the date such funds were received, the person, firm or entity remitting the funds, the applicable period of time for the remittance, and the amount remitted, separately showing tax, interest and penalty, if any. The City shall keep and maintain the Tax Accounting Report and supporting records for the term of ADA and five years thereafter."
- (c) Section 4.2(a)(ii) on page 11 of the ADA be and is hereby deleted and the following substituted in its place and stead:
 - "(ii) Commencing with the Effective Date of this First Amendment and thereafter throughout the term of this ADA, the City shall be entitled to withdraw each Quarter from the Special Allocation Account, for deposit to the City's General Funds, the first thirty-eight thousand five hundred dollars (\$38,500) of NMBOR received by the City for the preceding Quarter (the "City Share")."
- (d) Section 4.2(a)(iii) on page 11 of the ADA be and is hereby deleted and the following substituted in its place and stead:
 - "(iii) Upon withdrawal of the City Share, the City shall contemporaneously pay to the NDA the balance of all other NMBOR received. Thereafter, during such Quarter, on or before the 10th day of each month of said Quarter, the City shall pay all other NMBOR for taxes due from previous Quarters to the NDA. The City shall provide a Certification of Payment, as described in 4.2(c) below, to the Company."
 - (e) Section 4.2(a)(iv) on pages 11 and 12 of the ADA shall be deleted.

- (f) The paragraph designated (b) <u>Establishment of. and Deposit into, Special</u>

 <u>Allocation Account</u> on page 12 of the ADA be and is hereby deleted and the following paragraph substituted in its place and stead:
 - "(b) Establishment of, and Deposit into, Special Allocation Account. The City acknowledges the existence and purpose of the Special Allocation Account which is used solely for the purposes described in the Amended Development Agreement and this First Amendment. Upon receipt, the City shall promptly deposit the Business and Occupation Taxes described in 4.1 above, into such separately designated account. Until such time as the City has paid all amounts due and owing under this Amended Development Agreement, as amended, the City agrees to pledge and apply the monies in the Special Allocation Account to the payment of the amounts due hereunder, and to use such monies for no other purpose and to otherwise maintain the Special Allocation Account in accordance with this Amended Development Agreement, as amended. The City further agrees that the City shall not further encumber nor pledge any portion of the Special Allocation Account during the term of this Amended Development Agreement, as amended, nor take any actions in connection therewith inconsistent with the terms and conditions hereof. Any interest earned on said Special Allocation Account shall belong to the City."
- (g) New sections 4.2(c) and 4.2(d) are inserted after the new 4.2(b). The sections are the following:
 - "(c) <u>Certification of Payment</u>. On or before the 20th day of each Quarter, the City shall provide a Certification of Payment to the Company. As used herein, "Certification of Payment" shall be a statement of the total amount of Tax Credits, as defined below, paid by the City to NDA throughout the preceding Quarter and the names of the taxpayers remitting such payments, not including the separate amount paid by each. The Certification of Payment shall be signed by the City Treasurer and certified under oath to be correct, or certified by a Certified Public Accountant acting on behalf of the City.
 - (d) The Company shall have the right at its discretion to appoint an independent Certified Public Accountant to inspect, audit, and verify the City's Tax Accounting Reports, all City records which the City relied upon to prepare the Tax Accounting Reports, the records of the Special Allocation Account of the City and NDA, as well as the Certification of Payment. The CPA appointed by the Company shall be a CPA firm or individual identified on a "CPA List" published by the State Auditor's

Office of West Virginia as approved to perform Municipal Audits. In the event the list is not published or issued by the Auditor's Office in the future, the Company may select any independent Certified Public Accounting firm with an office in Kanawha County, West Virginia. The said CPA shall conduct such inspection, audit and verification, at reasonable times, during ordinary business hours, upon at least ten-day advance written notice. If any such audit by a CPA appointed by the Company as aforesaid, shows a deficit in the amount that was paid to the Company, under this Agreement the City will promptly pay such deficit amount. If such deficit is greater than 3% of the amount shown on the Certification(s) for Payment reported by the City for the period encompassed by the audit (reduced by the \$1,500 per Quarter retained by the NDA), the expenses of the audit shall be paid by City, and otherwise by the Company."

- 4. The section entitled "Section 4.3 Receipt, Deposit and Payment of the Tax Credits by the Nitro Development Authority" be and is hereby amended as follows:
- (a) The paragraph designated 4.3(b) on page 12 of the ADA be and is hereby deleted and the following substituted in its place and stead:
 - "(b) Upon receipt of the Tax Credits from the City, the Nitro Development Authority shall forthwith deposit such monies in a Special Allocation Account which is used solely for the purposes described in this Amended Development Agreement. Within a reasonable time after deposit to such account, but no later than seven (7) days after such deposit, the Nitro Development Authority shall pay the Tax Credits to the Company, less however the sum of One Thousand Five Hundred Dollars (\$1,500.00) for each Quarter hereafter, which monies the Nitro Development Authority shall retain to use for any purpose authorized by its charter. The aforesaid One Thousand Five Hundred Dollars (\$1,500.00) designated as aforesaid to be retained by the Nitro Development Authority is a quarterly sum which may unilaterally be reduced at the discretion of the City and the said reduction shall be retained by the City. Such reduction shall be by resolution of the City and the Company shall receive written notice thereof. In the event of such reduction the dollar amounts described in Section 4.2 and 4.3 to be retained by the City and the Nitro Development Authority shall be deemed amended accordingly. However, notwithstanding any such reduction, the Nitro Development Authority shall continue to carry out the terms of this Amended Development Agreement as herein provided.

- 5. Section 5.1 of the ADA entitled "<u>Defaults: Rights to Cure</u>" be and is hereby amended to insert a new paragraph (c) after existing paragraph (b) and before Section 5.2. The said paragraph (c) to be the following:
 - "(c) Collections. In the event any Occupants of the Property fail to comply with Business and Occupation Tax provisions of the Ordinances of the City of Nitro, the City agrees that it will use its best administrative efforts as provided in applicable Nitro Ordinances to assess and collect such taxes, including assessments and the filing of liens. Any interest and penalties collected by the City shall belong to the City. If, despite such efforts, Nitro is unable to collect such taxes, when the delinquent amounts for any calendar year exceed \$10,000, the City shall advise the Company the details thereof and the Company shall have the right, but not the obligation, at its cost, to institute and pursue such legal action in the City's name as it deems appropriate to collect such taxes. The Company shall indemnify and hold harmless the City from any liabilities arising from acts of the Company in such collection actions brought in the City's name. The Company shall have the right to settle such action upon terms it deems reasonable. Such delinquent taxes, when collected, shall be accounted for pursuant to this First Amendment. Interest on such taxes if collected by the Company shall belong to the Company.
- 6. A new Section 5.4 be and is hereby inserted in the ADA after Section 5.3(b)(ii) and before Article VI. The Section 5.4 shall be as follows:

"The parties have entered into an additional agreement dated in the case of THF Nitro Development Limited Liability Company v. City of Nitro et al., Civil Action No. 06-C-2196 in the Circuit Court of Kanawha County, West Virginia, (the "Settlement Agreement") which resolves various disputes between them. As part of said Settlement Agreement, the parties to such Settlement Agreement and this ADA agree the Circuit Court of Kanawha County shall retain jurisdiction of the matter throughout the term of the ADA and the parties may apply to said court for such further orders and directions as may be necessary and appropriate for the interpretation and enforcement of the Settlement Agreement or ADA as amended. In the event any party to the First Amendment shall fail to comply with and adhere to the terms of the ADA or the Settlement Agreement, and the other party may promptly notify the non-complying party, in writing, of the alleged non-compliance. If the alleged noncompliance is not cured within thirty days of such notice, the aggrieved party may apply to the Circuit Court of Kanawha County for injunctive relief requiring the non-complying party to in fact comply with the terms of the ADA, as amended or this Settlement Agreement, whichever the

case may be including an application for injunctive relief and such damages as may be warranted. The election of a party to seek relief in the Circuit Court as herein provided shall not be exclusive of the other remedies provided in this Article V and its subparts."

7. Section 6.5 of the ADA entitled "<u>Cooperation and Further Assurances</u>" be and is hereby amended to delete the last complete sentence of Section 6.5 and substitute in its place and stead the following:

"In such event, the City shall retain the quarterly amount of one thousand five hundred dollars (\$1,500.00) which the Nitro Development Authority is entitled to retain under Section 4.3 of this Amended Development Agreement."

- 8. Section 6.7 of the ADA entitled "Notices" be and is hereby amended as follows:
- (a) Delete on page 16 the name and contact information for Alan Bornstein and substitute in its place and stead the following:

Lewis, Glasser, Casey & Rollins, PLLC ATTN: Martin J. Glasser 300 Summers Street, Suite 700 P. O. Box 1746 Charleston, WV 25326 Phone: (304) 345-2000

Fax: (304) 343-7999

(b) Delete on page 17 the address for the City Attorney for the City of Nitro and change it as follows:

Allen Guthrie McHugh & Thomas 500 Lee Street, East, Suite 800 Charleston, WV 25301

9. <u>Effective Date, Implementation Date</u>. This Amendment, when Implemented (as "Implemented" is defined in the Settlement Agreement), shall be effective as of the First Day of April, 2008. If this First Amendment is not Implemented on or before 5:00 p.m. EDT, May 23, 2008 it shall be void, unless the parties hereto mutually execute a written consent to extend the time to a later date.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized officers as of the date first stated above.

City of Nitro, West Virginia				
Rusty Casto				
e: Its Mayor				
o Development Authority				
e: Its President				
Nitro Development Limited Liability pany by THF Cross Lanes Development				
ited Liability Company, Its Manager				
Michael H. Staenberg, Manager				
E				

RESOLUTION APPROVING FIRST AMENDMENT TO AMENDED DEVELOPMENT AGREEMENT RELATING TO TAX INCENTIVES AND REMITTANCES, APPROVING THE SETTLEMENT AGREEMENT AND FURTHER AUTHORIZING THE PRESIDENT OF NDA TO EXECUTE EACH

WHEREAS, the City of Nitro (the "City"), THF Cross Lanes Development Limited Liability Company ("THF Cross Lanes") and the Nitro Development Authority (the "NDA") entered into an agreement on the 18th day of June, 1996 relating to certain property that would be annexed into the City and then acquired by THF Cross Lanes which would construct a shopping center thereon; and,

WHEREAS, by Ordinance No. 96-08, the City duly adopted an Ordinance authorizing the Mayor of Nitro to enter into that certain "Amended Development Agreement" providing for tax incentives for THF Cross Lanes; and,

WHEREAS, the NDA was also a party to said Amended Development Agreement; and,
WHEREAS, THF Cross Lanes subsequently transferred its interest in the Amended
Development Agreement to THF Nitro Development Limited Liability Company ("THF"); and,

WHEREAS, the Amended Development Agreement was implemented and the parties performed according to its terms until the City of Nitro ceased making payments to THF pursuant to the Amended Development Agreement;

WHEREAS, as a result of the cessation of payments, THF filed suit in the Circuit Court of Kanawha County, West Virginia styled "THF Nitro Development Limited Liability Company v. The City of Nitro, et al., Civil Action No. 6-C-2196," and the NDA also is a defendant in such civil action;

WHEREAS, the City, THF and the NDA have agreed upon a resolution of the aforesaid civil action, the terms of which are set forth in the First Amendment to the Amended

Development Agreement, as well as the Settlement Agreement, true copies of which are attached hereto as Exhibits 1 and 2 respectively and made a part hereof.

NOW, THEREFORE, pursuant to lawful authority vested in the NDA, the NDA, upon motion duly made and seconded, does hereby APPROVE and ADOPT the "First Amendment to the Amended Development Agreement" between the City, NDA and THF, as well as the Settlement Agreement in the forms attached hereto. The President of NDA is hereby authorized, directed and empowered to execute and deliver for and on behalf of NDA the First Amendment to the Amended Development Agreement and the Settlement Agreement.

IN W	ITNESS WHE	REOF, the Preside	nt and Secretary of NDA have hereunto set their
hands this _	day of	, 2008.	
			Nitro Development Authority
			By: Its: President
Secretary or	Witness		

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THF NITRO DEVELOPMENT, LIMITED LIABILITY COMPANY, a West Virginia limited liability company, as successor-in-interest to THF Cross Lanes Development Limited Liability Company,

Plaintiff,

v.

CIVIL ACTION NO. 06-C-2196 Judge Jennifer Bailey Walker

THE CITY OF NITRO, a West Virginia municipal corporation, TIFFANY TERRY, in her official capacity as Treasurer of the City of Nitro and NITRO DEVELOPMENT AUTHORITY, an agency of the City of Nitro,

Defendants.

AGREED ORDER OF SUBSTITUTION

Pursuant to Rule 25(d) of the West Virginia Rules of Civil Procedure, the Defendants advise the Court that John Young is the acting successor in interest to Tifney Terry as Treasurer of the City of Nitro.

Therefore, by agreement of the parties, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that John Young, in his capacity as Acting Treasurer of the City of Nitro is substituted for Defendant Tifney Terry in this action as set forth in the above style of the case.

The Clerk is further **ORDERED** to provide a copy of this Order to counsel of record.

ENTER:

Honorable Jennifer	Bailey Walker

Presented by:

Websterd. Arceneaux, III (WV Bar #155)

LEWIS GLASSER CASEY & ROLLINS, PLLC

300 Summers Street

Charleston, West Virginia 25326-1746

 $Counsel \ for \ Plaintiff \ \ THF \ Nitro \ Development,$

Limited Liability Company

Debra C. Price (WV Bar # 2979)

ALLEN GUTHRIE MCHUGH & THOMAS PLLC

500 Lee Street, East, Suite 800

P. O. Box 3394

Charleston, West Virginia 25333-3394

Counsel for Defendants The City of Nitro and Tifney Terry

Martin R. Smith (WV Bar # 3474)

SMITH LAW OFFICES

P. O. Box 7534

Cross Lanes, West Virginia 25356

Counsel for Defendant Nitro Development Authority

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THF NITRO DEVELOPMENT, LIMITED LIABILITY COMPANY, a West Virginia limited liability company, as successor-in-interest to THF Cross Lanes Development Limited Liability Company,

Plaintiff,

v.

CIVIL ACTION NO. 06-C-2196 Judge Jennifer Bailey Walker

THE CITY OF NITRO, a West Virginia municipal corporation, JOHN YOUNG, in his official capacity as Treasurer of the City of Nitro and NITRO DEVELOPMENT AUTHORITY, an agency of the City of Nitro,

Defendants.

ORDER OF DISMISSAL

The parties have advised the Court, by counsel, that this matter has been settled and compromised and that the parties have entered into a Settlement Agreement that has been filed with the Court. The Court hereby incorporates the terms of that Settlement Agreement fully herein by reference and it enters this **ORDER** fully incorporating the terms of the Settlement Agreement.

It is hereby **ORDERED**, in accordance with the Settlement Agreement and by agreement of the parties, that this Court shall retain jurisdiction over the parties and the subject matter of this action for the purpose of interpreting and enforcing the Settlement Agreement. In the event any party to the First Amendment shall fail to comply with and adhere to the terms of the ADA, as amended, or the Settlement Agreement, any other party may promptly notify the non-complying party in writing of the alleged violation. If the alleged violation is not cured within thirty days, the aggrieved party may apply to the Circuit Court of Kanawha County for injunctive relief requiring the

non-complying party to in fact comply with the terms of the ADA, as amended, or this Settlement Agreement, whichever the case may be, and that party may seek other remedial action, including a claim for damages as may be warranted.

It is further **ORDERED**, by agreement of the parties, that this matter be, and hereby is, **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the Clerk shall send certified copies of this Order to counsel of record.

Entered this _____ day of _______, 2008.

Honorable Jennifer Bailey Walker

Prepared and submitted by:

Webster J. Arceneaux, III (WV Bar # 155) LEWIS GLASSER CASEY & ROLLINS, PLLC 300 Summers Street Charleston, West Virginia 25326-1746 Counsel for Plaintiff THF Nitro Development, Limited Liability Company

Debra C. Price (WV Bar # 2979)

ALLEN GUTHRIE MCHUGH & THOMAS PLLC

500 Lee Street, East, Suite 800

P. O. Box 3394

Charleston, West Virginia 25333-3394

Counsel for Defendants The City of Nitro and Tifney Terry

Martin R. Smith (WV Bar # 3474)
SMITH LAW OFFICES
P. O. Box 7534
Cross Lanes, West Virginia 25356
Counsel for Defendant Nitro Development Authority

CITY OF NITRO

Sewerage System Design Revenue Bonds, Series 2008 A (West Virginia Water Development Authority)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE. **MATURITY** DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE CITY OF NITRO: APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST **VIRGINIA** DEVELOPMENT **AUTHORITY:** WATER **AGENT DESIGNATING** Α REGISTRAR, **PAYING** AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of the City of Nitro (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective May 6, 2008 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS. ADDITIONS. **BETTERMENTS** AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF NITRO AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY NOT MORE THAN \$314,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

CITY OF NITRO

BOND ORDINANCE

ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS. ADDITIONS, **BETTERMENTS AND** IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF NITRO AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$314,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR REGISTERED OWNERS OF SUCH AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS: AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF 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 enacted pursuant to the provisions of Chapter 16, Article 13, and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

- A. The City of 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 sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain extensions, additions, betterments and improvements to the existing public sewerage facilities of the Issuer (the design of such herein known as the "Project") and at the costs estimated in Section 2.01 hereof.
- C. In order to complete the Project, the Issuer has entered into a Contract with the Consulting Engineer for the engineering services. The Issuer intends to temporarily

finance a portion of the costs of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority") pursuant to the Act.

- D. It is deemed necessary for the Issuer to issue its Sewerage System Design Revenue Bonds in one single series, being the Sewerage System Design Revenue Bonds, Series 2008 A (West Virginia Water Development Authority), in the aggregate principal amount of not more than \$314,000 (the "Series 2008 A Bonds"); to temporarily finance a portion of the costs of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor: interest, if any, upon the Series 2008 A Bonds prior to and during a period not exceeding 6 months after completion of the Project: amounts which may be deposited in the Reserve Account (as hereinafter defined) for the Series 2008 A Bonds; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority; discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2008 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the Project and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2008 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.
- E. The period of usefulness of the System after completion of the Project is not less than 40 years.
- F. It is in the best interests of the Issuer that its Series 2008 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, in form satisfactory to the respective parties, to be approved hereby if not previously approved by resolution of the Issuer.
- G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2008 A Bonds as to liens, pledge and source of and security for payment being the Issuers: (i) Sewer Revenue Bonds, Series 1995 A, dated July 27, 1995, issued in the original aggregate principal amount of \$373,000 (the "Series A 1995 Bonds") and held by the State of West Virginia Water Development Authority; (ii) Sewer Revenue Bonds, Series 1996, dated December 10, 1996 issued in the original aggregate principal amount of \$4,575,502 (the "Series A 1996 Bonds") and held by the State of West Virginia Water Development Authority; (iii) Sewer Revenue Bonds, Series 2000 A dated June 28, 2000, issued in the original aggregate principal amount of \$2,050,000 (the "Series A 2000 Bonds") and held by the State of West Virginia Water Development Authority; (iv) Sewer Revenue Bonds, Series 2001 A dated June 5, 2001, issued in the original aggregate principal amount of \$543,900 (the "Series A 2001 Bonds") and held by the State of West Virginia Water Development Authority; (collectively, the "Prior Bonds"). The Series 2008 A Bonds shall be issued on a parity with the Prior Bonds. Prior to the issuance of the Series 2008 A Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Holders of the Prior Bonds to the issuance of the Series 2008 A Bonds on a parity with the Prior Bonds. Other than the

Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

- H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Series 2008 A Bonds and the Prior Bonds and to make payments into all funds and accounts and other payments provided for herein.
- I. The Issuer has complied with all requirements of West Virginia law, the Loan Agreement (hereinafter defined) relating to authorization of the Project and the System and issuance of the Series 2008 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the Authority.
- J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board and the Sanitary Board has petitioned the Governing Body to issue the Series 2008 A Bonds for the purposes set forth herein.
- K. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.
- Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2008 A Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2008 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.
- <u>Section 1.04</u>. <u>Definitions</u>. The following terms shall have the following meanings herein unless the context expressly requires otherwise:
- "Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.
- "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2008 A Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.
- "Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.
 - "Board" or "Sanitary Board" means the Sanitary Board of the Issuer.

"Bondholder", "Holder of the Bonds", "Holder", "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

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

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 2008 A Bonds and the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Closing Date" means the date upon which there is an exchange of the Series 2008 A Bonds for all or a portion of the proceeds of the Series 2008 A Bonds from the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

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

"Consulting Engineers" means S & S Engineering, Inc., Charleston, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Contract" means the Contract for preconstruction engineering services for the Project by and between the Issuer and the Consulting Engineer.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the costs of the Project.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

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

"Governing Body" means the City Council of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

"Herein", "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Issuer" means the City of Nitro, a municipal corporation and political subdivision of the State of West Virginia, 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 heretofore entered, or to be entered into, by and between the Issuer and the Authority providing for the purchase of the Series 2008 A Bonds from the Issuer by the Authority, the form of which shall be approved and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2008 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2008 A Bonds Reserve Account.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance

expenses (other than those capitalized as part of the Costs), fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding" when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond cancelled by the Bond Registrar, at or prior to said date; (ii) any Bond, for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Parity Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority.

"Prior Bonds" means collectively the Series 1995 Bonds, the Series 1996, the Series 2000 Bonds, and the Series 2001 Bonds.

"Prior Ordinances" means the ordinances of the Issuer, as supplemented, authorizing the Prior Bonds.

"Project" means the Project as described in Section 1.02B hereof.

"Qualified Investments" means and includes the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America:
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;
- (f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;
- (g) Repurchase agreements or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above or fully insured by the FDIC, with member banks of the Federal Reserve system or banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;
- (h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended, including, without limitation, authorized pools of investments operated by such State Board of Investments; and
- (i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"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 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 the Prior Ordinance and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Series 2008 A Bonds and the Prior Bonds.

"Reserve Requirement" means the amounts required to be on deposit in any Reserve Account.

"Revenue Fund" means the Revenue Fund established by the Prior Ordinance and continued hereby.

"Series 1995 A Bonds" means the Sewer Revenue Bonds, Series 1995 A, dated July 27, 1995, issued in the original aggregate principal amount of \$373,000 and held by the State of West Virginia Water Development Authority on behalf of the West Virginia Department of Environmental Protection

"Series 1996 A Bonds" means the Sewer Revenue Bonds, Series A 1996, dated December 10, 1996, issued in the original aggregate principal amount of \$4,575,502 and held by the State of West Virginia Water Development Authority on behalf of the West Virginia Department of Environmental Protection

"Series 2000 A Bonds" means the Sewer Revenue Bonds, Series 2000 A, dated June 28, 2000, issued in the original aggregate principal amount of \$2,050,000 and held by the State of West Virginia Water Development Authority on behalf of the West Virginia Departmental of Environmental Protection

"Series 2001 A Bonds" means the Sewer Revenue Bonds, Series 2001 A, dated June 5, 2001 issued in the original aggregate principal amount of \$543,800 and held by the State of West Virginia Water Development Authority on behalf of the West Virginia Department of Environmental Protection.

"Series 2008 A Bonds" means the Sewerage System Design Revenue Bonds, Series 2008 A (West Virginia Water Development Authority), of the Issuer, authorized by this Ordinance.

"Series 2008 A Bonds Project Trust Fund" means the Series 2008 A Bonds Project Trust Fund established by Section 5.01 hereof.

"Series 2008 A Bonds Reserve Account" means the Series 2008 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2008 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 2008 A Bonds in the then current or any succeeding year.

"Series 2008 A Bonds Sinking Fund" means the Series 2008 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the sinking funds established for the Prior Bonds and the Series 2008 A Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2008 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2008 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

"System" means the complete existing public sewerage system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever.

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

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF THE PROJECT

Section 2.01. Authorization of the Project. There is hereby authorized and ordered the Project at an estimated cost of not to exceed \$314,000, which will be paid in part from proceeds of the Series 2008 A Bonds. The proceeds of the Series 2008 A Bonds hereby authorized shall be applied as provided in Article VI hereof.

The	cost	of	the	Project	is	estimated	not	to	exceed	\$314,000	of	which
approximate	ly \$31	4,0	00 w	ill be obt	tain	ed from the	pro	ceed	ds of the	Series 200	8 A	Bonds
and \$				as	def	erral from t	he Co	onsi	ulting En	gineers.		

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2008 A Bonds, funding the reserve account for the Series 2008 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2008 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2008 A Bonds of the Issuer. The Series 2008 A Bonds shall be issued in one series, as a single bond, designated as "Sewerage System Design Revenue Bonds, Series 2008 A (West Virginia Water Development Authority)", in the principal amount of not more than \$314,000, which shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2008 A Bonds remaining after funding of the Series 2008 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2008 A Bonds Project Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 2008 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2008 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2008 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2008 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a debt service schedule attached, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2008 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest as specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2008 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or

imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2008 A Bonds shall cease to be such officer of the Issuer before the Series 2008 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. The Series 2008 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2008 A Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on the Series 2008 A Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2008 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2008 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2008 A Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2008 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging or transferring the registered Series 2008 A Bonds are exercised, Series 2008 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2008 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2008 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses

of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of any Series 2008 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2008 A Bonds or, in the case of any proposed redemption of such Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Series 2008 A Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2008 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2008 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2008 A Bonds shall be secured by a first lien on the Net Revenues derived from the System on a parity with the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2008 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2008 A Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 2008 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2008 A Bonds to the original purchasers;

- C. An executed and certified copy of the Bond Legislation;
- D. An executed copy of the Loan Agreement; and
- E. The unqualified approving opinion of bond counsel on the Series 2008 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2008 A Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2008 A BOND)

UNITED STATES OF AMERICA STATE OF WEST VIRGINIA CITY OF NITRO SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. AR-1	\$
, 2008, the CITY OF NITRO, a municof the State of West Virginia in Calhoun Coureceived, hereby promises to pay, solely from hereinafter set forth, to the WEST VIRGINIA V(the "Authority") or registered	the special funds provided therefor, as VATER DEVELOPMENT AUTHORITY
lesser amount as shall have been advanced to repaid, as set forth in the "Record of Advancincorporated herein by reference. Interest only amounts advanced and outstanding, payable in 1. July 1 and October 1 of each year in arrears payment due on1, 20 Interest and principal payments are payable in quarterly and October 1 of each year commencing on"Debt Service Schedule" attached as EXHIB reference.	the Issuer hereunder and not previously tes" attached as EXHIBIT A hereto and shall commence on the date hereof on the quarterly installments on January 1, April at the rate of 3% per annum, with the first est accrues at 5% per annum and interest installments on January 1, April 1, July 1
Principal installments of this Bond are payable dates of payment of such installments, is leg private debts under the laws of the United State Virginia Municipal Bond Commission, Charles The interest on this Bond is payable by check of registered owner hereof at the address as it appears as a segister month next preceding an interest payment day mutually agreeable so long as the Authority is may be redeemed prior to its stated date of mat express written consent of the Authority, and by, and otherwise in compliance with, the Lo and the Authority dated	al tender for the payment of public and tes of America, at the office of the West ston, West Virginia (the "Paying Agent"). Or draft of the Paying Agent mailed to the pears on the books of The City National (the "Registrar"), on the 15th day of the te, or by such other method as shall be as the registered owner hereof. This Bond surity in whole or in part, but only with the upon the terms and conditions prescribed an Agreement by and between the Issuer
This Bond is issued (i) to pay a port acquisition and construction of certain of improvements to the public sewerage system of certain costs of issuance hereof and related costs.	f the Issuer (the "Project"); and (ii) to pay

the Issuer, the Project, and any further extensions, additions, betterments or

improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on _______, 2008, and a Supplemental Resolution duly adopted by the Issuer on _______, 2008 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS WITH THE ISSUER'S (1) SEWER REVENUE BONDS, SERIES 1995 A, DATED JULY 27, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$373,000 (THE "SERIES 1995 A BONDS"); (2) SEWER REVENUE BONDS, SERIES 1996 A, DATED DECEMBER 10, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,575,502 (THE "SERIES a 1996 BONDS"); (3) SEWER REVENE BONDS, SERIES 2000 A, DATED JUNE 28, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,050,000 (THE "SERIES 2000 A BONDS"); AND (4) SEWER REVENE BONDS, SERIES 2001 A, DATED JUNE 5, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$543,800 (THE "SERIES 2001 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2008 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 monies in the Series 2008 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds; provided however, that, so long as there exists in the Series 2008 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here

made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the CITY OF 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 the day and year first written above.

[SEAL]			
		Mayor	
ATTEST ₂	_		
Kita	(CO)		
Recorder			

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

Bond Legislati		ries 2008 A Bonds described in the within-mentioned y registered in the name of the registered owner set pelow.
Date:	, 2008.	
		THE CITY NATIONAL BANK, as Registrar
		By: Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

	AMOUNT	DATE	AMOUNT	DATE
(1) \$	n =		(19) \$	
			(20) \$	
(2) f			(21) \$	
			(22) \$	
			(23) \$	
(C) O			(24) \$	
			(25) \$	
			(26) \$	
(O) P			(27) \$	
			(28) \$	
			(29) \$	
(10) 0			(30) \$	
			(31) \$	
			(32) \$	
			(33) \$	
			(34) \$	
			(35) \$	
(18) \$			(36) \$	
		TOTAL	\$	

EXHIBIT B

<u>DEBT SERVICE SCHEDULE</u>

(Form of)

ASSIGNMENT

within	FOR VA Bond				ersigned sells irrevocably	and	appoint
	on the boo of substitu	-	_		the within B		
	Dated: _			·			
In the p	presence of	f:					

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2008 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 it to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, is hereby approved and incorporated in this Bond Legislation.

Section 3.12. Filing of Amended Schedule. Upon completion of the Project, the Issuer will file with the Authority a schedule of the Series 2008 A Bonds, the form of which will be provided by the Authority, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund (established by Prior Ordinance):
- (2) Renewal and Replacement Fund (established by Prior Ordinance); and
 - (3) Series 2008 A Bonds Project Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 2008 A Bonds Sinking Fund; and
- (2) Series 2008 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation. All monies in the Revenue Fund shall be disposed of only in the following manner and order of priority:

- (1) The Issuer shall first, each month, transfer from the Revenue Fund to pay current Operating Expenses of the System (including SRF Administrative Fees as defined in Prior Ordinance).
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission the amount required by Prior Ordinances to pay interest on the Prior Bonds; and (ii) remit to the Commission commencing 3 months prior to the first date of payment of interest on the Series 2008 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2008 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2008 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 2008 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

- (3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission the amounts as required by Prior Ordinances to pay principal on the Prior Bonds; and (ii) remit to the Commission commencing 3 months prior to the first date of payment of principal of the Series 2008 A Bonds, for deposit in the Series 2008 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2008 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2008 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.
- (4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission the amounts as required by Prior Ordinances to be deposited in the Prior Bonds Reserve Accounts; and (ii) remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2008 A Bonds, if not fully funded upon issuance of the Series 2008 A Bonds, for deposit in the Series 2008 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2008 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2008 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 2008 A Bonds Reserve Requirement. Monies in the Series 2008 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2008 A Bonds as the same shall come due, when other monies in the Sinking Fund are insufficient therefor, and for no other purpose.
- (5) The Issuer shall next, on the first day of each month, from the monies remaining in the Revenue Fund, simultaneously transfer (i) to the Commission for deposit to the Depreciation Reserve Funds until there has been accumulated therein the sum of \$5,000; and (ii) 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 any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Funds.

Monies in the Series 2008 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2008 A Bonds as the same shall become due. Monies in the Series 2008 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2008 A Bonds as the same

shall come due, when other monies in the Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2008 A Bonds Sinking Fund shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during the Project, as applicable, be deposited in the Series 2008 A Bonds Project Trust Fund, and following completion thereof, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2008 A Bonds.

Any withdrawals from the Series 2008 A Bonds Reserve Account, which result in a reduction in the balance of such account to below the Reserve Requirement thereof, shall be restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2008 A Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective Reserve Accounts in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2008 A Bonds Sinking Fund, or the Series 2008 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2008 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2008 A Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2008 A Bonds Sinking Fund, and the Series 2008 A Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2008 A Bonds, under the conditions and restrictions set forth herein.

- B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.
- C. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 2008 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.
- D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.
- E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.
- F. The monies in excess of the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.
- G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as herein above provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; <u>provided</u>, <u>however</u>, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.
- H. The Gross Revenues of the System shall only be used for purposes of the System.

ARTICLE VI

APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2008 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

- A. From the proceeds of the Series 2008 A Bonds, there shall first be deposited with the Commission in the Series 2008 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2008 A Bonds for the period commencing on the date of issuance of the Series 2008 A Bonds and ending 6 months after the estimated date of completion of the Project.
- B. Next, from the proceeds of the Series 2008 A Bonds, there shall be deposited with the Commission in the Series 2008 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2008 A Bonds Reserve Account.
- C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2008 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2008 A Bonds Project Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 2008 A Bonds.
- D. After completion of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2008 A Bonds shall be expended as approved by the Authority.

Section 6.02. Disbursements of Bond Proceeds.

The Issuer shall each month provide the Authority with a requisition for the costs incurred for the Project, together with such documentation as the Authority shall require. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of the proceeds of the Series 2008 A Bonds from the Series 2008 A Bonds Project Trust Fund shall be made only after submission to, and approval from, the Authority of a certificate, signed by an Authorized Officer stating that:

- (1) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
- (2) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
 - (3) Each of such costs has been otherwise properly incurred; and
 - (4) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2008 A Bonds Project Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2008 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2008 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2008 A Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2008 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2008 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2008 A Bonds shall be secured by a first lien on the Net Revenues derived from the System on a parity with each other and with the lien on Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted February 15, 2005, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2008 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rate and charges initially established for the System in connection with the Series 2008 A Bonds shall prove to be insufficient to produce the amounts required by this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the amounts required by this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, lease, mortgage or in any manner dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances and with the written consent of the Authority.

So long as the Series 2008 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 2008 A Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2008 A Bonds in accordance with Article X hereof. Any balance remaining after the payment of the Series 2008 A Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$200,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Governing Body may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$200,000 shall be deposited by the Issuer into the Renewal and Replacement Fund. Such payments of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said fund by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the source fiscal year for such sales, leases or other dispositions of such properties, shall be in excess of \$200,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for

the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2008 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2008 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2008 A Bonds: provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2008 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2008 A Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations of parity obligations set forth in the Prior Ordinances shall be applicable. In addition no additional Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2008 A Bonds pursuant to this Ordinance, without the prior written consent of the Authority and without complying with the conditions and requirements herein provided.

No such additional Parity Bonds shall be issued except for the purposes of financing the costs of, additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

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

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

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which has expired (without successful appeal) prior to the issuance of such Parity Bonds.

All covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and account created in this Ordinance required for and on account of such Parity Bonds, in addition to the payments required for the Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to the lien on and source of and security for payment from such revenues, with the Bonds.

No Parity Bonds shall be issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance with respect to the Bonds then Outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of issuance of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of

this Ordinance.

Section 7.08. Books; Records and Audit. The Issuer shall permit the Authority, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority such documents and information as they may reasonably require in connection with the Project; the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of the Project.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Authority, or any other original purchaser of the Series 2008 A Bonds and shall mail in each year to any Holder or Holders of the Series 2008 A Bonds, requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any Bonds, notes or other obligations outstanding. The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof,) and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2008 A Bonds and shall

submit the report to the Authority, or any other original purchaser of the Series 2008 A Bonds. Such audit report submitted to the Authority shall include a statement that notes whether the results of test disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet annually the Issuer's Operating Expenses and debt service and reserve requirements. The Issuer annually shall provide the Authority with bank statements and all investment information for the funds and accounts related to the proceeds for the Series 2008 A Bonds. The Issuer shall annually provide the Authority with such financial information or other information as requested by the Authority to meet its ongoing disclosure requirement.

Prior to, during and after completion of the Project, the Issuer shall also provide the Authority, or its agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2008 A Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Recorder of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, (i) to provide for all Operating Expenses of the System; (ii) so long as the Prior Bonds are Outstanding, always provide revenues on each fiscal year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Bonds and to make the payments required into Reserve Account; and (iii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 2008 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2008 A Bonds including the Prior Bonds; provided that, in the event that, an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2008 A Bonds, if applicable, are funded at least at the requirement therefor, such sum need only equal 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2008 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2008 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04.

The Issuer hereby covenants to commence enactment of such ordinance or

ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Independent Certified Public Accountant that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her, within 30 days of adoption thereof and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority by the 10th day of each month.

<u>Section 7.11.</u> Engineering Services and Operating Personnel. The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreement.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of the System or the water system until all delinquent charges for the services of the System. plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water system is not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders thereof.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. The Issuer hereby covenants and agrees that so long as the Series 2008 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not

less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

- (3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.
- (4) FIDELITY BONDS will be provided as to every officer and employee of the Issuer having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.
- (5) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.
- (6) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

Section 7.16. 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 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 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a

revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the Project, all orders and approvals from the West Virginia Infrastructure and Jobs Development Council necessary for the Project and the operation of the System and all approvals of issuance of the Series 2008 A Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, or other state, federal or local bodies in regard to the Project and the operation, maintenance and use of the System.

Section 7.19. Reserved

Section 7.20. Securities Law Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

<u>Section 7.21</u>. <u>Contracts; Public Releases</u>. A. The Issuer has entered into a contract with the Consulting Engineer for the Project.

B. The Issuer shall list the funding provided by the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any dedication of the Project.

ARTICLE VIII

INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Resolution, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, The Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2008 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and to assure the exclusion of interest, if any, on the Series 2008 A Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate and Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2008 A Bonds as a condition to issuance of the Series 2008 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2008 A Bonds as may be necessary in order to maintain the status of the Series 2008 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2008 A Bonds which would cause any bonds, the interest, if any, on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority from which the proceeds of the Series 2008 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from

taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2008 A Bonds and any additional information requested by the Authority.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2008 A Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2008 A Bonds; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on their respective parts relating to the Series 2008 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2008 A Bonds, and such default shall have continued for a period of 30 days after the Issuer, as appropriate, shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or
 - (4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner or Bondholder of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due. (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners or Bondholders including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners or Bondholders of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners, provided that all rights and remedies of Holders of the Series 2008 A Bonds shall be on a parity with those of the Holders of the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates,

rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

Such receiver, in the performance of the powers herein above conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

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

ARTICLE X

PAYMENT OF BONDS AND DEFEASANCE

Section 10.01. Payment of Series 2008 A Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holders of the Series 2008 A Bonds, the principal of and interest due or to become due thereon at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2008 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2008 A Bonds from gross income for federal income tax purposes.

Section 10.02. Defeasance of Series 2008 A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all of the Series 2008 A Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2008 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2008 A Bonds from gross income for federal income tax purposes.

Series 2008 A Bonds for the payment of which either monies in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide monies which, together with the monies, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 2008 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 2008 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either monies in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide monies which, together with other monies, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 2008 A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor monies deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 2008 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and

in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2008 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2008 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2008 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2008 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2008 A Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2008 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended with the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2008 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2008 A Bonds.

<u>Section 11.04</u>. <u>Headings, Etc.</u> The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed; Prior Ordinance. 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, provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive) so long as the Prior Bonds are outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the 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.

<u>Section 11.07</u>. <u>Effective Date</u>. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in Charleston Gazette, a qualified newspaper published and of general circulation in the City of Nitro, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2008 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: April 1, 2008

Passed on Second Reading: April 15, 2008

Enacted Following May 6, 2008

Mayor (us/s

Public Hearing

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Governing Body of the City of Nitro on the 6th day of May, 2008.

Dated: May 29, 2008.

[SEAL]

Recorder

EXHIBIT A

Loan Agreement included in bond transcript as Document 3.

CITY OF NITRO

SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

BOND ORDINANCE

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TOWN OF NITRO

LEVY PAGE REGULAR CURRENT EXPENSE LEVY 2008-2009

TOWN OF NITRO in KANAWHA COUNTY & Putnam

Column E

		of Valuation for Tax Purposes	Levy Rate/\$100		Taxes Levied
Class I	rissessed value	-	Ταιτογφίου	• —	Bevieu
Personal Property	\$	0	9.40	\$	0
Public Utility		0	3	Ι Ψ	0
Total Class I	\$	0		\$	0
Class II					
Real Estate	\$ 7	9,052,640	18.80	\$	148,619
Personal Property		153,210			288
Total Class II	\$ 7	9,205,850		\$	148,907
Class IV					
Real Estate	\$ 8	0,731,310	37.60	\$	303,550
Personal Property	5	3,809,337			202,323
Public Utility	1	0,102,187			37,984
Total Class IV	S 14	4,642,834		\$	543,857
Total Value & Projected Revenue	\$	3,848,684		\$	692,764
Less Delinquencies, Exonerations, &	& Uncollectable	Taxes:	5.00%		34,638
Less Tax Discounts		_	1.00%		6,581
Less Allowance for Tax Increment I (Subtracted from regular current exp	-				0
Total Projected Property Tax Collect	ion				651,545
Less Assessor Valuation Fund (Subtracted from regular current exp	ense taxes levie	ed only)	2.00%		13,042
Net Amount to be Raised by Levy of For Budget Purposes (Transfer amount)				\$	638,503

0.0940

TOWN OF NITRO CALCULATING REDUCED LEVY RATE 2008-2009

TOWN OF NITRO in KANAWHA COUNTY & PUTNAM

CLASS		Column D Roll Back Value		Weightin	g		Weighted Assessed Value
Class I	\$	0	X	0.01	_	\$	0
Class 2	·	78,938,610		0.02		' —	1,578,772
Class 3		0		0.04			0
Class 4		141,406,543		0.04			5,656,262
Total All Classes	\$	220,345,153	(T	otal WAV	')	\$_	7,235,034
Previous year's projected reven	ue X 101%+%	% for Assessor:		2.00%			
, ,			·	00.00%	07	S	680,181
Divide by the TOTAL WEIG	\$ HTED ASSES	660,369 SSED VALUE (T		03.00% (AV)	%	۶_	
Divide by the TOTAL WEIG	HTED ASSES	SSED VALUE (T 4 decimal place	otal W s here	/AV)		*_	0.0940
Divide by the TOTAL WEIG The result of this division is t and this will = the Class 1	HTED ASSES (use 4	SSED VALUE (T 4 decimal place 1 x 100 (use 2 de	otal W s here	/AV) ·) places h	ere)	*_	· ·
The result of this division is t	HTED ASSES (use 4) hen multiplied Levy Rate in	SSED VALUE (T 4 decimal place 1 x 100 (use 2 de cents per \$100 d	otal W s here cimal f asse	AV) places h ssed valu	ere) e	*_	0.0940
The result of this division is the and this will the Class for the Class 2, 3, and 4 Levy For Rate as follows:	HTED ASSES (use 4) hen multiplied Levy Rate in	SSED VALUE (T 4 decimal place 1 x 100 (use 2 decents per \$100 coermined by multip	otal W s here cimal f asse	(AV) places h ssed valu he Class	ere) e	\$ 	0.0940 9.40 Class 2 Rate:
The result of this division is t and this will = the Class î The Class 2, 3, and 4 Levy F	HTED ASSES (use 4) hen multiplied Levy Rate in	SSED VALUE (T 4 decimal place 1 x 100 (use 2 de cents per \$100 d	otal W s here cimal f asse	AV) places h ssed valu	ere) e	\$ 	9.40

Divide by the TOTAL WEIGHTED ASSESSED VALUE (TOTAL WAV) USE 4 DECIMAL POINTS HERE

TOWN OF NITRO EXCESS LEVY PAGE

Name 2008-2009

TOWN OF NITRO in KANAWHA COUNTY & Putnam

	Column E Certificate of Valuation Assessed Value for Tax Purpo				Levy Taxes Levied
Current Year	7 133633	ta value for Tax var poses	Rate/\$100		Bevieu
Class I					
Personal Property	\$	0	5.33	∫ \$	0
Public Utility		0		ــــ ۲ ك	0
Total Class I	\$	0		\$	0
Class II					
Real Estate	\$	79,052,640	10.66	ן\$	84,270
Personal Property		153,210		J '	163
Total Class II	\$	79,205,850		\$_	84,433
Class IV					
Real Estate	\$	80,731,310	21.32] \$	172,119
Personal Property		53,809,337		J '	114,722
Public Utility		10,102,187			21,538
Total Class IV	\$	144,642,834		\$	308,379
Total Value & Projected Revenue	\$	223,848,684			392,812
Less Delinquencies, Exonerations, &	Uncollect	table Taxes	5.0%	••	19,641
Less Tax Discounts			1.0% • • •	· • ·_	3,732
Net Amount to be Raised by Levy For F	Budget Pu	rposes:			369,439
PLEASE CHECK ONE: THE EXCESS I	LEVY IS:	<u> </u>	NOT INCLUDEI		
IF EXCESS LEVY IS INCLUDED IN GEN	NERAL FU	J ND ,	•		

REPORT THIS TOTAL ON PAGE 4 IN ACCOUNT # 301-90:



State of Mest Virginia

Office of the State Auditor Glen B. Gainer III State Auditor www.wvsao.gov

200 West Main Street Clarksburg, West Virginia 26301 Telephone: (304) 627-2415 FAX: (304) 627-2417

Building 1, Room W-100 Charleston, West Virginia 25305 Telephone: (304) 558-2251 FAX: (304) 558-5200

April 8, 2008

NOTICE OF APPROVAL OF THE LEVY ESTIMATE (BUDGET)

City of Nitro

In accordance with the provisions of Chapter 11, Article 8, of the West Virginia Code, as amended, the State Auditor of West Virginia hereby approves your Levy Estimate (Budget) for the fiscal year beginning July 1, 2008.

I find that any levy rates to be imposed in excess of those prescribed by the West Virginia Constitution were legally authorized by a vote of the people.

I find that the proper rates of levy are being used to retire any existing general obligation bond debt, and that such total debt is within the limits prescribed by the West Virginia Constitution and Code.

With this written approval, the levying body shall meet on the third Tuesday in April (April 15th) to hear and consider any objections and to officially adopt the levy rates for property taxation. The clerk/recording officer, within three days of such meeting, shall prepare and forward to the State Auditor the officially adopted levy rates and levy order.

If you have any questions, please do not hesitate to contact me at 627-2415 or 1-877-982-9148 extension 5114, Joyce Ferrebee extension 5118, or Karen Drain extension 5101.

Very truly yours, Glen B. Gainer III WV State Auditor

By: Ora L. Ash, Director

Local Government Services Division

NITRO CITY COUNCIL MEETING MINUTES MAY 6, 2008

Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. In attendance along with Mayor Casto were Recorder Rita Cox, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 4 Councilman Bill Javins, Councilwoman-at-Large Brenda Tyler, Councilwoman-at-Large Gertie Estep, Councilman-at-Large Bill Clark, City Treasurer John Young, and City Attorney Troy Giatras.

The Invocation was given by Councilman Savilla and the Pledge of Allegiance was led by Councilman Bill Clark.

Mayor Casto announced the next scheduled date of Council is Tuesday, May 20, 2008.

AGENDA ITEMS:

SECOND READING - THF SETTLEMENT AGREEMENT

Attorney Troy Giatras stated there were no changes in the THF Settlement Agreement since the first reading besides the amount that was corrected as the NDA portion which is \$1500.00 per quarter. He had notification from Charleston Newspapers of publication of the public meeting on the matter. COUNCILMAN SAVILLA MOVED THAT COUNCIL APPROVED THE THF SETTLEMENT AGREEMENT ON SECOND READING. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. Councilman Javins asked if the lawyer fees were coming from this money. Treasurer Young said they were listed in the Accounts Payable. The only legal fees not listed were approximately \$5000.00 to \$6000.00 for an attorney fee that was by a verbal agreement. Councilman Racer asked where the money would come from for the NDA. Attorney Giatras said it would come from the same money the city would receive. He said the city will receive approximately \$250,000.00 and \$312,000.00 that the city has already spent and will not have to pay back. Under the old agreement, he said, the city did not receive their portion until the 4th quarter. Under the new arrangement the city will receive more each quarter. He said that the NDA has to sign off on it but after tonight's reading it should move quickly. Councilwoman Estep asked if the Senior Center will receive their back rent. Treasurer Young said yes. Attorney Bob Allen said he had enjoyed working with the City of Nitro. Mayor Casto said it had been a pleasure working with Bob Allen and Dee Price. VOTE WAS UNANIMOUS FOR THE MOTION. Mayor Casto thanked John Young, Recorder Rita Cox, and Councilman A. A. "Joe" Savilla.

TREASURER REPORT:

Mr. Young said the city had recently received \$199,884.71 in property tax revenue. He projected that by the end of the fiscal year the city should be in the black. He recommended that a contingency fund be established for the times during the year when revenue is down such as in July through October. COUNCILMAN SAVILLA MOVED THAT AN EMERGENCY FUND OF \$100,000.00 BE ESTABLISHED WHEN THE THF SETTLEMENT AGREEMENT IS COMPLETED. COUNCILMAN CLARK SECONDED THE MOTION. Treasurer Young said he would recommend a money market fund because it pays interest. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION. Councilwoman Estep said we were not paid up and Mayor Casto said that the city is paid up.

NITRO-ST. ALBANS CARE AND SHARE HOME REPAIRS: Councilwoman Tyler introduced Larry Westfall and Bill Fortune who told of a new service being offered to people who need minor repairs done at their homes. June 14 is the kickoff day for the service. Bill Fortune said the goal was to try to keep the jobs under \$100.00, no major improvements. Larry Westfall said it will be done under the Nitro-St. Albans Care and Share, which will be the clearinghouse for the projects. Councilman Savilla offered them a van to add to their vehicles. Councilwoman Tyler said contributions would be accepted.

Councilwoman Tyler reported on the dinner and ceremony held recently to honor emergency service workers, Firemen and Policemen. The Nitro Ministerial Association sponsored it and she said it was wonderful. Bob Schamber made a \$500.00 donation to the Larry Westfall and Bill Fortune to use in their work.

CITIZEN OF THE MONTH:

Mayor Casto announced that Fred King was May Citizen of the Month for all the volunteer work he does at the Nitro High School Football Field. Mayor Casto said the county had supplied the materials and the city was helping build a new fence at the field with volunteer labor.

NATURAL GAS LINE RIGHT OF WAY:

Councilman Clark reported that he has been working on the right of way with Attorney Giatras to find the most expeditious way to resolve it. Attorney Giatras said he did not currently have a resolution to the situation but he was working on it. Councilman Clark said his hope was that it be resolved during this current four year term.

WV DEVELOPMENT OFFICE-GOVERNOR'S COMMUNITY PARTICIPATION GRANT PROGRAM CONTRACT AND RESOLUTION:

Recorder Cox presented Council with a copy of the Resolution which would allow for Nitro to receive \$20,000.00. RECORDER RITA COX MOVED THAT COUNCIL ADOPT THE RESOLUTION ALLOWING THE CITY TO RECEIVE \$20,000.00 FROM THE WV DEVELOPMENT OFFICE-GOVERNOR'S PARTICIPATION GRANT PROGRAM TO WORK ON KANAWHA AVE S. THE MOTION WAS SECONDED BY COUNCILWOMAN BRENDA TYLER. Mayor Casto said he would like with Council's approval to put the money toward repairs on Kanawha Avenue South because that was the street he applied for. Councilman Clark said that Brookhaven also needs some work done and he recommended that \$5000.00 be put toward work on Brookhaven. He said that no work has been done in Brookhaven. Councilman Savilla said that patching has been done in Brookhaven. Treasurer John Young said at the recent Monday Dept. meeting Public Works Director A. J. Hill said Brookhaven was his number one priority and that work there has been planned as soon as possible. Councilman Racer said that work should be done on west 31st St. Mayor Casto said that was about a \$50,000.00 job. Recorder Cox said that Council had committed to do what it took to make E. 31st St. passable for emergency vehicles. VOTE FOR THE MOTION WAS UNANIMOUS.

NITRO POLICEMEN AND FIREMEN PENSJON BOARD OF TRUSTEES ELECTION: RECORDER COX MOVED THAT THE RESULTS OF THE NITRO POLICEMEN AND FIREMEN PENSION BOARDS ELECTION OF MARCH, 2008 BE MADE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Recorder Cox read the results to Council. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

Mayor Casto called on Bob Schamber to explain the three vacuum cleaners sitting in boxes in Council Chambers. Bob Schamber said that he had committed to one for the Library and one for the Municipal Courtroom. Treasurer John Young said he needed one also and therefore Bob Schamber had gotten one for that office also. He said they were donations to the city.

COUNCIL COMMENTS:

Councilman Javins said he wanted to be sure and know when the ground breaking for the boat launch was and to remind Council that David Hight would be at the next meeting to discuss the boat launch.

Councilman Savilla said he wanted to honor all the young people who are so active in Nitro High School and Poca High School. He urged people to attend the events, sports, show choir and whatever the young people were involved in.

Councilwoman Estep said she and the NDA are concerned about the back rent they are owed by the City.

COUNCILMAN CLARK MOVED THAT NO MAIL BE ACCEPTED THAT IS ANONYMOUSLY SENT. THE MOTION WAS SECONDED BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR THE MOTION. He said there seems to be a serious problem with the bar proposed to be put on Main Avenue. He said it was zoned a B-1 property. He said he was not sure if it was zoned for a tavern or bar. He said he felt Council needs to look at it to rectify the problem. Sandy Saunders said that area is zoned B-1 which allows eating and drinking establishments. She said that a building permit was issued for 701 Main Ave. which is B-1 and Council had approved the new planning and zoning this past February. She said that she has been harassed about this decision and justifying it has taken a good deal of her time. She said almost all of Main Avenue is zoned B-1 and there are also other drinking establishments in the area. A woman connected with the business said that it would be a local eating and drinking establishment. She said she was willing to work with the neighborhood to keep down disturbances. Councilman Clark said he thought that any commercial building to be built should be approved by Council. Jeannie Leighton expressed displeasure with the files she received. She said that area had a high accident rate and she has family in the a ea who do not want a bar near them.

COUNCILWOMAN TYLER MADE THE MOTION THAT THE CROSS LANES-NITRO LITTLE LEAGUE CLOSING DAY PARADE BE PERMITTED FOR JUNE 14, 2008. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCILWOMAN TYLER MADE THE MOTION THAT A HELMUT DRIVE BE PERMITTED MAY 17 FROM 10:00 AM TO 4:00 PM ON 21ST ST AND 1ST AVE. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Recorder Cox announced that early voting will be held in Nitro City Hall May 14 through May 31. There will be two Saturdays, 9:00 am to 5:00 pm: May 24 and May 31. May 31 will be the last day of early voting.

PUBLIC COMMENTS:

Bob Schamber said that Monday, May 12 the Senior Center will host Meet the Candidate at 10:00 am. He said the rent owed for the Senior Center was \$15,200.00 He said that Troy Giatras was going to make a presentation before the U. S. Supreme Court and he thought that was an honor.

Mayor Casto again thanked Council and employees for helping the city get out of debt.

ADJOURNMENT:

COUNCILMAN RACER MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILWOMAN ESTEP. THE MOTION CARRIED WITH UNANIMOUS APPROVAL.

RUSTY CASTO, MAYOR

RITA COX. RECORDER

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THF NITRO DEVELOPMENT, LIMITED LIABILITY COMPANY, a West Virginia limited liability company, as Successor-in-Interest to THF CROSS LANES DEVELOPMENT LIMITED LIABILITY COMPANY,

Plaintiff,

v.

CIVIL ACTION NO. 06-C-2196

CITY OF NITRO, a West Virginia municipal corporation, JOHN YOUNG, in his official capacity as Treasurer of the City of Nitro, and NITRO DEVELOPMENT AUTHORITY, an agency of the City of Nitro,

Defendants.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

WHEREAS, THF Cross Lanes Development Limited Liability Company, the City of Nitro ("City"), and the Nitro Development Authority, an agency of the City of Nitro ("NDA"), entered into that certain Amended Development Agreement dated the 8th day of January, 1997 ("ADA"); and,

WHEREAS, THF Nitro Development, Limited Liability Company, a West Virginia limited liability company ("THF"), is the Successor-in-Interest to THF Cross Lanes Development Limited Liability Company; and,

WHEREAS, the City, the NDA and THF entered into the ADA pursuant to Ordinances duly enacted by the City; and,

WHEREAS, pursuant to the ADA and a predecessor agreement, the City annexed certain property into the City and THF constructed a shopping center thereon, hereinafter referred to as the "Nitro Marketplace"; and,

WHEREAS, disputes arose between THF, the City and NDA as to various provisions of the ADA; and

WHEREAS, as a result of such disputes, THF initiated Civil Action No. 06-C-2196 in the Circuit Court of Kanawha County, West Virginia against the City, Tiffany Terry, then Treasurer of the City of Nitro and the NDA; and,

WHEREAS, NDA has filed an Answer to the Complaint of THF; and,

WHEREAS, the City of Nitro and Tiffany Terry have filed an Answer and Counterclaims to the Complaint of THF; and,

WHEREAS, Tiffany Terry is no longer the Treasurer of the City of Nitro and John Young, in his official capacity as Treasurer of the City of Nitro, has been substituted for Tiffany Terry in such civil action; and,

WHEREAS, the City, John Young, Treasurer of the City of Nitro, the NDA and THF have negotiated, each with the other, seeking a compromise of any and all claims and disputes.

NOW, THEREFORE, the City, John Young, Treasurer, NDA and THF, in consideration of the mutual promises contained in this Settlement Agreement and Mutual Release (the "Settlement Agreement"), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. <u>The Escrow</u>. Pursuant to the terms of the ADA, the City, Tiffany Terry and NDA were obligated to periodically pay certain monies to THF as more particularly provided for and described in the ADA. After commencement of the above-entitled action, the parties entered

into that certain Escrow Agreement dated the 1st day of December, 2006 which provided, <u>interalia</u>, that the City, its Treasurer and NDA would deposit into the Escrow Account any and all monies due and owing under the ADA to THF pursuant to the terms of the ADA, and continue to deposit such monies as may be due and owing to THF under the ADA during the pendency of this action. The parties now agree as follows:

- (a) As of March 31, 2008, the Escrow Account consists of a total of \$1,045,813.90 of which \$26,914.66 is interest on said funds. In contravention of the terms of the Escrow Agreement, the City, Tiffany Terry in her capacity as Treasurer, and NDA, did not deposit approximately \$312,000 in the Escrow Account.
- (b) Until Implementation, as defined below, the City and Treasurer will deposit in said Escrow Account all Business and Occupation Taxes received by the City arising from sales and services at Nitro Marketplace, as well as Business and Occupation taxes paid to the City by THF on account of rental income from Nitro Marketplace, collectively hereinafter referred to as "Nitro Marketplace B & O Receipts" or "NMBOR". The Treasurer represents that all NMBOR since January 1, 2008 have been deposited in such Escrow Account.
- \$312,000 which was not deposited into the Escrow Account as aforesaid is released. The City shall not be required in any fashion to deposit said monies into the Escrow Account or otherwise pay them to THF. Furthermore, upon Implementation, from the aforesaid sum of \$1,045,813.90, the amount in the Escrow Account as of March 31, 2008, the City will receive the sum of \$250,000. as well as \$26,914.66 which is the interest earned on the Escrow Account through March 31, 2008. Upon Implementation, the City will be paid from the Escrow Account such additional interest as may be earned from March 31, 2008 to the date of Implementation.

- (d) Contemporaneously with the payment of the aforesaid monies to the City, the balance of the Escrow Account, \$768,899.21, as of March 31, 2008 and any other NMBOR deposited in the Escrow Account for taxes accruing for periods prior to March 31, 2008 will be paid to THF.
- (e) All NMBOR received by the City from and after April 1, 2008 for taxes accrued for the first Quarter of 2008 shall be deposited to the Escrow Account. Upon Implementation, such NMBOR deposited from and after April 1 until the date of Implementation, shall be transferred to the City Special Allocation Account as defined in the ADA, as amended, and disbursed in accordance with the provisions of the ADA, as amended. Upon disbursement of the Escrow monies to the City and THF as aforesaid, the parties will mutually cooperate to close the Escrow Account and terminate the Escrow Agreement.
- 2. The parties have agreed to amend the terms of the ADA by execution and enactment of the "First Amendment to the Amended Development Agreement", a copy of which is attached hereto as Exhibit A and incorporated by this reference as fully and completely as if fully set forth in this Settlement Agreement. With respect to such First Amendment, the parties have further agreed as follows:
- (a) The execution of the First Amendment, as well as this Settlement
 Agreement, by the City shall be authorized by a duly adopted Ordinance of the City of Nitro in
 form and substance as attached herewith as Exhibit B and incorporated by this reference as fully
 and completely as if fully set forth herein. The execution of the First Amendment and
 Settlement Agreement by the President of NDA shall be duly authorized by appropriate
 resolution, in form and substance as attached herewith as Exhibit C.

- (b) The parties each represent and warrant that they have entered into this Settlement Agreement, in substantial part, because of and relying upon the terms of the First Amendment. Therefore, the parties agree that the Settlement Agreement shall be filed with the Court and that the Circuit Court of Kanawha County shall retain jurisdiction of this case throughout the term of the ADA, as amended, and the parties may apply to this Court for such further orders and directions as may be necessary and appropriate for the interpretation and enforcement of the Settlement Agreement or ADA, as amended. In the event any party hereto shall fail to comply with and adhere to the terms of the ADA, as amended, or this Settlement Agreement, any other party may promptly notify the non-complying party in writing of the alleged non-compliance. If the alleged non-compliance is not cured within thirty days, the aggrieved party may apply to the Circuit Court of Kanawha County for injunctive relief requiring the non-complying party to in fact comply with the terms of the ADA, as amended, or this Settlement Agreement, whichever the case may be, including an application for injunctive relief and such damages as may be warranted.
- 3. <u>Mutual Release</u>. In consideration for the Implementation of the First Amendment and this Settlement Agreement, each of the parties hereto mutually release each other party as follows:
- (a) THF does HEREBY RELEASE, ACQUIT, EXONERATE,

 DISCHARGE AND FOREVER HOLD HARMLESS the City, its Treasurer and NDA, and
 each of them, their council members, officers, agents, servants, employees, attorneys, successors
 and successors-in-interest, of and from all manner of action and actions, cause and causes of
 action, suits, judgments, damages, claims for damages, losses, compensation, costs, expenses,
 attorneys fees, and any and all claims and demands of whatsoever name and nature, known or

unknown, in law, equity or otherwise including but not limited to any claims for monies not paid to THF pursuant to the ADA and any other claims that were or could have been brought as part of the lawsuit captioned THF Nitro Development, Limited Liability Company, a West Virginia limited liability company, as Successor-in-Interest to THF Cross Lanes Development Limited Liability Company v. City of Nitro, a West Virginia municipal corporation, John Young, in his official capacity as Treasurer of the City of Nitro, and Nitro Development Authority, an agency of the City of Nitro, Civil Action No. 06-C-2196, in the Circuit Court of Kanawha County, West Virginia.

do HEREBY RELEASE, ACQUIT, EXONERATE, DISCHARGE AND FOREVER
HOLD HARMLESS THF, its divisions, subsidiaries, sister corporations, parent corporations, related entities, directors, officers, agents, servants, employees, attorneys, successors and successors-in-interest of and from all manner of action and actions, cause and causes of action, suits, judgments, damages, claims for damages, losses, compensation, costs, expenses, attorneys fees, and any and all claims and demands of whatsoever name and nature, known or unknown, in law, equity or otherwise including but not limited to any claims for the failure to file any tax returns or failure to pay any taxes, fees, interest, penalties or other monies to the City of Nitro, including but not limited to Business and Occupation taxes on sales, services, construction or rentals, or any other claims that were or could have been brought as part of the lawsuit captioned THF Nitro Development, Limited Liability Company, a West Virginia limited liability Company, as Successor-in-Interest to THF Cross Lanes Development Limited Liability Company v. City of Nitro, a West Virginia municipal corporation, John Young, in his official capacity as Treasurer

of the City of Nitro, and Nitro Development Authority, an agency of the City of Nitro, Civil Action No. 06-C-2196, in the Circuit Court of Kanawha County, West Virginia.

- 4. <u>Effective Date, Conditions Precedent and Implementation</u>. The Effective Date of this Settlement Agreement is, as of April 1, 2008, provided Implementation as herein defined thereafter occurs. "Implementation" shall mean the implementation or carrying out of the terms of the First Amendment and Settlement Agreement, provided, however, before Implementation can occur, each of the following Conditions Precedent must have occurred within the time hereinbelow provided. The Conditions Precedent are the following:
- (i) the City of Nitro has duly enacted an Ordinance, in form and substance as attached herewith as Exhibit B, and pursuant to such enactment the "First Amendment to the Amended Development Agreement," Exhibit A, and this Settlement Agreement have been duly executed: and
- (ii) the NDA has duly adopted a Resolution, in form and substance as attached herewith as Exhibit C, and pursuant to such adoption the "First Amendment to the Amended Development Agreement" and this Settlement Agreement have been duly executed; and
- (iii) the parties have jointly moved the Circuit Court of Kanawha County to enter an Order in the above-styled suit, in form and substance as attached hereto as Exhibit D; and
- (iv) the aforesaid Ordinance and Resolution shall have been duly adopted, and the Order shall have been entered by the Circuit Court of Kanawha County, West Virginia on or before May 23, 2008, or at such other later date as all of the parties by written agreement find acceptable. May 23, 2008, or such later mutually agreed-upon extension date, is hereinafter referred to as the "Implementation Date".

- (a) On Implementation Date, the First Amendment and this Settlement Agreement shall become final and binding upon the parties and they shall mutually cooperate to comply with the terms of each. Promptly on said date, the City, the City Treasurer and THF shall terminate the Escrow Account and distribute the funds as provided above.
- (b) If the Implementation Date is reached and by 5:00 p.m. EDT on that date the Conditions Precedent have not been satisfied, this Settlement Agreement shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by the duly authorized officers as of the date first stated above.

	City of Nitro, West Virginia
Nitro Recorder	By: Rusty Casto Title: Its Mayor
	Nitro Development Authority
	By:
	THF Nitro Development Limited Liability Company by THF Cross Lanes Development Limited Liability Company, Its Manager
	By: Michael H. Staenberg, Manager
	John Young, Treasurer of the City if Nitro

FIRST AMENDMENT TO THE AMENDED DEVELOPMENT AGREEMENT

This First Amendment to the Amended Development Agreement (the "First Amendment") is made and entered into this _____ day of _______, 2008 by and among the City of Nitro, a State of West Virginia municipal corporation (the "City"), THF Nitro Development Limited Liability Company, a West Virginia Limited Liability Company ("THF") and the Nitro Development Authority, a public agency established by the City pursuant to the laws of the State of West Virginia ("NDA").

WITNESSETH

WHEREAS, the City, NDA, THF Cross Lanes Development Limited Liability Company, Solco, Inc. ("Solco") and Par-Com Associates Limited Partnership ("Par-Com") entered into that certain Amended Development Agreement ("ADA") on the 8th day of January 1997; and,

WHEREAS, Par-Com and Solco were entitled to certain rights, privileges and benefits pursuant to the ADA for the first seven years of the term of the ADA; and,

WHEREAS, said seven years having expired, Par-Com and Solco are no longer entitled to rights, privileges or benefits under the ADA, and therefore are not parties to this First Amendment; and,

WHEREAS, THF Nitro Development Limited Liability Company is the successor-ininterest to THF Cross Lanes Development Limited Liability Company; and,

WHEREAS, disputes arose between THF, the City and NDA as to various provisions of the ADA; and,

WHEREAS, as a result of such disputes, THF initiated a suit in the Circuit Court of Kanawha County, West Virginia, Civil Action No. 06-C-2196; and,

WHEREAS, pursuant to its powers as a municipal corporation, the City has the power to defend against such suit and also has the power to enter into contracts; and,

WHEREAS, each of the parties to this First Amendment recognize the expense of litigation as well as the uncertainty of the outcome of such litigation and have elected to resolve their disputes by a Settlement Agreement and a mutually acceptable modification of the ADA as set forth in this First Amendment.

NOW, THEREFORE, each of the parties to this Agreement deem it in their best interest to amend the ADA for and in consideration of the mutual promises and covenants set forth below.

- 1. <u>First Amendment Incorporation</u>. The ADA will continue in full force and effect, according to its terms, except as specifically amended by the First Amendment. The amendments herein agreed upon, from and after the Effective Date are incorporated into and are a part of the ADA as fully and completely as if set forth therein.
 - 2. Section 1.1 of the ADA be and is hereby amended as follows:
- (a) The definition "Additional Sales or Services Business and Occupation Taxes" is hereby deleted and the following definition substituted in its place and stead:
 - "Additional Sales or Services Business and Occupation Taxes" means the amount of Business and Occupation Taxes from: (i) sales or services income on the Development Property, and (ii) rents of the Company from the Development Property, received by the City during each Qualifying Year in excess of the Adjusted Year Business and Occupation Taxes."
- (b) The definition "Company Share" on page 4 of the ADA, be and is hereby deleted and the following definition substituted in its place and stead:
 - "'Company Share' means after \$38,500 is received by the City each quarter as provided in Section 4.2(a)(ii), and \$1,500 is received by NDA each quarter as provided in Section 4.3(b), one hundred percent (100%) of

- all other Additional Sales or Services Business and Occupation Taxes paid to the City in such quarter."
- (c) The definition of "Qualifying Years" on page 5 of the ADA be and is hereby deleted and the following definition is substituted in its place and stead:
 - "'Qualifying Years' means each twelve (12) month period from the date of execution of this Agreement through and including the term of this Agreement. Each Qualifying Year is composed of four Quarters: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31."
- (d) The following definition shall be inserted on page 5 of the ADA after "Qualifying Years" and before "Storage Property":
 - "'Quarter' means each of the three-month periods of time described in the definition of 'Qualifying Years'."
- (e) The definition "Term" on page 5 of the ADA be and is hereby deleted and the following definition inserted in its place and stead:
 - "'Term' means a term commencing with the full execution of this Agreement on January 8, 1997 and ending after twenty (20) Qualifying Years. The term of this Agreement ends in the first Quarter of 2017, upon payment to the Company of the Tax Credits due the Company for NMBOR (as defined below) received in the first Quarter of 2017 for the preceding Quarter ending December 31, 2016."
- 3. The section entitled "Section 4.2 <u>Receipt, Deposit, and Accounting of the Tax</u>

 <u>Credits by the City and Payment to the Company</u>" and its subparts be and are hereby amended as follows:
- (a) Section 4.2(a) on page 11 of the ADA be and is hereby deleted and the following paragraph substituted in its place and stead:
 - "(a) Each Quarter of each Qualifying Year, the City shall collect and receive the Business and Occupation Taxes described in Sections 4.1(a), (b) and (c), and deposit and disburse such funds as provided hereafter. Upon receipt, the City shall initially deposit such funds into the Special

- Allocation Account described below and account for such funds (the "Tax Accounting") as follows:"
- (b) Section 4.2(a)(i) on page 11 of the ADA be and is hereby deleted and the following paragraph substituted in its place and stead:
 - "(i) The receipts from the Business and Occupation Taxes described in Sections 4.1(a), (b) and (c), collectively referred to as 'Nitro Marketplace B&O Receipts' (or "NMBOR") are, by Nitro Ordinance, due and payable to the City in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The City shall promptly deposit such receipts in the Special Allocation Account. When received by the City, the receipts shall be recorded on a Tax Accounting Report, showing the date such funds were received, the person, firm or entity remitting the funds, the applicable period of time for the remittance, and the amount remitted, separately showing tax, interest and penalty, if any. The City shall keep and maintain the Tax Accounting Report and supporting records for the term of ADA and five years thereafter."
- (c) Section 4.2(a)(ii) on page 11 of the ADA be and is hereby deleted and the following substituted in its place and stead:
 - "(ii) Commencing with the Effective Date of this First Amendment and thereafter throughout the term of this ADA, the City shall be entitled to withdraw each Quarter from the Special Allocation Account, for deposit to the City's General Funds, the first thirty-eight thousand five hundred dollars (\$38,500) of NMBOR received by the City for the preceding Quarter (the "City Share")."
- (d) Section 4.2(a)(iii) on page 11 of the ADA be and is hereby deleted and the following substituted in its place and stead:
 - "(iii) Upon withdrawal of the City Share, the City shall contemporaneously pay to the NDA the balance of all other NMBOR received. Thereafter, during such Quarter, on or before the 10th day of each month of said Quarter, the City shall pay all other NMBOR for taxes due from previous Quarters to the NDA. The City shall provide a Certification of Payment, as described in 4.2(c) below, to the Company."
 - (e) Section 4.2(a)(iv) on pages 11 and 12 of the ADA shall be deleted.

- (f) The paragraph designated (b) <u>Establishment of, and Deposit into, Special</u>

 <u>Allocation Account</u> on page 12 of the ADA be and is hereby deleted and the following paragraph substituted in its place and stead:
 - "(b) Establishment of, and Deposit into, Special Allocation Account. The City acknowledges the existence and purpose of the Special Allocation Account which is used solely for the purposes described in the Amended Development Agreement and this First Amendment. Upon receipt, the City shall promptly deposit the Business and Occupation Taxes described in 4.1 above, into such separately designated account. Until such time as the City has paid all amounts due and owing under this Amended Development Agreement, as amended, the City agrees to pledge and apply the monies in the Special Allocation Account to the payment of the amounts due hereunder, and to use such monies for no other purpose and to otherwise maintain the Special Allocation Account in accordance with this Amended Development Agreement, as amended. The City further agrees that the City shall not further encumber nor pledge any portion of the Special Allocation Account during the term of this Amended Development Agreement, as amended, nor take any actions in connection therewith inconsistent with the terms and conditions hereof. Any interest earned on said Special Allocation Account shall belong to the City."
- (g) New sections 4.2(c) and 4.2(d) are inserted after the new 4.2(b). The sections are the following:
 - "(c) <u>Certification of Payment</u>. On or before the 20th day of each Quarter, the City shall provide a Certification of Payment to the Company. As used herein, "Certification of Payment" shall be a statement of the total amount of Tax Credits, as defined below, paid by the City to NDA throughout the preceding Quarter and the names of the taxpayers remitting such payments, not including the separate amount paid by each. The Certification of Payment shall be signed by the City Treasurer and certified under oath to be correct, or certified by a Certified Public Accountant acting on behalf of the City.
 - (d) The Company shall have the right at its discretion to appoint an independent Certified Public Accountant to inspect, audit, and verify the City's Tax Accounting Reports, all City records which the City relied upon to prepare the Tax Accounting Reports, the records of the Special Allocation Account of the City and NDA, as well as the Certification of Payment. The CPA appointed by the Company shall be a CPA firm or individual identified on a "CPA List" published by the State Auditor's

Office of West Virginia as approved to perform Municipal Audits. In the event the list is not published or issued by the Auditor's Office in the future, the Company may select any independent Certified Public Accounting firm with an office in Kanawha County, West Virginia. The said CPA shall conduct such inspection, audit and verification, at reasonable times, during ordinary business hours, upon at least ten-day advance written notice. If any such audit by a CPA appointed by the Company as aforesaid, shows a deficit in the amount that was paid to the Company, under this Agreement the City will promptly pay such deficit amount. If such deficit is greater than 3% of the amount shown on the Certification(s) for Payment reported by the City for the period encompassed by the audit (reduced by the \$1,500 per Quarter retained by the NDA), the expenses of the audit shall be paid by City, and otherwise by the Company."

- 4. The section entitled "Section 4.3 Receipt, Deposit and Payment of the Tax Credits by the Nitro Development Authority" be and is hereby amended as follows:
- (a) The paragraph designated 4.3(b) on page 12 of the ADA be and is hereby deleted and the following substituted in its place and stead:
 - "(b) Upon receipt of the Tax Credits from the City, the Nitro Development Authority shall forthwith deposit such monies in a Special Allocation Account which is used solely for the purposes described in this Amended Development Agreement. Within a reasonable time after deposit to such account, but no later than seven (7) days after such deposit, the Nitro Development Authority shall pay the Tax Credits to the Company, less however the sum of One Thousand Five Hundred Dollars (\$1,500.00) for each Quarter hereafter, which monies the Nitro Development Authority shall retain to use for any purpose authorized by its charter. The aforesaid One Thousand Five Hundred Dollars (\$1,500.00) designated as aforesaid to be retained by the Nitro Development Authority is a quarterly sum which may unilaterally be reduced at the discretion of the City and the said reduction shall be retained by the City. Such reduction shall be by resolution of the City and the Company shall receive written notice thereof. In the event of such reduction the dollar amounts described in Section 4.2 and 4.3 to be retained by the City and the Nitro Development Authority shall be deemed amended accordingly. However, notwithstanding any such reduction, the Nitro Development Authority shall continue to carry out the terms of this Amended Development Agreement as herein provided.

- 5. Section 5.1 of the ADA entitled "<u>Defaults: Rights to Cure</u>" be and is hereby amended to insert a new paragraph (c) after existing paragraph (b) and before Section 5.2. The said paragraph (c) to be the following:
 - "(c) Collections. In the event any Occupants of the Property fail to comply with Business and Occupation Tax provisions of the Ordinances of the City of Nitro, the City agrees that it will use its best administrative efforts as provided in applicable Nitro Ordinances to assess and collect such taxes, including assessments and the filing of liens. Any interest and penalties collected by the City shall belong to the City. If, despite such efforts, Nitro is unable to collect such taxes, when the delinquent amounts for any calendar year exceed \$10,000, the City shall advise the Company the details thereof and the Company shall have the right, but not the obligation, at its cost, to institute and pursue such legal action in the City's name as it deems appropriate to collect such taxes. The Company shall indemnify and hold harmless the City from any liabilities arising from acts of the Company in such collection actions brought in the City's name. The Company shall have the right to settle such action upon terms it deems reasonable. Such delinquent taxes, when collected, shall be accounted for pursuant to this First Amendment. Interest on such taxes if collected by the Company shall belong to the Company.
- 6. A new Section 5.4 be and is hereby inserted in the ADA after Section 5.3(b)(ii) and before Article VI. The Section 5.4 shall be as follows:

"The parties have entered into an additional agreement dated in the case of THF Nitro Development Limited Liability Company v. City of Nitro et al., Civil Action No. 06-C-2196 in the Circuit Court of Kanawha County, West Virginia, (the "Settlement Agreement") which resolves various disputes between them. As part of said Settlement Agreement, the parties to such Settlement Agreement and this ADA agree the Circuit Court of Kanawha County shall retain jurisdiction of the matter throughout the term of the ADA and the parties may apply to said court for such further orders and directions as may be necessary and appropriate for the interpretation and enforcement of the Settlement Agreement or ADA as amended. In the event any party to the First Amendment shall fail to comply with and adhere to the terms of the ADA or the Settlement Agreement, and the other party may promptly notify the non-complying party, in writing, of the alleged non-compliance. If the alleged noncompliance is not cured within thirty days of such notice, the aggrieved party may apply to the Circuit Court of Kanawha County for injunctive relief requiring the non-complying party to in fact comply with the terms of the ADA, as amended or this Settlement Agreement, whichever the

case may be including an application for injunctive relief and such damages as may be warranted. The election of a party to seek relief in the Circuit Court as herein provided shall not be exclusive of the other remedies provided in this Article V and its subparts."

7. Section 6.5 of the ADA entitled "<u>Cooperation and Further Assurances</u>" be and is hereby amended to delete the last complete sentence of Section 6.5 and substitute in its place and stead the following:

"In such event, the City shall retain the quarterly amount of one thousand five hundred dollars (\$1,500.00) which the Nitro Development Authority is entitled to retain under Section 4.3 of this Amended Development Agreement."

- 8. Section 6.7 of the ADA entitled "Notices" be and is hereby amended as follows:
- (a) Delete on page 16 the name and contact information for Alan Bornstein and substitute in its place and stead the following:

Lewis, Glasser, Casey & Rollins, PLLC ATTN: Martin J. Glasser 300 Summers Street, Suite 700 P. O. Box 1746 Charleston, WV 25326 Phone: (304) 345-2000 Fax: (304) 343-7999

(b) Delete on page 17 the address for the City Attorney for the City of Nitro and change it as follows:

Allen Guthrie McHugh & Thomas 500 Lee Street, East, Suite 800 Charleston, WV 25301

9. <u>Effective Date, Implementation Date</u>. This Amendment, when Implemented (as "Implemented" is defined in the Settlement Agreement), shall be effective as of the First Day of April, 2008. If this First Amendment is not Implemented on or before 5:00 p.m. EDT, May 23, 2008 it shall be void, unless the parties hereto mutually execute a written consent to extend the time to a later date.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized officers as of the date first stated above.

	City of Nitro, West Virginia
Nitro Recorder	By:Rusty Casto Title: Its Mayor
	Nitro Development Authority
	By: Title: Its President
	THF Nitro Development Limited Liability Company by THF Cross Lanes Development Limited Liability Company, Its Manager
	By:Michael H. Staenberg, Manager

Ordinance No. 08-05

ORDINANCE APPROVING FIRST AMENDMENT TO AMENDED DEVELOPMENT AGREEMENT RELATING TO TAX INCENTIVES AND REMITTANCES, APPROVING THE SETTLEMENT AGREEMENT AND FURTHER AUTHORIZING THE MAYOR TO EXECUTE EACH

WHEREAS, by Ordinance No. 96-08, passed on Second Reading on January 7, 1997, this Council duly adopted an Ordinance authorizing the Mayor of the City of Nitro to enter into that certain "Amended Development Agreement" providing for tax incentives for THF-Cross Lanes Limited Liability Company; and,

WHEREAS, THF-Cross Lanes Limited Liability Company subsequently transferred its interest in the Amended Development Agreement to THF Nitro Development Limited Liability Company;

WHEREAS, the Amended Development Agreement was implemented and the parties performed according to its terms until the City of Nitro ceased making payments to THF pursuant to the Amended Development Agreement;

WHEREAS, as a result of the cessation of payments by Nitro, THF filed suit in the Circuit Court of Kanawha County, West Virginia, styled "THF Nitro Development Limited Liability Company v. The City of Nitro, et al., Civil Action No. 6-C-2196";

WHEREAS, the parties have agreed upon a resolution of the aforesaid civil action, the terms of which are set forth in the First Amendment to Amended

Development Agreement, as well as the Settlement Agreement, true copies of which are attached hereto and made a part hereof.

NOW, THEREFORE, pursuant to lawful authority vested in the municipality known as the City of Nitro, West Virginia, be it ordained by the Council of the City, that

the "First Amendment to Amended Development Agreement" between with the City of Nitro, the Nitro Development Authority, and THF Nitro Development Limited Liability Company, as well as the Settlement Agreement in the forms attached hereto, be and are hereby approved.

BE IT FURTHER ORDAINED that the Mayor of the City of Nitro is directed to sign both the "First Amendment to Amended Development Agreement" and the "Settlement Agreement" on behalf of the City of Nitro.

Motion made by	, seconded by
to have first reading of this Ordinance.	
Motion made by	, seconded by
to have second and final reading and adoption	on of this Ordinance, notice of which was
duly published in accordance with West Vir	ginia law.
	_
FIRST READING	Date:
SECOND READING:	Date:
	Effective Date:
	MAYOR

CITY RECORDER

RESOLUTION APPROVING FIRST AMENDMENT TO AMENDED DEVELOPMENT AGREEMENT RELATING TO TAX INCENTIVES AND REMITTANCES, APPROVING THE SETTLEMENT AGREEMENT AND FURTHER AUTHORIZING THE PRESIDENT OF NDA TO EXECUTE EACH

WHEREAS, the City of Nitro (the "City"), THF Cross Lanes Development Limited Liability Company ("THF Cross Lanes") and the Nitro Development Authority (the "NDA") entered into an agreement on the 18th day of June, 1996 relating to certain property that would be annexed into the City and then acquired by THF Cross Lanes which would construct a shopping center thereon; and,

WHEREAS, by Ordinance No. 96-08, the City duly adopted an Ordinance authorizing the Mayor of Nitro to enter into that certain "Amended Development Agreement" providing for tax incentives for THF Cross Lanes; and,

WHEREAS, the NDA was also a party to said Amended Development Agreement; and,
WHEREAS, THF Cross Lanes subsequently transferred its interest in the Amended
Development Agreement to THF Nitro Development Limited Liability Company ("THF"); and,

WHEREAS, the Amended Development Agreement was implemented and the parties performed according to its terms until the City of Nitro ceased making payments to THF pursuant to the Amended Development Agreement;

WHEREAS, as a result of the cessation of payments, THF filed suit in the Circuit Court of Kanawha County, West Virginia styled "THF Nitro Development Limited Liability Company v. The City of Nitro, et al., Civil Action No. 6-C-2196," and the NDA also is a defendant in such civil action;

WHEREAS, the City, THF and the NDA have agreed upon a resolution of the aforesaid civil action, the terms of which are set forth in the First Amendment to the Amended

Development Agreement, as well as the Settlement Agreement, true copies of which are attached hereto as Exhibits 1 and 2 respectively and made a part hereof.

NOW, THEREFORE, pursuant to lawful authority vested in the NDA, the NDA, upon motion duly made and seconded, does hereby APPROVE and ADOPT the "First Amendment to the Amended Development Agreement" between the City, NDA and THF, as well as the Settlement Agreement in the forms attached hereto. The President of NDA is hereby authorized, directed and empowered to execute and deliver for and on behalf of NDA the First Amendment to the Amended Development Agreement and the Settlement Agreement.

IN V	VITNESS WHE	REOF, the Preside	ent and Secretary of NDA have hereunto set their
hands this _	day of	, 2008.	
			Nitro Development Authority
			By: Its: President
Secretary or	Witness		

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THF NITRO DEVELOPMENT, LIMITED LIABILITY COMPANY, a West Virginia limited liability company, as successor-in-interest to THF Cross Lanes Development Limited Liability Company,

Plaintiff,

v.

CIVIL ACTION NO. 06-C-2196 Judge Jennifer Bailey Walker

THE CITY OF NITRO, a West Virginia municipal corporation, TIFFANY TERRY, in her official capacity as Treasurer of the City of Nitro and NITRO DEVELOPMENT AUTHORITY, an agency of the City of Nitro,

Defendants.

AGREED ORDER OF SUBSTITUTION

Pursuant to Rule 25(d) of the West Virginia Rules of Civil Procedure, the Defendants advise the Court that John Young is the acting successor in interest to Tifney Terry as Treasurer of the City of Nitro.

Therefore, by agreement of the parties, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that John Young, in his capacity as Acting Treasurer of the City of Nitro is substituted for Defendant Tifney Terry in this action as set forth in the above style of the case.

The Clerk is further **ORDERED** to provide a copy of this Order to counsel of record.

ENTER:

Honorable Jennifer	Bailey Walker

Presented by:

Webster G. Arceneaux, III (WV Bar #155)

LEWIS GLASSER CASEY & ROLLINS, PLLC

300 Summers Street

Charleston, West Virginia 25326-1746

Counsel for Plaintiff THF Nitro Development,

Limited Liability Company

Debra C. Price (WV Bar # 2979)

ALLEN GUTHRIE MCHUGH & THOMAS PLLC

500 Lee Street, East, Suite 800

P. O. Box 3394

Charleston, West Virginia 25333-3394

Counsel for Defendants The City of Nitro and Tifney Terry

Martin R. Smith (WV Bar # 3474)

SMITH LAW OFFICES

P. O. Box 7534

Cross Lanes, West Virginia 25356

Counsel for Defendant Nitro Development Authority

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THF NITRO DEVELOPMENT, LIMITED LIABILITY COMPANY, a West Virginia limited liability company, as successor-in-interest to THF Cross Lanes Development Limited Liability Company,

Plaintiff.

v.

CIVIL ACTION NO. 06-C-2196 Judge Jennifer Bailey Walker

THE CITY OF NITRO, a West Virginia municipal corporation, JOHN YOUNG, in his official capacity as Treasurer of the City of Nitro and NITRO DEVELOPMENT AUTHORITY, an agency of the City of Nitro,

Defendants.

ORDER OF DISMISSAL

The parties have advised the Court, by counsel, that this matter has been settled and compromised and that the parties have entered into a Settlement Agreement that has been filed with the Court. The Court hereby incorporates the terms of that Settlement Agreement fully herein by reference and it enters this **ORDER** fully incorporating the terms of the Settlement Agreement.

It is hereby **ORDERED**, in accordance with the Settlement Agreement and by agreement of the parties, that this Court shall retain jurisdiction over the parties and the subject matter of this action for the purpose of interpreting and enforcing the Settlement Agreement. In the event any party to the First Amendment shall fail to comply with and adhere to the terms of the ADA, as amended, or the Settlement Agreement, any other party may promptly notify the non-complying party in writing of the alleged violation. If the alleged violation is not cured within thirty days, the aggrieved party may apply to the Circuit Court of Kanawha County for injunctive relief requiring the

non-complying party to in fact comply with the terms of the ADA, as amended, or this Settlement Agreement, whichever the case may be, and that party may seek other remedial action, including a claim for damages as may be warranted.

It is further **ORDERED**, by agreement of the parties, that this matter be, and hereby is, **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the Clerk shall send certified copies of this Order to counsel of record.

Entered this ____ day of ______, 2008.

Honorable Jennifer Bailey Walker

Prepared and submitted by:

Webster J. Arceneaux, III (WV Bar # 155)
LEWIS GLASSER CASEY & ROLLINS, PLLC
300 Summers Street
Charleston, West Virginia 25326-1746
Counsel for Plaintiff THF Nitro Development,
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SMITH LAW OFFICES
P. O. Box 7534
Cross Lanes, West Virginia 25356
Counsel for Defendant Nitro Development Authority



May 6, 2008 RESOLUTION 08-01

West Virginia Development Office-Governor's Community Participation Grant Program

Contract and Resolution

The City of Nitro Adopts the Resolution Allowing the City to Receive \$20,000.00 from the West Virginia Development Office-Governor's Participation Grant Program with the Money Received Going to Work on Paving Kanawha Avenue South

Voting for the Resolution:
Councilman A. A. Savilla
Councilman Bill Racer
Councilman Bill Javins
Councilwoman Brenda Tyler
Councilwoman Gertie Estep
Councilman Bill Clark
Recorder Rita Cox

RUSTY CASTO, MAYOR

RITA COX, RECORDER

NITRO CITY COUNCIL MEETING MINUTES TUESDAY, MAY 20, 2008

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Mayor Casto called the meeting to order at 7:30 pm in Council Chambers. Attending with Mayor Casto were Recorder Rita Cox, Treasurer John Young, Councilmen Bill Javins, Bill Clark, Bill Racer and A. A. "Joe" Savilla, Councilwomen Gertie Estep and Brenda Tyler, Attorney Phil Sword.

The Invocation was given by Councilman Savilla. The Pledge of Allegiance was led by Councilman Clark.

COUNCILMAN SAVILLA MOVED THE MINUTES OF APRIL 1, 2008 BE APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN RACER. Councilwoman Estep asked for a change in the record to reflect she had the necessary 25 names on the petition to run for mayor. Recorder Cox agreed to make the change. COUNCIL VOTED FOR THE MOTION TO PASS WITH THAT CHANGE.

FUTURE DATES OF COUNCIL: Mayor Casto noted that the Municipal Election will be held on the first Tuesday in June when Council normally meets. RECORDER COX MOVED THAT THE JUNE COUNCIL MEETING BE HELD JUNE 10, 2008 AND JUNE 24, 2008 WITH A SECOND BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR THE MOTION.

AGENDA ITEMS:

THF SETTLEMENT RE: JUDGE JENNIFER BAILEY WALKER: Recorder Cox reported that on May 9, 2008 she met with Mayor Casto and Treasurer John Young, and Mary Trout of the Nitro Development Authority along with the representative attorneys and Andy Boyd of THF and his attorneys to meet with Judge Walker to present her with the Ordinance Approving First Amendment to Amended Development Agreement Relating to Tax Incentives and Remittances, Approving the Settlement Agreement and Further Authorizing the Mayor to Execute Each.

SEWERAGE SYSTEM DESIGN REVENUE BONDS - SUPPLEMENTAL RESOLUTION/LOAN AGREEMENT - RECORDER RITA COX MOVED THAT COUNCIL ADOPT THE SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE CITY OF NITRO, APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WV WATER DEVELOPMENT AUTHORITY, DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK, AND MAKING OTHER PROVISIONS AS TO THE BONDS. THE MOTION WAS SECONDED BY COUNCILMAN A. A. "JOE" SAVILLA. Recorder Cox told Council this was a necessary step following the action of Council in passing Ordinance 08-04 authorizing upgrades to the current wastewater system. Councilman Racer asked if there was to be a rate increase. Mayor Casto said that there would not be and the sale would go through the WV Water Development Authority. VOTE WAS UNANIMOUS FOR THE PASSAGE OF THE MOTION FOR THE RESOLUTION.

POLL WORKER LIST: Recorder Cox reported that poll workers for the June 3, 2008 election along with alternates had been selected and the election school would take place on May 22, 2008 at 6:00 pm in Council Chambers. RECORDER COX MOVED THAT THE POLL WORKERS LIST BE MADE A PART OF THE MINUTES. THE MOTION WAS SEONDED BY COUNCILMAN SAVILLA. THE VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

NITRO LANDFILL BOAT LAUNCH: David Hight of the DNR and project manager of the

landfill reclamation said the process was nearly at an end. The next step will be a Certificate of Completion and then a public meeting. Chris Amick of Kemron said there will be a public meeting to discuss the project and get community input. He stated that the initial construction should being in the fall of 2008 and be completed in the spring of 2009. He introduced Kathleen Neuber who reported on the residual risk evaluation. She said that it was taken into consideration that a sanitary sewer runs under the land and that work may have to be done in the future. She presented information about the risk factors involved. She said there were to be no enclosed structures and recreational uses are restricted. It was also to be non-residential. Councilman Clark said he was opposed to it because of the chemicals. Councilman Savilla said it was primarily to be used for parking of trailers and vehicles and was only a place to launch boats into the Kanawha River. David Hight said that inspection will continue to be done. Councilman Racer asked who would monitor the wells. David Hight said that the state will do the monitoring and that recent tests had been good. Nitro citizen Marian Bartlett asked if was to be monitored 24 hrs. a day. David Hight said it will be accessible 24 hrs. a day, it will be up to the City of Nitro to patrol, and lighting will be low level. He said the public meeting with the DNR will be a good time for public input.

TREASURER REPORT: City Treasurer John Young reported that the City was \$37,483.00 in the black at the end of April. He said that after paying payroll today of \$42,000.00 the Accounts Payable balance is \$264,651.00 and the Payroll Account has \$95,127.00. He recommended the city set up an emergency fund of \$100,000.00 with money collected through the THF Amended Settlement. He stated that this would help at the beginning of the fiscal year when money from the Tri-State Gaming Center does not come in. COUNCILMAN SAVILLA MOVED THAT THE CITY OF NITRO PASS A RESOLUTION TO SET UP AN EMERGENCY FUND OF \$100,000.00 IN AN INTEREST BEARING ACCOUNT AT PEOPLES FEDERAL CREDIT UNION WITH THE SIGNATORIES BEING MAYOR CASTO, RECORDER COX, TREASURER JOHN YOUNG AND PAYROLL CLERK MARY BETH BURT. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Treasurer Young reported to Council the city was in a position to purchase the excavator that had been approved this fiscal year. Councilman Savilla said that we had paid so much in rent, and the season for using an excavator was here, this would be a good time to purchase. COUNCILMAN SAVILL A MOVED THE CITY PURCHASE THE KUBOTA EXCAVATOR AS APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Savilla said that the Treasurer and Fire Chief had discussed the longevity pay for Firemen. Councilman Savilla asked Treasurer Young if there was enough money to pay the Firemen in \$500.00 payments. Treasurer Young said yes. COUNC'LMAN SAVILLA MOVED THAT THE CITY BEGIN PAYING THE LONGEVITY PAY FOR FIREMEN AS STATED IN TE APRIL 1, 2008 MINUTES AND APRIL 3, 2008 MINUTES OF COUNCIL THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilwoman Tyler asked Treasurer Young if we were in the black before the THF settlement and he said that we were in the black as of April 30 by \$37,483.00 which meant that we were in the black prior to the THF settlement.

ATTORNEY REPORT: Phil Sword with Giatras Law Offices stated that their office is working on updating the DUI statute as requested by the City. They are also updating the animal cruelty ordinance to bring it up to area standards. They will attempt to have them ready for the June 10, 2008 meeting of Council. Councilman Clark asked if there was any information about the gas line property and Phil Sword responded that the had no new information. Councilman Clark stated that Council may move to seek transmission.

COUNCIL COMMENTS:

Mayor Casto said that he stood behind Recorder Cox to run the election legally.\
Councilwoman Tyler read a press release from Recorder Cox concerning conducting the election as a candidate. Councilwoman Tyler expressed here confidence in the Recorder to conduct the election.

COUNCILWOMAN TYLER MOVED THAT THE PRESS RELEASE BE MADE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Javins said that he was glad the City was back in the black but that we need to still be careful. He said the pool workers did a excellent job getting the pool ready naming Debra Jordan, Hazel Casto, Dustin Fridley, and Zach Gardner.

Councilman Savilla said to remember all the citizen we lost recently with a special mention of Freda Patton who worked for the City of Nitro.

Councilwoman Estep said she wanted to remember the families who had lost someone.

Councilman Clark said he had been called about the use of the Shelter at the ball field on every third Saturday of each month to have concerts. He called on Dick Patton to tell more about it. Dick Patton said he would like to call it the Jewell McClanahan concert series for the four months of summer. Councilwoman Tyler said she would like to have it under Recreation 3rd Saturday of each month 7:00 pm to 10:00 or 10:30 pm and possible some concerts on the lake. COUNCILMAN CLARK MOVED THAT THE CITY HOST A SERIES OF FREE CONCERTS DURING THE SUMMER MONTHS AT THE CITY PARK ONCE A MONTH ON THE THIRD SATURDAY. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilwoman Tyler said she thought the vacant lot next to City Hall should be considered for purchase. She asked Mr. Young to contact the realty company to see what they are asking and make and offer. She thought the money the city is giving to the Community Center for the Police Dept. and Senior Center rent could be made as payment on a new building.

Recorder Cox asked who was responsible for the scheduling of the practice field at Nitro City Park. Mayor Casto said the city has control. She said she thought that there should be more groups able to use it. She said that the football and men and women's soccer will all need access to it. Councilwoman Tyler said that the field comes under the Recreation Department.

PUBLIC COMMENT:

Laura Mallett asked where the money for Brookhaven street repair will come from and is there anything in writing. She said there is no money in the budget. Treasurer Young said that repairs will be made as money is available, repairs not paving. He said she should talk with A. J. Hill about repair. Mayor Casto said another way to pay for paving is assessing the property owner. She asked if other homeowners had been assessed. Councilwoman Tyler said for many years that is the only way roads were paved. Laura Mallett asked why the people of Brookhaven had not been made aware that they could pay for their own paving.

ADJOURNMENT: COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN CLARK. THE VOTE FOR THE MOTION WAS UNANIMOUS FOR PASSAGE.

RUSTY CASTO, MAYOR

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CITY OF NITRO

Sewerage System Design Revenue Bonds, Series 2008 A (West Virginia Water Development Authority)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL DATE. DATE. AMOUNT. MATURITY REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2018 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE CITY OF MITRO, APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST ViRGINIA WATER DEVELOPMENT AUTHORITY. DESIGNATING A REGISTRAR, PAYING AGENT DEPOSITORY BANK: AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of the City of Nitro (the "Issuer"; has duly and officially adopted and enacted a bond ordinance, efficience May 6, 2008 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS. ADDITIONS, BELLERMENTS IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE FACILITIES OF THE CITY OF NITRO AND THE FEVANCING OF THE COST THUREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY NOT MORE THAN \$314,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWERAGE SYSTEM DESIGN REVENUE BONDS, SERIES 2008 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS: AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS: AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of Sewerage System Design Revenue Bonds, Series 2008 A (West Virginia Water Development Authority), of the Issuer (the "Bonds"), in an aggregate principal amount not to exceed \$314.00, and has authorized the execution and delivery of the loan agreement relating to the Bonds, including all schedules and exhibits attached thereto, by and between the Issuer and the West Virginia Water Development Authority (the "Authority") (the "Loan Agreement"), all in accordance with Chapter 16. Article 13 and Chapter 22C. Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds, and that other matters relating to the Bonds be herein provided for:

WHEREAS, the Loan Aggreement has been presented to the Issuer at this meeting,

WHEREAS the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement:

WHEREAS, the Governing flody deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Bonds be redesignated, that the Lean Agreement be approved and remited by the issuer, that the exact principal amount, the date, the matterity date, the redemption provision, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW THEREFORE. BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF NITRO:

Section 1 Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewerage System Design Revenue Bonds. Series 2008 A (West Virginia Water Development Authority), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$313,929. The Series 2008 A Bonde shall be dated the date of delivery thereof, shall fluidy mature July 1, 2010. Interest shall commence on the date of closing on the amounts advanced and outstanding, and interest only payable quarterly on landary 1, April 1, July 1, and October 1 of each year in arrears at the rate of 3% per annum, with the first payment due on July 1, 2008. Commencing July 1, 2008, interest accrues at the rate of 3% per annum, and interest and principal payments are payable quarterly January 1. April 1, July 1, and October 1 of each year commencing October 1, 2008 and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2008 A Bonds. The Series 2008 A Bonds shall be subject to redemption upon the written consent of the Authority and upon payment of the redemption premium, if any, and otherwise in compilance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2008 A Bonds.

<u>Section 2.</u> All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the

Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

- Section 4. The Issuer does hereby appoint and designate The City National Bank, Charleston. West Virginia, to serve as Registrar (the 'Registrar') for the Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.
- Section 5. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission. Charleston. West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.
- Section 6. The Issuer does hereby appoint and designate The City National Bank West Virginia, to serve as Depository Bank under the Bond Ordinance.
- Section 7. Series 2008 A Bonds proceeds in the amount of 3-G-shall be deposited in the Series 2008 A Bonds Sinking Fund, as capitalized interest.
- Section 8. Series 2008 A Bonds proceeds in the amount of S-0-shall be deposited in the Series 2008 A Bonds Reserve Account.
- Section 10. The balance of the proceeds of the Series 2008 A Bonds shall be deposited in or credited to the Series 2008 A Bonds Project Fund as received from the Authority from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and befored costs.
- Section 11. The Mayor and the Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about May 29, 2008, to the Authority pursuant to the Loan Agreement.
- Section 12. The Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.
- Section 13. The Issuer does hereby approve and authorize all contracts relating to the financing of the Project.
- Section 14 The issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moties to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall

be invested by the West Virginia Municipal Bond Commission in the West Virginia Board of Treasury Investments

Section 15. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 193(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations promulgated or to be promulgated thereunder.

Section 16. This Supplemental Resolution shall be effective immediately following adoption beyon?

[Remainder of this page intentionally left blank]

Adopted this 20th day of May, 2008.

Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution daly adopted by the Council of the CiTY OF NITRO on the 20th day of May, 2008.

Lia Cox

Dated: May 20, 2008.

[SEAL]

NITRO MUNICIPAL ELECTION (JUNE 3, 2008)

PRECINCTS 22-23	RESA 39 TH STREET	
R CLERK D CLERK R SUPPLY COMM. D COMM.(ESCORT)	MICHAEL TODD RAYNES-3945 39 TH ST. PATRICIA A. SLACK-4038 40 TH ST. ALICE SHAFFER-3509 35 TH ST. MONOKA J. BROGAN-121 BAILES DR.	415-2907 755-0711 755-9387 755-1487
PREINCT 349	NITRO WOMAN'S CLUB	
R CLERK (ESCORT) D CLERK D SUPPLY COMM. R. COMMISSIONER	WILLIAM ROBERT FINCH-111 FAIRVIEW DR. HAROLD WHITE-2720 27 TH ST. JACI WHITE-2720 27 TH ST. ALMA M. BOGGESS-64 31 ST ST.	776-8411 755-2346 755-2346 755-2544
PRECINCT 350	NITRO ELEMENTARY SCHOOL	
R CLERK D CLERK D SUPPLY COMM. R COMM. (ESCORT)	MATILDA MYNES-2158 21 ST ST. SANDRA DORSEY-1127 11 TH ST. DONNA WILCOX-103 DUPONT AVE. CLYDE MYNES-2158 21 ST ST.	755-0321 755-4913 755-5531 755-0321
PRECINCT 352	NITRO HIGH SCHOOL	
D CLERK R CLERK D SUPPLY COMM. R COMM. (ESCORT)	SAMANTHA SAYRE-401 MAIN AVE. APT. 5 ROBIN HIVELY-61 31 ST ST. SHARON HILL-2134 21 ST ST. N. JESSICA HOFFMAN-1312 MAIN AVE. 610-0516	395-1905 755-7876 755-2400 722-1154
PRECINCT 354	TWIN CITY BIBLE CHURCH	
D CLERK R CLERK D SUPPLY COMM. R COMM. (ESCORT)	EARLENE PRIDDY-1 WASHINGTON AVE. BETTY COOK-223 JAMESTOWN RD. WANDA SMITH-203 WALKER ST. DOLORES MCGUCKEN-1816 18 TH ST.	755-5886 755-9771 7277801 755-3123

ALTERNATES

(DEM	IOCRATS)			
BARE	NIE REDDINGTON-P.O. B BARA COX-1116 W.11 TH S EN MORGAN-2611 26 TH S	T.		415-5692 542-2937 755-1243
(REPU	UBLICANS)			
CHAR	ROBERT JORDAN RICHARDSON-302 COUNTRY OAKS DR. CHARLES SHAFFER-3509 35 TH ST. RON COLBY-366 SCENIC DR. ST. ALBANS, WV 25177			
(INDE	EPENDENT)			
CARC	DL COLE-85 31 ST ST.		755-4725	395-6213
BALL	OT COMMISSIONERS			
R	BESS STAHL	1914 19 TH ST.		755-3443
D	LEONARD WOMBLE	1360 VALENTINE CIRC	LE	533-6059



May 16, 2008

PRESS RELEASE

As the chief election official of the City of Nitro, I intend to conduct this election with the same high standards that the Recorder's who came before me have employed. In 2004 Recorder Joan McClanahan was chief election official and ran for the office of Recorder. In 2000 Recorder Don Karnes ran for Mayor and also conducted that election, and in 1980 Recorder Joan McClanahan conducted the election and was a candidate for Recorder. The City of Nitro has a rich tradition as do many small cities in West Virginia of being able to separate duties and powers without affecting the outcome.

I welcome all concerns from citizens and have information in my office supplied by the WV Secretary of State concerning election fraud and a complaint form that can be submitted. If any citizen feels there has been fraud or they have been disenfranchised in any manner I urge them to come forward. My intent is to run an honest election. Each vote is sacred and I intend to do everything in my power to honor that.

Rita Cox

Recorder

City of Nitro

755-0707



May 20, 2008 RESOLUTION 08-02

The Council of the City of Nitro Resolves to Establish an Account of \$100,000.00 as an Emergency Fund at Peoples Federal Credit Union.

The Signatories on the Emergency Account Fund are to be: Mayor Rusty Casto, Recorder Rita Cox, Treasurer John Young, Payroll Clerk Mary Beth Burt.

Voting for the Resolution:
Councilman A. A. Savilla
Councilman Bill Racer
Councilman Bill Javins
Councilwoman Brenda Tyler
Councilwoman Gertie Estep
Councilman Bill Clark
Recorder Rita Cox

RUSTY CASTO, MAYOR

RITA COX, RECORDER

NITRO CITY COUNCIL MEETING MINUTES TUESDAY, JUNE 10, 2008

Mayor Casto called the meeting to order at 7:30 pm in Council Chambers. Attending along with Mayor Casto were Recorder Rita Cox, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 4 Councilman Bill Javins, Councilwoman-at-Large Brenda Tyler, and Councilwoman-at-Large Gertie Estep. Absent was Councilman-at-Large Bill Clark.

The Invocation was given by Rev. Todd Raynes and the Pledge of Allegiance was led by Ward 4 Councilman Bill Javins.

AGENDA ITEMS:

Approval of Council Minutes: COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT THE MINUTES OF APRIL 15, 2008, MAY 6., 2008 AND MAY 20, 2008 BE APPROVED AS WRITTEN. COUNCILWOMAN BRENDA TYLER SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR APPROVAL OF THE MOTION.

Todd Raynes addressed Council concerning Poca Show Choir whose student body is contains students from the Putnam County portion of Nitro. He stated that the students and parents would like to be allowed to have a fund raiser on Saturday, June 14, 2008 at 40th St. and 1st Ave. Councilman Savilla asked if a policeman would be available for that. Lt. Savilla said that it would be possible to put a policeman there at a cost of approximately \$125.00. Bob Schamber donated \$300.00 to the Poca Choir and Councilman Savilla said he would donate two months Council pay to the Poca Choir. COUNCILMAN SAVILLA MOVED THAT COUNCIL ALLOW A COLLECTION FROM 9:00 AM TO 1:00 PM ON SAT., JUNE 14 AT 40TH ST. AND 1ST AVE. THE MOTION WAS SECONDED BY COUNCILWOMAN TYLER. Councilwoman Tyler asked if there would be adult supervision with the students and Mr. Raynes responded there would be. VOTE WAS UNANIMOUS FOR THE MOTION.

Citizen of the Month; Mayor Casto announced that the Nitro High School Baseball Team is to be honored as June Citizens of the Month. They recently won the WV AAA High School Baseball Championship. He asked Debra Jordan to organize a pool party for the team and guests.

Attorney Report: Attorney Troy Giatras said he had been working with Treasurer Young on the lease agreement on a piece of equipment to work on the streets. Councilman Javins asked about the status of the Broadway Ave. gas line issue. Attorney Giatras said there were some unique questions to be addressed on that issue and there was no movement on it yet.

Treasurer Report: Treasurer John Young said the May financial report he supplied Council with contains the figures for the THF settlement and currently shows the city in the black by \$94,506.00 He said that even though finances were better, June will not be that good. He said the city currently has \$189,000.00 in the bank and the payables are approximately \$106,000.00. Because of the way the money is distributed from Tri-State Gaming the months of July and August will be lean but the city will get through it. Councilman Racer asked how much the city had received from the area to be annexed. Mr. Young said it was \$50,000.00. Councilwoman Tyler said it was her understanding the business owners in the area could not reach an agreement on the money.

Council Comments:

Mayor Casto said that Sherry King was collecting donations for campers at the Spinal Bifida Camp that her brother oversees. Capt. Ronnie King explained that the idea was to put together back packs and supplies for campers.

Councilman Bill Javins read a letter he had received from a parent who had been helped recently

by Chad and Casey Mathes of the Nitro Fire Department when her child was ill. He praised the response they made and the help they gave her. Councilman Javins reported that the Boat Launch would be moving along and he would keep Council updated. He said he would work hard in the next four years and fully supports the Police and Fire Departments. He expressed his interest in the Brownfields projects and urged the public to attend the June 16 meeting and public open house concerning the Brownfields project. He also congratulated the baseball team

Councilman Racer said there were a lot of projects coming up and he looked forward to the new Council.

Councilman Savilla recommended a committee be formed to look at the Building Inspector situation with the new construction that will come up at Tri-State Racetrack and Gaming Center. Mayor Casto suggested the Committee consists of Treasurer John Young, Recorder Rita Cox and himself with all members of Council be welcomed. Recorder Cox recommended John Montgomery be a member of the Committee since he is a member of the Planning Commission. Councilman Savilla thanked all who participated in the election and congratulated his opponent Laura Mallett for the campaign she ran. He also complimented the city workers and their professionalism. He congratulated the Nitro High baseball team.

Councilwoman Estep said she too was impressed with the planning that is coming out of the Brownfield projects and urged all that could to attend the public meeting. She said the state championship baseball game was very exciting.

Councilwoman Tyler said that the baseball team was allowed to have a parade on the previous Friday since it was the last day of school. She said the new fence at the high school field was very attractive. She said she hoped someone would step up in support of the children. She said the city has elected a very good Council and she was very proud to have served. She hoped the new Council could get along.

Recorder Cox said she looked forward to the next four years and was excited about the Brownsfield and multimodal projects. She thanked the Poll Workers and said they had done an excellent job. She said the election would be certified at noon the following day in Council Chambers. She said a quorum was required.

Mayor Casto thanked Recorder Cox for conducting the election.

Debra Jordan announced the July Celebration would be held on July 12, 2008.

Councilwoman Tyler announced that her son Jeff had done very well in the competition for physically impaired individuals.

Adjournment: COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED, WITH A SECOND BY COUNCILWOMAN TYLER. VOTE WAS UNNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER



NOTICE TO COUNCIL MEMBERS-JUNE 5, 2008

Nitro City Council will convene at 8:00 am Monday, June 9, 2008 in Nitro City Council Chambers to act in the capacity of a Board Of Canvassers for the Municipal Election of June 3, 2008 following the Rules of Canvass to be conducted following the West Virginia State Code Best Practices produced by the West Virginia Secretary of State. The meeting will be convened according to WV State Code in Council Chambers, recessed and reconvened at 8:30 am in the Voters Registration Office of Kanawha County at 415 Quarrier St., Charleston.

MAYOR RUSTY CASTO

A. A. "JOE" SAVILLA WARD 1 COUNCILMAN

BILL RACER WARD 2 COUNCILMAN

BILL JAVINS WARD 4 COUNCILMAN

GERTIE ESTEP
COUNCIL-AT-LARGE

BRENDA TYLER COUNCIL-AT-LARGE

BILL CLARK COUNCIL-AT-LARGE

RITA COX RECORDER Bell Juin

1 Cox 6/5/08

Nitro City Election June 3, 2008 Official Results

10:21 AM

Office:	PCT. 349	PCT. 350	PCT. 352	PCT. 354	PCT 22	PCT. 23	Total	Canvass	Total
Mayor: Rusty Casto	51	216	157	125		15	695	8	703
Gertie Estep	10	12	29	12	9	1	73	2	75
John Montgomery	72	130	156	103	48	8	517	8	525
Don Karnes	44	212	152	157	85	9	659	10	669
Recorder: Karen Fritz	76	211	. 148	162	87	10	694	16	710
Rita Cox	96	343	337	227	184	23	1210	12	1222
Council At Large: Bill Clark	50	119	62	77	69	10	387	8	395
Robert (Bob) Fields	39	221	202	153	104	13	732	11	743
Dave Caseboic	103	272	288	226	134	15	1038	21	1059
Brenda Tyler	75	189	149	109	110	17	649	11	660
Doug Meadows	37	146	158	113	59	11	524	8	532
Shane McComas	49	142	174	102	89	10	566	7	573
James "Jim" McKay	39	189	170	181	73	10	662	6	668
Council - Ward 1 : Laura N. Mallett	100				113	15	228	4	232
A.A. "Joe" Savilla	73				157	18	248	4	252
Council - Ward 2: Bill Racer		389					389	5	394
Council - Ward 3 Ralph McKinney,Jr			188				188	3	191
Craig A. Matthews			273				273	6	279
Council - Ward 4 Frank Grover				185			185	1	186
Bill Javins				191			191	2	193



June 9, 2008

Board of Canvass City of Nitro Municipal Election June 3, 2008

The Board of Canvass of the City of Nitro Declare the Election

The results will be certified at noon on Wednesday, June 11, 2008 in Council Chambers.

(e) Co

RUSTY CASTO

MAYOR

755-0705

NITRO CITY COUNCIL MEETING MINUTES JUNE 24, 2008

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending along with Mayor Casto were Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 4 Councilman Bill Javins, Councilman-at-Large Bill Clark, Councilwoman-at-Large Brenda Tyler, Recorder Rita Cox, Treasurer John Young, and Attorney Troy Giatras. Absent was Councilwoman-at-Large Gertie Estep.

INVOCATION/PLEDGE OF ALLEGIANCE: Councilwoman Brenda Tyler gave the Invocation and the Pledge of Allegiance was led by Councilman Bill Clark.

Mayor Casto introduced Council elect Craig Matthews, Bob Fields and Jim McKay who were in attendance. He invited all to a reception at 7:00 pm on Tuesday, July 1 outside Council Chambers and announced that the new Council would be sworn in at 7:30 pm at the start of the regularly scheduled Council meeting.

AGENDA:

ANNUAL REPORT NITRO FIREMEN'S PENSION AND RELIEF/PROTECTION FUND: Treasurer John Young reported that the pension fund is under funded and is running approximately \$10,000.00 per year. He said that money will have to be made up. He said that the information distributed has been submitted to the WV Treasurer's office and has been approved. COUNCILMAN SAVILLA MOVED THAT THE INFORMATION BE MADE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. THE MOTION PASSED WITH A UNANIMOUS VOTE.

ANNUAL REPORT NITRO POLICEMEN'S PENSION AND RELIEF/PROTECTION FUND: Treasurer John Young said that a correction had to be made in the Policemen's fund and this information would have to be presented at a future Council meeting.

SMITH ST. BOAT LAUNCH: Councilman Javins reported there will be a public meeting held for information and input on the boat launch from 6:00 to 8:00 pm on July 7 in Council Chambers. Brett Parsons of Fish and Wildlife and Chris Amick of Kemron will be present. Councilman Javins said that a more up to date drawing should be on hand and will show paved areas, handicap parking spaces and green spaces. He said the boat launch will be open 24 hours a day with low level lighting and two boats will be able to launch at the same time.

BROWNSFIELD GRANTS REPORT: Councilman Javins said that a public meeting was held recently concerning the Brownsfield Grants. Sean Garrigan and Chris Amick were available for information and went over potential plans for the spaces.

ATTORNEY REPORT: Troy Giatras said among things his office was working on was an advisory opinion, some work for the Board of Zoning Appeals, and an item for the Planning Commission.

TREASURER REPORT: John Young said a report for June was not available yet. He said the income from Tri-State Gaming will stop July 1 and will not start up again until October. This will make it necessary to be conservative with spending particularly for the month of July and August.

COUNCIL REPORT:

Recorder Rita Cox reported she had received a letter from the WV Secretary of States Office Election Division Manager Jason Williams. He stated that no critical issues arose during the June 3rd Municipal Election but a review of the process should be done. The letter contained five recommendations.

RECORDER COX MOVED THE LETTER FROM WV SECRETARY OF STATE ELECTION DIVISION MANAGER JASON WILLIAMS BE MADE A PART OF THE MINITES. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Javins thanked Treasurer John Young for all his work and said he looked forward to working with the new Council.

Councilman Racer said he was looking forward to working with the new Council but will miss those who are not coming back.

Councilman Savilla said he will miss the old Council members but is looking forward to the new and to working together.

Councilman Clark said he was disappointed that the Nitro High School baseball team had been unable to attend to be recognized as Citizens of the Month. He said that he hoped the Broadway Ave. gas line project is pursued. He thought that inaction on the matter may come back to haunt the city in the future.

Councilwoman Tyler asked Councilman Savilla to remember the Nitro High Show Choir Haunted Trail in the future in cooperation with the city. She thanked the citizens for allowing her to served.

RECORDER COX MOVED THE MINUTES OF JUNE 10, 200 BE APPROVED AS SUBMITTED. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

PUBLIC COMMENTS:

Debra Jordan thanked Councilwoman Tyler and Councilman Clark for their service. The received a standing ovation.

Councilwoman Tyler said she would still like to see a new City Hall built on the property behind the current City Hall.

Councilman Javins said he had found out the price of that property is \$161,000.00. He said he would look into it.

COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

WORKSHEET FOR THE APPLICATION FOR ADDITIONAL DISTRIBUTION AND CERTIFICATION OF MUNICIPAL CONTRIBUTIONS TO THE MUNICIPAL PENSIONS AND PROTECTION FUND

\$ 367,520° 23° \$ 84,529° \$ 235,607° \$ 320,136°
\$ 94,342 83 \$ 225,773 98
\$ \$ \$

Notes: The "State Share" comes from the Insurance taxes collected by the Insurance Commissioner during the 2004 calendar year.

Allocation of these funds by the State Treasurer's Office are made on September 1, 2005.

Actuarial information is based on your last actuarial valuations as required by Chapter 8-22-20 and Chapter 8-22-26a (f).

*** § 8-22-20(c) requires cities to contribute annually to the fund an amount, which may not be less than the normal cost, as determined by the actuary



The above named municipal treasurer further certifies that a report of the actuarial soundness of the pension fund for the 2005 fiscal year, prepared in accordance with Chapter 8-22-26a (f) of the West Virginia Code, has previously been transferred to the State Treasurer's Office; and

The above named municipal treasurer further certifies that the following amounts are true and correct:

A.	Actual amount contributed by the municipality's covered employees during the fiscal year ending June 30, 2005.	\$ 25,726.
В.	State Share	\$ 94,362
C.	Municipal Obligation	\$ 73, 5676
D.	TOTAL	\$ 193,457,

The previously named municipal treasurer further certified that of the supplemental amount indicated in Item C: \$\frac{73}{73}\frac{12}{73}\frac{1}{73

The total year to date amount of irrevocable contribution is: \$ 73,567 which includes the above additional contribution.

Certified by:	
Signature of Municipal Treasurer	
Certified on:	
α <i>(-1, -1, -1, -1, -1, -1, -1, -1, -1, -1, </i>	Date
Phone: 255-5066	

OFFICE OF THE SECRETARY OF STATE STATE OF WEST VIRGINIA



Secretary of State

June 23, 2008

Rita Cox, Recorder City of Nitro P.O. Box 308 Nitro, WV 25143

Dear Ms. Cox:

Upon completion of any election, it is important for a jurisdiction to review the procedures in place as part of an ongoing effort to hold elections that are fair and clean. Although it would appear that no critical issue arose during the June 3rd Nitro city election, it is apparent that a review of procedures is warranted. Based on our observation of your election, we suggest that a number of procedures be reviewed and addressed, by not only adjusting standard operating procedures, but through ordinances enacted by your town council.

The Secretary of State's Office makes the following recommendations:

- Review and address the issue of announcement of candidacy. This process is currently not clarified in ordinance and can be confusing to the general public. The petition process should be reviewed to ensure that it comports with West Virginia law and Nitro ordinances.
- 2. Completely review and update all current election ordinances and sections of Nitro's charter to ensure that they comport with West Virginia election law. This would include absentee balloting, candidate certificate of announcements, campaign finance requirements, and the election calendar.
- 3. Review the canvassing procedures as outlined by West Virginia election law, city ordinances, and directives of the Secretary of State's Office.
- 4. Attend any and all training pertaining to municipal elections offered by the Secretary of State's Office. Because turnover typically is high in municipal government, it is imperative that employees are regularly and adequately trained in all aspects of their positions.

Building 1, Suite 157-K 1900 Kanawha Blvd., East Charleston, West Virginia 25305 Cox. Rita June 19, 2008 Page 2 of 2

5. Consult with legal counsel or other experienced election officials before aggressively pursuing a change in procedures. It is important to utilize all resources available to local election officials while implementing election processes.

If there are additional questions in relation to the above suggestions, or other issues, feel free to contact a member of the elections division at (304)558-6000 or elections@wvsos.com.

Sincexely,

Jason Williams, Manager

Elections Division

c: Nitro Town Council

Rusty Casto, Mayor of Nitro

Vera McCormick, Kanawha County Clerk

NITRO CITY COUNCIL MEETING MINUTES JULY 1, 2008

Mayor Casto called the meeting to order in Council Chambers at 7:30 pm. Attending along with Mayor Casto were Recorder Rita Cox, Ward 1 Councilman A. A. "Joe" Savilla, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Councilmen-at-Large Jim McKay, Dave Casebolt and Bob Fields. Treasurer John Young, and Attorney Troy Giatras. Ward 2 Councilman Bill Racer was absent.

The Invocation was given by Councilman Jim McKay and the Pledge of Allegiance was led by Councilman Bob Fields.

Mayor Casto announced the future dates of Council were July 15, August 5 and August 19.

Mayor Casto announced that he had been sworn in the previous day, June 30, and he swore in the newly elected Council members.

AGENDA ITEMS:

Citizen of the Month: Mayor Casto announced the July Citizen of the Month is Allen Lin who works with his parents at the Golden Wok Chinese Restaurant.

Kanawha Ave. South Paving Bids: Recorder Cox announced that there was one bid received for the paving of Ka. Ave. S. The bid was opened and read by Councilman Savilla, was submitted by West Virginia Paving for \$33,417.00. Mayor Casto said that this would be aided by a \$20,000.00 grant received from Governor Manchin. COUNCILMAN JAVINS MOVED THAT A COMMITTEE BE FORMED TO STUDY THE PAVING AND THE OBTAINING OF MORE GRANT MONEY CONSISTING OF MAYOR CASTO, RECORDER COX, TREASURER JOHN YOUNG AND COUNCILMAN JAVINS. THE MOTION WAS SECONDED BY COUNILMAN MATTHEWS. VOTING IN FAVOR OF THE MOTION WERE COUNCILMEN MCKAY, CASEBOLT, FIELDS, SAVILLA, MATTHEWS AND JAVINS, AND RECORDER COX. THE MOTION PASSED.

Annual Report Nitro Policemen's Pension and Relief Protection Fund: Treasurer Young presented Council with information concerning the Police Pension Fund for fiscal year ending June 30, 2005 that is to be submitted to the WV Treasurers Office. Mr. Young said that the City is intending to increase the amount that the city is paying for Firemen and Policemen after September. He said the 2006 paperwork is almost ready. Councilman McKay asked if Mr. Young had heard anything about the state taking over the pension fund. Mr. Young said he too had heard that story but he has no specific knowledge. He said that it is a large under funded liability but he did no know what the state was going to do. COUNCILMAN MATTHEWS MOVED THAT THE POLICEMEN'S PENSION FUND INFORMATION FOR FISCAL YEAR 2005 TO BE SUBMITTED TO THE WV TREASURERS OFFICE BE MADE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, MATTHEWS, SAVILLA, FIELDS, CASEBOLT, AND MCKAY, AND RECORDER COX. THE MOTION PASSED.

First Reading Convenience Fee Ordinance: Attorney Troy Giatras presented Council with an Ordinance entitled An Ordinance creating Electronic Banking for Payment of Fines, Fees and Costs and a Convenience Fee imposed by the Municipal Court. He explained that it would enable fines to be paid electronically charging a \$5.00 fee to cover the transaction. COUNCILMAN SAVILLA MOVED THAT THE ORDINANCE BE ADOPTED ON FIRST READING BY TITLE ONLY. RECORDER COX SECONDED THE MOTION. Robin Smith of the Nitro Municipal Court said that she was receiving more requests to pay fines by way of electronic banking and it may help get in outstanding fines. Councilman McKay asked if that was currently done with Municipal Service and Treasurer Young said it was not but would like to implement it. VOTING IN FAVOR OF PASSAGE OF THE MOTION WAS RECORDER

COX, COUNCILMEN SAVILLA, JAVINS, MATTHEWS, FIELDS, MCKAY, AND CASEBOLT. THE MOTION PASSED.

Resolution: Corporate Authorization Resolution Peoples Federal Credit Union Authorizing a Line of Credit: Treasurer John Young said that the City is ending the fiscal year on a positive note. He said that there was \$100,000.00 in the Emergency Fund set up by the previous Council and he may have to draw on that. He said that the revenue from Tri-State Gaming stops coming in till October, July has three payrolls and PEIA is \$50,000.00 every month and the cash flow suffers in July and August. By having a line of credit he could draw on he could get through July and August and stay current with creditors and use it for payroll if necessary. COUNCILMAN SAVILLA MOVED THAT COUNCIL PASS THE RESOLUTION AUTHORIZING A LINE OF CREDIT WITH PEOPLES FEDERAL CREDIT UNION. THE MOTION WAS SECONDED BY COUNCILMAN FIELDS. Councilman Savilla said he was thought the city was trying to get a line of credit from Huntington Banks and Mr. Young responded that they had not gotten back with an answer. Councilman McKay asked what the interest will be on the money used and Mr. Young said 6% with a \$200,000.00 cap. He said he would keep Council informed if he is drawing off of it. He said one of the vehicles will be used as collateral. Councilman Savilla said it is often good to have banks competing for your business. VOTING FOR THE PASSAGE OF THE MOTION WAS COUNCILMEN JAVINS, MATTHEWS, SAVILLA, FIELDS, CASEBOLT, AND MCKAY, AND RECORDER COX. THE MOTION PASSED.

Payroll Account Peoples Federal Credit Union: Treasurer John Young said that the Payroll Account for the City of Nitro could be moved from Huntington Banks to Peoples. COUNCILMAN MATTHEWS MOVED THE PAYROLL ACCOUNT BE PLACED AT PEOPLES FEDERAL CREDIT UNION. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. Treasurer Young said the signatories on the account would be Mayor Casto, Recorder Cox, Treasurer Young, and Payroll Clerk Mary Beth Burt VOTING FOR THE MOTION WAS RECORDER COX, COUNCILMEN FIELDS, CASEBOLT, MCKAY, SAVILLA, MATTHEWS, AND JAVINS. THE MOTION PASSED

Council Comments:

Councilman Javins welcomed the new members and said he supports the city workers and the seniors. He had a list of items he hoped to see get done in the next four years including grant writing, beautification, municipal service fees paid up, a city equipment policy, convention and visitors bureau, update ordinance on disabled vehicles, and a sound system for Council Chambers.

Councilman Matthews said he had a list of goals for the future also. One of his concerns was the lack of a quarterly report from the Nitro Development Authority as required by State Law.

COUNCILMAN MATTHEWS MOVED THAT A LETTER BE SENT TO THE NITRO DEVELOPMENT AUTHORITY REQUESTING THE QUARTERLY REPORT AND REMIND THE NDA OF THE 60 DAYS TO SEND IN THEIR FINANCIAL REPORT. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Savilla welcomed the new members and thanked his opponent for a good election. He said he hoped the new Council could work as a team and move forward. COUNCILMAN SAVILLA MOVED THAT THE SHOW CHOIR BE ALLOWED TO DO THE HAUNTED TRAIL AT RIDENOUR LAKE PROVIDING THEY HAD INSURANCE COVERAGE. THE MOTION WAS SECONDED BY COUNCILMAN CASEBOLT. He suggested that Mayor Casto find from Paul McClanahan if they had insurance to cover the use of the trail. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Recorder Cox said she was looking forward to the next four years and thanked all those who supported her.

Councilman Fields said he agreed with the list of points provided by Councilman Javins. He thanked the voters and said he was there for the city.

Councilman Casebolt said that he was in the initial stages of applying for a streetscape grant to beautify the city.

Councilman McKay thanked the people who take their time to come to Council. He thought grant writers would be a help to the city. He said he supports the Firemen and Policemen and the pension is important. He said there were a lot of resources and the city needs to come together.

Public Comments:

Delmar Bird told Council about the Veterans Memorial that is to be placed on 21st St. and 1st Ave. and that donations were needed to fund it. He said that Dow Chemical had donated 300 acres nearby for a Veterans Cemetery.

Councilman Javins said that there would be a public meeting on July 7 at 6:00 pm in Council Chambers about the Smith St. Boat Launch.

Bob Schamber introduced himself to the new Council and said he was President of the Nitro Senior Advisory Council and he will try to get what he can for Seniors. He donated \$300.00 to the Veterans Memorial. He announced there was a trip to Homestead, Virginia in August for the Seniors. Councilman Fields said if there were Seniors who could not go due to finances to let him know.

Councilman Savilla thanked Sandy Saunders and any who helped her for preparing the reception before Council. He stated that his check from the City for this month would go to pay for the food.

Adjournment: COUNCILMAN JAVINS MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

RUSTY CASTO, MAYOR

RIJA COX, RECORDER

ORDINANCE NO.: 08-<u>64</u>

Introduced in Council

Adopted by Council:

√
Referred to:

Introduced by:

An Ordinance creating Electronic Banking for Payment of Fines, Fees and Costs

and a Convenience Fee imposed by the Municipal Court.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA

WHEREAS, the number of request presented to the Municipal Court by defendants to utilize electronic banking and the ability to pay fines, fees and cost imposed by the Municipal Court has increased considerably over the years,

WHEREAS, the Municipal Court in response to these requests, and in order to aid in the timely processing of payments is hereby establishing a program whereby defendants can utilize electronic banking,

WHEREAS, the Municipal Court will be assessing a five dollar (\$5.00) convenience fee for each electronic transaction to the defendant. The ability to utilize an electronic banking program is a convenience for the defendant and there are related costs to the City for this program. This fee is to help defray the cost to the City for enabling defendants to use the electronic services for court related cost.

173.09: COURT COSTS, FEES AND FINES

- (a) The Municipal Judge shall collect on behalf of the City such court costs, fees and/or fines as authorized by state law and these Codified Ordinances.
- (b) The Municipal Judge, in his or her discretion, may collect costs or fees on behalf of the City pursuant to guidelines adopted by the Municipal Court and filed with the City Clerk for elective alternative traffic school and for jail fees.
- (c) The Municipal Court will establish a program that will enable defendants to pay the imposed fines, fees and cost via electronic banking and/or credit cards. An additional \$5.00 convenience fee will be assessed for each transaction, which will be assessed to the defendant's account. This fee is above the imposed fines and other requisite fees and costs.

This Ordinance shall be advertised in accordance with the applicable provisions of the Codified Ordinances of the City of Nitro, West Virginia.

This Ordinance was introduced and read for the first time at a regular meeting of City Council held on the 1st day of July, 2008.

(cf. West Virginia Code §§62-1C-17b and 62-1C-17)

Passed on second reading:

Mayor, City of Nitro

Passed on second reading:

Recorder, City of Nitro

Resolution	08-
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RESOLUTION AUTHORIZING THE CITY OF NITRO TO ENTER INTO A LINE OF CREDIT WITH HUNTINGTON BANKS

- WHEREAS, the City of Nitro will have a line of credit with Huntington Banks to be utilized as necessary; and
- WHEREAS, any credit extended will be repaid within the fiscal year granted;
- NOW, THEREFORE, BE IT RESOLVED, the Council of the City of Nitro authorizes Treasurer John Young acting in his capacity as Treasurer for the City of Nitro to sign all documents pertaining to the line of credit with Huntington Banks.

This Resolution becomes effective as of this date. Passed this 15th Day of July, 2008.

Rus	sty Casto	, Mayor	
1	ila	COC	
Rita	Cox R	ecorder	

RESOLUTION 08-___

RESOLUTION AUTHORIZING PAYROLL ACCOUNT AT PEOPLES FEDERAL CREDIT UNION July 1, 2008

The City of Nitro is authorizing the Payroll Account for the City to be opened at Peoples Federal Credit Union.

The authorized signatories for the account are:

RUSTY CASTO, MAYOR

RITA COX, RECORDER

JOHN YOUNG, TREASURER

MARY BETH BURT, PAYROLL CLERK

RUSTY CASTO, MAYOR

RITA COX, RECORDER

WORKSHEET FOR THE APPLICATION FOR ADDITIONAL DISTRIBUTION AND CERTIFICATION OF MUNICIPAL CONTRIBUTIONS TO THE MUNICIPAL PENSIONS AND PROTECTION FUND

	Pension F	Fund	N_{I}	110 Porice	2 Pourse	
	Treasurer	-	JUH	y & Jour	16	
	Municipa	ality	Λ	IRO		
A.	Contribution by Employees (FY 2004-2005 Actual Contributions)	\$ 42,00		1. Payroll (FY 2004-2005 Actu	ual Payroll)	\$ 606, 814, 8°
В.	State Share	\$ 108,00	1941	2. Normal Cost % **		24 %
C.	Municipal Obligation *	\$ 78, ⁹⁵	7.1/	3. Normal Cost (Item 1 X Item	2)	\$ 145, 439.
D.	TOTAL (A+B+C)	\$ 229,00	8.	4. Unfunded Liability Funding Obligation	Amortization Cost** for the Year Under the	\$ 177,946.00
* F	lease indicate below the funding med	thod being used in	Item C.	5. Standard Funding N (Item 3 + Item		\$ 3,43,581. ⁵⁷
	Item 7 (Standard Funding Method	1)		6. State Share7. ***Municipal Shar	e Under the Standard Funding	\$ 108,049,41
Al ×	Lernative Funding Method-Largest of Litem 3- Item 6 107% of Prior Year's Contribution Prior year's contribution increased contribution of this percentage inc expected to continue to maintain f	ns d by a percentage ' crease over the nex		Method (Item 5- Ite	m 6)	\$ 2-15, 5.32.19
	** From the Actuary's Deport					

** From the Actuary's Report

Notes: The "State Share" comes from the Insurance taxes collected by the Insurance Commissioner during the 2004 calendar year.

Allocation of these funds by the State Treasurer's Office are made on September 1, 2005.

Actuarial information is based on your last actuarial valuations as required by Chapter 8-22-20 and Chapter 8-22-26a (f).

*** § 8-22-20(c) requires cities to contribute annually to the fund an amount, which may not be less than the normal cost, as determined by the actuary



To: John D. Perdue State Treasurer

Under penalty for false swearing (West Virginia Code 61-5-3), I hereby certify the foregoing information in this annual report of the Nitro Police Pension and Protection Fund for fiscal year 2005 to be true and accurate in all respects and has been presented to the Nitro City Council on July 2, 2008.

Date: <u>uy</u>2, 2008

Name: Rusty Casto

Signed:

Title: Chairperson of the Board of Trustees of the Policemen's Pension and Relief Fund.

Municipality: Nitro, WV

APPLICATION FOR INITIAL DISTRIBUTION AND CERTIFICATION OF MUNICIPAL CONTRIBUTION TO THE MUNICIPAL PENSIONS AND PROTECTION FUND

To:	John D. Perdue, State Treasurer Glen Gainer, III, Auditor	
From:	JOHN & YOUNG	(Municipal Treasurer Name)
	TREASURER	(Municipal Treasurer Title)
	CITY of NITRO	(Municipality Name)
	Po Box 308	(Mailing Address)
	NITRO, WV 25143	(City & Zip)
RE:	Allocation and certificate to Receipt of Allo Protection Fund for the	cated Funds of the Municipal Pensions &
C_{ij}	TY of NITAU POLICE PEN	SIEN + RELIEF FUND
	(Pension & Relief I	Fund Name)

In accordance with Chapter 8-22-19(b) (5) of the West Virginia Code, the above named municipal treasurer hereby applies for the applicable portion of the Municipal Pensions & Protection Fund for the above named municipality for the fiscal year ending June 30, 2006; and

The above named municipal treasurer hereby certifies that in accordance with the requirements of Chapter 8-22-19 (b) (5) (B) of the West Virginia Code, that the board of trustees of the above referenced pension and relief fund has made a report to the governing body of the above named municipality on the condition of its fund with respect to the fiscal year ending June 30, 2005 and has transmitted a copy of said report to the State Treasurer's Office; and

The above named municipal treasurer further certifies that a certified actuarial report prepared in conformity with Chapter 8-22-20 of the West Virginia Code, has previously been transferred to the State Treasurer's Office; and

The above named municipal treasurer further certifies that a report of the actuarial soundness of the pension fund for the 2005 fiscal year, prepared in accordance with Chapter 8-22-26a (f) of the West Virginia Code, has previously been transferred to the State Treasurer's Office; and

The above named municipal treasurer further certifies that the following amounts are true and correct:

- A. Actual amount contributed by the municipality's covered employees during the fiscal year ending June 30, 2005. \$ 42, 001.
- B. State Share \$ 108, 049
- C. Municipal Obligation s 28, 957, "
- D. TOTAL S 729,008,10

The previously named municipal treasurer further certified that of the supplemental amount indicated in Item C: \$\frac{2\pi}{2\pi}\frac{2\pi}{

The total year to date amount of irrevocable contribution is: \$ 28,957.

Certified by:

Signature of Municipal Treasurer

Certified on: 6/23/08

Date

Phone: 755-5066

Pension Fund _	Nitro Police Pension Relief Fund
Treasurer	John H. Youg
Municipality _	City of Nitro
Fiscal Year (July 1 - June 30)	2605
Name of Actuary _	
Period of Actuarial S	udy FY FY FY
Actuarial Funding Me (please check appropriate box)	Standard Funding Method 107% of Prior Year's Contribution Necessary to Maintain Plan Sovency for 15 Yrs %
Actuarial Assumption	trivestment Rate of Return % Percent Growth in State Share % Percent of Plan Funded (Funded Ratio) Unfunded Actuarial Accrued Liability
	% Projected Pay Increase Per Year

PARTI	 	
Item		Amount
Beginning Fair Value of Pension Plan July 1		१ १,१३८,३७१
I. Revenue During Fiscal Year		
1. Employee Contributions Percent of Gross Salary	7_%	.42 00 5
Total amounts contributed by employees or withheld from their salaries 2. Government Contributions		\$ 43,002
a. From Parent Local Government		
Required employer contributions from your municipality		\$ 72,000
h Additional analysis and the first transfer of the first transfer		s
b. Additional employer contributions from your municipality		<u> </u>
c. From State Government State aid received from the State Treasurer's Office		\$ 80,374
3. Earnings on Investments		-
a. Net Appreciation/(Depreciation) of Fair Value of Investments \$	56,427	
b. Bond Interest \$		
c. Dividends \$	29,709	
d. Net Realized Gain (Loss) on Sale or Exchange of Assets \$	14,583	
e, Other \$		
f. Less Investment Expense \$	(10,751)	
Net Investment Income	`	s 89.968
4. All other revenues Please Specify		\$
Total Revenues The sum of items I.1, through I.4.	\$ 384, 347	
Expenditures During Fiscal Year Does not include investment expense, see i.3.e. above.		
1. Benefits Paid Retirement, disability, survivors, and other benefits		s 116 858
2. Withdrawals		
Amount paid to employees or former employees or their survivors, representing return of contributions made by a	employees	2
during the period of their employment, and any interest on such amounts.		•

ltem			Amount	
3. Other Payments				
Administrative expenses and other costs or payments not represent	s 2400			
a. Administration Municipal administration fees.			3 47CC	
b. Other Specify.			\$	
Total Expenditures The sum of items II.1. through	\$ 114, 258			
Net Income/(Loss) Total Revenues less Total Expenditures			\$ 165,086	
	s 165,086 s 1,280,395			
Ending Fair Value of Pension Plan June 30			21,210,30	
III. Asset Allocation at End of Fiscal Year				
1. Cash and Short-Term Investments	Percent of Total Assets	*		
Institution or Money Manager	Type of Account	Fair Value		
	Checking	\$		
a.	Non-Interest Bearing	s		
b.		\$ 36,731.28		
с	Certificates of Deposit	\$ 36,131.23		
d	RePurchase Agreements	19	Fair Value	
Total Cash and Short-Term investments The sum	of items 1.a through 1.d.		\$ 36 731	
Total Cash and Short-Term investments The sur	on tems it a through it a.	*****	* JO, 121	
2. Government Securities	Percent of Total Assets	×		
		<u> </u>		
Institution or Money Manager	Type of Account	Fair Value		
a	Treasury Notes and Bonds	\$ 556,503.41		
b	State and Municipal Bonds	<u> \$</u>	Fair Value	
Total Government Securities (at fair value) The sum	\$ 556,503			
Total Government Securities (at fair value)	of items 2.a. through 2.b.		* C - 3	
3. Corporate Bonds	Percent of Total Assets	*		
Institution or Money Manager	Type of Account	Fair Value		
a management	Bonds	s		
<u> </u>	Mortgage-backed Securities	s		
b		s		
c	Debentures (Page 1)	s	}	
<u>d</u>	Mutual Fund Shares (Bonds)	19	Fair Value	
Total Corporate Bonds (at fair value) The sum	\$			
4. Corporate Stocks	Percent of Total Assets	*		
Institution or Money Manager	Type of Account	Fair Value		
a.	Stocks	s		
b.	Mutual Fund Shares	\$697, 160.40		
		1	Fair Value	
Total Corporate Stocks (at fair value) The sum	s 697, 160			
5. Other Percent of Total Assets %				
Institution or Money Manager	Type of Account	Fair Value		
a money manager	Type of Account	S Fail Value		
<u> </u>			Fair Value	
Total Other (at fair value) The sum of item 5.a.			\$	
			Fair Value	
Total Assets Sum of I	II.1. Through III.5.		1 200 200	
Sum of }	146,37			

PART II		
Membership and Beneficia	ries	
Please report the figures requ	ested below, for the fiscal year reported on page 1. To figure the Average Monthly Number of P	ersons, add figures for each
month and divide by 12. Plea	se round to two decimel places. An employee must have been paid for 100 hours in any month	
	item	Avg. Monthly #
. Members of your Pensic	n Fund Exclude beneficieries.	
1. Active Members	Current number of employees contributing to pension fund.	14
2. Inactive Members	Non-active vested members and employees on extended leave without pay	
. Beneficiaries Receiving	Periodic Benefit Payments During Fiscal Year	
1. Retirees		5
2. Disability Retirees		4
3. Survivors (of Decease	Members) Drawing Benefits	

To:

Nitro Policemen's Pension and Relief Trust Fund

From:

Jeff Sutler

Re:

Contributions

Date:

August 30, 2004

I request all monies paid from me, into the police pension fund from my time of employment until August 30, 2004.

Respectfully submitted,

Jeff Sutler Jeff Co Leif

NITRO CITY COUNCIL MEETING MINUTES TUESDAY, JULY 15, 2008

10040000

The meeting was called to order at 7:30 pm by Mayor Rusty Casto. Attending were Mayor Rusty Casto, Ward 4 Councilman Bill Javins, Ward 3 Councilman Craig Matthews, Councilmen-at-Large Bob Fields, Dave Casebolt, and Jim McKay, Recorder Rita Cox, Treasurer John Young, and Attorney Phil Sword. Not in attendance were Ward 1 Councilman A. A. "Joe" Savilla and Ward 2 Councilman Bill Racer.

The Invocation was given by Ivan Meadows and the Pledge of Allegiance was led by Bob Schamber.

COUNCILMAN CRAIG MATTHEWS MOVED THAT THE MINUTES OF THE JULY 1, 2008 MEETING OF COUNCIL BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN JAVINS. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

New Business:

COMMITTEE FORMATION AND APPOINTMENTS: Mayor Casto submitted a list of potential committees to members of Council and asked for input on any other committees that would be pertinent. He said that this would be addressed at the next Council meeting.

EXCESS LEVY: Mayor Casto announced that the vote on the Excess Levy is scheduled with Council approval to be held on Sept. 27, 2008. He said the levy has been in place since 1932. COUNCILMAN CRAIG MATTHEWS MOVED THE EXCESS LEVY BE VOTED ON SEPTEMBER 27, 2008. THE MOTION WAS SECONDED BY COUNCILMAN JIM MCKAY. VOTING FOR THE MOTION WERE COUNCILMEN MATTHEWS, JAVINS, FIELDS, CASEBOLT, MCKAY, AND RECORDER COX. THE MOTION PASSED WITH UNANIMOUS APPROVAL. Councilman Matthews asked what percentage it needed to pass and Mayor Casto said that it was 50 percent.

WV AUDITOR OPINION REGARDING LINE OF CREDIT: Treasurer John Young said he had spoken with Ora Ash and Donna Skaggs of the West Virginia Auditors Office to obtain an opinion on the legality of the line of credit recently approved by Council before he took any action on it. He stated that both had told him it was legal for a municipality to do this as long as it was repaid during the same fiscal year. They said that the practice was not encouraged but was legal. Mr. Young said that he only plan to use the money for payroll and the \$100,000.00 being held at Peoples Federal Credit Union in a CD would be used before any line of credit was addressed. He said that payroll had so far been met without drawing on the \$100,000.00 Certificate of Deposit.

RESOLUTION AUTHORIZING THE CITY OF NITRO TO ENTER INTO A LINE OF CREDIT WITH HUNTINGTON BANKS: COUNCILMAN BILL JAVINS MADE A MOTION THAT COUNCIL ADOPT A RESOLUTION AUTHORIZING THE CITY OF NITRO ENTER INTO A LINE OF CREDIT WITH HUNTINGTON BANKS UP TO \$200,000.00. THE MOTION WAS SECONDED BY COUNCILMAN BOB FIELDS. Councilman Jim McKay asked who would be the signatories on the account. Treasurer John Young said that this would not be that type of account. Councilman Craig Matthews said he wanted assurances that the City of Nitro would not borrow money before they tapped into the \$100,000.00 Certificate of Deposit. Treasurer John Young said that we would not, but that July and August are the worst months for money coming into the City. VOTING FOR THE MOTION WERE COUNCILMEN BOB FIELDS, JIM MCKAY, DAVE CASEBOLT, CRAIG MATTHEWS, BILL JAVINS AND RECORDER RITA COX. THE MOTION CARRIED.

KONIKA MINOLTA PRINTER: Treasurer John Young said the printer currently being used in City Hall is not functioning properly and can't be depended on when doing many copies. The men who are

currently installing software can install a new printer with no extra charge to the city. Councilman Craig Matthews asked if a new printer was a budgeted item and if not why was it not budgeted if the old copier was in such bad shape. Treasurer John Young said that when preparing the current budget Council was trying to cut as much as possible because the THF settlement was pending. COUNCILMAN BILL JAVINS MOVED THAT A PRINTER BE PURCHASED. THE MOTION WAS SECONDED BY COUNCILMAN DAVID CASEBOLT. Treasurer John Young said the printer being looked at is a Konica Minolta Printer and the city would look at the best offer. He said that the only budgets that have gone over are Legal Fees and Park and Recreation. VOTING FOR THE MOTION WERE COUNCILMEN MCKAY, CASEBOLT, FIELDS, MATTHEWS, AND JAVINS, AND RECORDER COX. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

MUNICIPAL SERVICE FEE ORDINANCE AMENDMENTS: Treasurer John Young said that he would like Council permission to investigate making changes to the Municipal Service Ordinance because as it is currently written there are no teeth to it. Councilman Jim McKay asked if the unpaid bills could be turned over to a collection agency. Treasurer Young said that was possible but they would charge between 25% to 30% for the service. COUNCILMAN JIM MCKAY MOVED THAT TREASURER JOHN YOUNG BE GRANTED PERMISSION TO INVESTIGATE MAKING AMENDMENTS TO THE CURRENT MUNICIPAL SERVICE FEE ORDINANCE. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

Old Business:

SECOND READING CONVENIENCE FEE ORDINANCE: Attorney Phil Sword of the Giatras Law Firm presented Council with the second reading of the Convenience Fee Ordinance. COUNCILMAN CRAIG MATTHEWS MOVED THAT COUNCIL READ THE CONVENIENCE FEE ORDINANCE BY TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. Attorney Phil Sword read the title of the ordinance: AN ORDINANCE CREATING ELECTRONIC BANKING FOR PAYMENT OF FINES, FEE, AND COSTS AND A CONVENIENCE FEE IMPOSED BY THE MUNICIPAL COURT. Attorney Sword stated that the Ordinance would enable fines and fees to be paid electronically while charging a \$5.00 service fee to the payer. COUNCILMAN CRAIG MATTHEWS MOVED THAT THE CONVENIENCE FEE ORDINANCE BE PASSED ON SECOND READING. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTING FOR THE MOTION WERE COUNCILMEN BILL JAVINS, CRAIG MATTHEWS, BOB FIELDS, DAVE CASEBOLT, AND JIM MCKAY, AND RECORDER RITA COX. THE MOTION PASSED.

SHOW CHOIR/HAUNTED TRAIL INSURANCE COVERAGE: Mayor Casto stated that the City was reluctant to grant the Nitro High School Show Choir usage of the Ridenour Lake Trail for Halloween until there was a determination of insurance liability. Recorder Rita Cox said that maybe a waiver or declaration of responsibility or some legal document could absolve the city of liability. Attorney Phil Sword was instructed to look into the matter.

NITRO DEVELOPMENT AUTHORITY: Mayor Casto reported that NDA Committee member Olaf Walker would attend the next meeting of Council to report on the Development Authority.

ATTORNEY REPORT: Attorney Phil Sword introduced himself to the member of Council and said he was a member of the Giatras Law Firm and was attending in place of City Attorney Troy Giatras who was unable to attend. He presented Council with an ordinance that would allow Nitro to continue in the Housing Consortium of ten local governments called the Charleston/Kanawha Housing Consortium which enables the HOME Investment Partnership Program to help provide safe, decent and affordable housing to low and moderate income families. RECORDER RITA COX MOVED COUNCIL ADOPT ON FIRST READING BY TITLE ONLY THE HOUSING CONSORTIUM COOPERATION BY AND BETWEEN THE CITY OF CHARLESTON, THE TOWN OF BELLE, THE TOWN OF CLENDENIN, THE CITY OF NITRO, THE CITY OF SAINT ALBANS, THE CITY OF SOUTH CHARLESTON, THE TOWN OF CEDAR GROVE AND KANAWHA COUNTY. THE MOTION WAS SECONDED BY

COUNCILMAN BILL JAVINS. VOTING FOR THE MOTION WERE COUNCILMEN JIM MCKAY, DAVE CASEBOLT, BOB FIELDS, CRAIG MATTHEWS, AND BILL JAVINS, AND RECORDER RITA COX. THE MOTION PASSED.

TREASURERS REPORT: City Treasurer John Young said that the WV Auditors office will be in City Hall in August to audit the city finances for fiscal year 2006-2007.

COUNCIL COMMENTS:

Mayor Casto presented a letter to Council from Nitro employee Debra Jordan thanking all for the work they did in making the Nitro Boomtown Celebration a success. COUNCILMAN CRAIG MATTHEWS MOVED THE LETTER BE MADE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Councilman Bill Javins said the Boomtown Celebration was a successful event. He said the public meeting held recently about the Smith St. boat launch was positive. Comments were made concerning the lighting. Work on the launch should begin in the spring.

Councilman Craig Matthews said the Boomtown Celebration was made possible by \$11,800.00 in pledged donations to cover costs and \$8600.00 had been collected.

Recorder Rita Cox said the Boomtown Celebration was successful and \$3000.00 had been donated by the Central WV Regional Convention an Visitors Bureau.

Councilman Bob Fields said the Boomtown Celebration involved a lot of good work.

Councilman Dave Casebolt said the Streetscape Committee would be meeting Thursday, July 17 at 7:00 in City Hall in the Code Enforcement Office.

Councilman Jim McKay thanked all that worked hard for the Celebration particularly Debra Jordan who did a great job. He said he thought the city needs to do more of this type of thing for the community. He said he had been in touch with a representative of Walgreens about locating in Nitro.

PUBLIC COMMENT:

Laura Mallett had a proposal for consideration by Council. She would like to do work along First Avenue, possibly planting Dogwood trees between the railroad and Route 25. Mayor Casto recommended she talk with a representative of the railroad.

Bob Schamber commented on the recent article about Troy Giatras in the Charleston newspaper. He thanked Treasurer John Young for being current on rent with the NDA for the Senior Center.

Eleanor Raynes said she would like to see the city with an ordinance calling for humane treatment of animals. Councilman Dave Casebolt said he thought the current ordinance needed to be updated and suggested an Ordinance Committee be formed,

Debra Jordan armounced the Christmas in July dinner July 19 at Holy Trinity Church.

USTY CASTO, MAYOR

RITA/COX, RECORDER

ORDINANCE NO.: 08	
Introduced in Council July / , 2008 Introduced by: A le Sawel (a	Adopted by Council: July 15, 2008 Referred to:

An Ordinance creating Electronic Banking for Payment of Fines, Fees and Costs and a Convenience Fee imposed by the Municipal Court.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA

WHEREAS, the number of request presented to the Municipal Court by defendants to utilize electronic banking and the ability to pay fines, fees and cost imposed by the Municipal Court has increased considerably over the years,

WHEREAS, the Municipal Court in response to these requests, and in order to aid in the timely processing of payments is hereby establishing a program v/hereby defendants can utilize electronic banking,

WHEREAS, the Municipal Court will be assessing a five dollar (\$5.00) convenience fee for each electronic transaction to the defendant. The ability to utilize an electronic banking program is a convenience for the defendant and there are related costs to the City for this program. This fee is to help defray the cost to the City for enabling defendants to use the electronic services for court related cost.

173.09: COURT COSTS, FEES AND FINES

- (a) The Municipal Judge shall collect on behalf of the City such court costs, fees and/or fines as authorized by state law and these Codified Ordinances.
- (b) The Municipal Judge, in his or her discretion, may collect costs or fees on behalf of the City pursuant to guidelines adopted by the Municipal Court and filed with the City Clerk for elective alternative traffic school and for jail fees.
- (c) The Municipal Court will establish a program that will enable defendants to pay the imposed fines, fees and cost via electronic banking and/or credit cards. An additional \$5.00 convenience fee will be assessed for each transaction, which will be assessed to the defendant's account. This fee is above the imposed fines and other requisite fees and costs.

This Ordinance shall be advertised in accordance with the applicable provisions of the Codified Ordinances of the City of Nitro, West Virginia.

This Ordinance was introduced and read for the first time at a regular meeting of City Council held on the 1st day of July, 2008.

(cf. West Virginia Code §§62-1C-17b and 62-1C-17)

Passed on second reading:

Mayor, City of Nitro

Passed on second reading:

Recorder, City of Nitro

This Ordinance shall be advertised in accordance with the applicable provisions of the Codified Ordinances of the City of Nitro, West Virginia.

This Ordinance was introduced and read for the first time at a regular meeting of City Council held on the 1st day of July, 2008.

(cf. West Virginia Code §§62-1C-17b and 62-1C-17)

Passed on second reading:

Mayor, City of Nitro

Passed on second reading

Recorder, City of Nitro

R	es	olι	ıtior	า 08-	

RESOLUTION AUTHORIZING THE CITY OF NITRO TO ENTER INTO A LINE OF CREDIT WITH HUNTINGTON BANKS

- WHEREAS, the City of Nitro will have a line of credit with Huntington Banks to be utilized as necessary; and
- WHEREAS, any credit extended will be repaid within the fiscal year granted;
- NOW, THEREFORE, BE IT RESOLVED, the Council of the City of Nitro authorizes Treasurer John Young acting in his capacity as Treasurer for the City of Nitro to sign all documents pertaining to the line of credit with Huntington Banks.

This Resolution becomes effective as of this date. Passed this 15th Day of July, 2008.

Rusty	Casto	o, Mayor		
The	la	COC		
Rita (Cox. Re	ecorder		

Introduced in Council 1st Geading Sily 15,2008 Introduced by Dicarcles Stalar	Passed by Council 2nd Reading Referred to

Bill No. ______, a Bill authorizing and directing the Mayor to enter in to a Housing Consortium Cooperation Agreement between The City of Charleston, The Kanawha County Commission, The Town of Belle, The Town of Cedar Grove, The Town of Clendenin, the Town of Marmet, the City of Nitro, the Town of Pratt, the City of St. Albans, the City of Dunbar, the City of South Charleston to renew the Charleston/Kanawha County Housing Consortium for fiscal years 2009, 2010, 2011.

Be it Ordained by the Council of the City of Theo, West Virginia:

That the Mayor is hereby authorized and directed to enter in to a Housing Consortium Agreement between the City of Charleston, the Kanawha County Commission, the Town of Belle, the Town of Cedar Grove, the Town of Clendenin, the Town of Marmet, the City of Nitro, the Town of Pratt, the City of St. Albans, the City of Dunbar, the City of South Charleston to renew the Charleston/Kanawha County Housing Consortium for fiscal years 2009, 2010, 2011.



HOUSING CONSORTIUM COOPERATION BY AND BETWEEN THE CITY OF CHARLESTON, THE TOWN OF BELLE, THE TOWN OF CLENDENIN, THE CITY OF DUNBAR, THE TOWN OF MARMET, THE CITY OF NITRO, THE CITY OF SAINT ALBANS, THE CITY OF SOUTH CHARLESTON, THE TOWN OF CEDAR GROVE AND KANAWHA COUNTY

This AGREEMENT is made and entered into between the Town of Belle, Town of Clendenin, the City of Dunbar, the Town of Marmet, the City of Nitro the City of Saint Albans, the City of South Charleston, the Town of Cedar Grove (hereinafter the "Municipalities"), the City of Charleston and the Kanawha County Commission for and on behalf of Kanawha County, a political subdivision of the State of West Virginia (hereinafter referred to as ("County").

WHEREAS, Title II of the National Affordable Housing Act of 1990 provides for the creation of the HOME Investment Partnership Program (hereinafter referred to as ("HOME"): and

WHEREAS, the HOME regulations promulgated by the U.S. Department of Housing and Urban Development (HUD) at 24 CFR Part 92 authorizes units of general local government to enter into Housing Consortium Cooperation Agreements; and

WHEREAS, the Municipalities, the City of Charleston and County have determined that obtaining funding under the HOME Program as part of a Consortium Participating Jurisdiction will increase their ability to provide safe, decent and affordable housing for their low and moderate income constituencies.

NOW THEREFORE, the parties to the AGREEMENT do hereby agree as follows:

SECTION 1 B DEFINITIONS

The definitions contained in 24 CFR Part 92, Subpart A., paragraph 92.2 are incorporated herein by reference and made a part hereof, and the terms defined in this section have the meanings given them:

- A. "Act" means Title II, of the Cranston-Gonzalez National Affordable Housing Act (Pub.L.101-625), (42 U.S.C. 12701).
- B. "HOME Program" means a procedure established for the use of funds made available from HUD through the ACT to carry out multi-year housing strategies through acquisition, rehabilitation and new construction of housing tenant-based rental assistance.
- C. "HUD" means the United States Department of Housing and Urban Development.
- D. "Housing Strategy" means the Consolidated Plan as set out in 24 CFR Part 91 and encompasses a local government's housing needs, with a focus on affordable housing

for low-income families.

- E. "Regulations" means 24 CFR Part 92 HOME Investment in Affordable Housing Implementing Regulations as issued by HUD.
- F. "Member" means a unit of local government which as a signatory to this Agreement and therefore a member of the consortium for the purpose of carrying out eligible activities under 24 CFR Part 92.
- G. "Representative Member" means the unit of local government designated hereafter as the one member to act in a representative capacity for all members for the purpose of this agreement. The Representative Member will assume overall responsibility for ensuring that the consortium's HOME Program is carried out in compliance with the requirements of 24 CFR Part 92, 91 & 92.350(a) 5; and will assume responsibility for the requirements concerning the Consolidated Plan. City of Charleston is the Representative Member.

SECTION II B PURPOSE

This Agreement is to form a CONSORTIUM of ten (10) units of general local government geographically located for designation as a PARTICIPATING JURISDICTION under the ACT, said PARTICIPATING JURISDICTION to be known and hereinafter may be referred to as CHARLESTON/KANAWHA HOUSING CONSORTIUM.

The signatory parties agree to cooperate in undertaking, or assist in undertaking housing assistance activities under the HOME Investment Partnership Program in compliance with HUD regulations and the local Housing Strategy.

SECTION III B ADMINISTRATION

- A. The Municipalities, the City of Charleston and the County mutually agree that the City of Charleston shall act as the Representative Member for all participants in the Charleston/Kanawha Housing Consortium for the purposes of the Act. Since the City of Charleston has the sole administrative authority, the City of Charleston agrees to indemnify and hold the County harmless of all liability for consortium activities.
- B. The Municipalities, the City of Charleston and the County mutually agree that the City of Charleston, in its role as Representative Member, shall assume overall responsibility for insuring that the Charleston/Kanawha Housing Consortium's HOME Program is carried out in compliance with the requirements of the HOME Program, including requirements concerning the Consolidated Plan in accordance with HUD regulations in 24 CFR Parts 92 and 91, respectively, and the requirements of 24 CFR 92.350(a)(5). It is further agreed that no member of the Charleston/Kanawha Housing Consortium will obstruct the implementation of the Consolidated Plan approved by the Consortium.
- C. The County and municipalities agree to fully participate with the City of Charleston in

development and preparation of the Consolidated Plan.

- D. The City of Charleston assumes the entire cost of preparation of the Consolidated Plan.
- E. The Municipalities, the City of Charleston and the County shall participate jointly in the development of the Charleston/Kanawha Housing Consortium HOME Program. The Consortium will form a council known as the Housing Consortium Council. The Housing Consortium Council shall be consisted of two (2) members appointed by each the City of Charleston, the County and the Municipalities, for a total of six (6) appointees on the Council. The City of Charleston, the Municipalities and the County will mutually agree and appoint the Chairperson of the Council.
- F. The Council will define a strategy in sufficient detail to accommodate the collective and individual needs and priorities of any and all of the members constituting the Charleston/Kanawha Housing Consortium. The Council shall approve any Program changes or amendments' prior to action being taken by the Representative Member's governing body.
- G. The City of Charleston, as the Representative Member, and the County shall each be entitled to 50% of the available Home Project funding. This percentage is based upon the total Home Program Funding, less 10% administration costs and less 15% Community Housing Development Organization set-aside. CHDO activities above and beyond the minimum 15% shall be divided equally between the City of Charleston and County.

For example: \$935,000 Total Home Allocation

- <u>93,500</u> Less 10% Administration costs \$841,500 Total Project Fund Available - <u>126,225</u> Less 15% CHDO set-aside

\$715,275 Funds to be divided between the City of Charleston and the

County, i.e., \$357,637.50 for each.

Members of the consortium may elect to combine their allocations to carry out collaborative HOME activities. Any funds allocated to Members but remaining un-obligated 6 months after the initial allocation date will be recaptured and redistributed by the Housing Consortium Council. Uncommitted funds will be offered to the other members for reprogramming for eligible activities in accordance with the HOME Program regulations. The final decision for distribution of these funds will be made by the Housing Consortium Council.

H. Nothing in this Agreement will preclude the ability of the Municipalities, the City of Charleston or the County individually or jointly in applying for financial assistance under the State of West Virginia HOME Program. Furthermore, it is expressly agreed and understood that any specific projects eligible for HOME funding may be submitted to the Housing Consortium Council by any Member, any municipality located in the County, any authority, and/or non-profit housing agency for funding under the Consortium's annual HOME Entitlement Funds.

- I. Each Member is responsible for submitting in a timely manner to the Representative Member all information necessary for participation in the Charleston/Kanawha Housing Consortium as defined in the Regulations. This includes all information necessary for the Housing Strategy, the Program Description, Certifications, written agreements with subrecipients and performance reports.
- J. The City of Charleston will be responsible for any required matching funds for specific eligible projects as determined by HUD.
- K. The City of Charleston will be responsible for the administrative funds and allocate portions of these funds to eligible non-profits as determined by the Representative Member.
- L. Legal title to or ownership of all real and personal property, including, but not limited to, easements, acquired by virtue of the execution of or performance under this agreement is vested in City of Charleston.
- M. If any party terminates this agreement in whole or in part, all completed and incomplete portions of the project will become the property of the City of Charleston and disposition or completion of the uncompleted portions of the project will become the responsibility of the City of Charleston.
- This agreement shall be in effect for a period of three (3) fiscal years subject to the renewal N. for any additional period of time needed to complete all phases of the project, each of which renewal periods shall be limited to three (3) fiscal years, provided that, in addition to the right on non-renewal, any party hereto shall have the right to terminate this agreement on any 12-month anniversary of the date of this agreement by giving to the other parties 30 days written notice of such termination. The members of the consortium provide that the consortium will automatically be renewed for participation in successive three-year qualification periods. The Consortium Agreement must, at a minimum, remain in effect until the HOME funds from each of the Federal fiscal years of the qualification period are expended for eligible activities. No Consortium member may withdraw from the agreement while the agreement remains in effect. The representative member will notify each member of the Consortium in writing of its right not to participate for the successive three-year qualification period. The Consortium will adopt any amendment to the agreement to incorporate changes necessary to meet the requirements set forth in a Consortia Qualification Notice applicable for a subsequent three-year consortia qualification period.
- O. The City of Charleston will be responsible to amend the Consortium Agreement on behalf of the entire Consortium to add new members to the Consortium.

P. Each Member shall:

- (1) Provide information required for the preparation of the Consolidated Plan.
- (2) Assist with the preparation of all required plans and reports, as needed.
- (3) Obtain all local legislative and executive approvals.

- Q. The Representative Member shall:
 - (1) Provide staff to manage the preparation, public hearing, and submission of the Consolidated Plan.
 - (2) Provide staff to manage the preparation and submission of the HOME Program Description and its administration.
 - (3) Prepare and submit all required notices, plans and performance and other reports as required by HUD.
 - (4) Ensure that all HUD requirements are met both in the overall administration and in project administration.
 - (5) Prepare guide form contracts, agreements, etc., for use by the Members.
 - (6) Review, approve, and execute Project Funding Agreements for each project.
 - (7) Monitor Members to ensure that they are complying with program requirements.
 - (8) Take full responsibility for all federal requirements for its projects including:
 - (a) documentation of project eligibility,
 - (b) completing environmental reviews,
 - (c) ensuring labor compliance,
 - (d) negotiating and executing any required written agreements with any subrecipient or contractor receiving HOME assistance.
 - (e) ensuring post-completion compliance (e.g., housing affordability),
 - (f) and any other administrative requirements mandated by law or regulation.
 - (9) Establish, account for, and maintain local HOME Investment Trust Fund account (including federal drawdowns and program income, contributions, etc.).
 - (10) Process drawdowns from the Treasury Account (funds received within 48 to 72 hours).
 - (11) Process payment requisitions approved by Member and disburse funds from the Local Account to the member and/or to their designated contractors.
 - (12) Accept and account for contributions and payments and other program income to the local trust fund account.
 - (13) Service HOME loans.
 - (14) Supervise closeout of each annual grant.

- (15) Take responsibility for all aspects of project planning, design, construction, and program implementation.
- (16) Draft project funding agreement for each project and execute following approval.
- (17) All required project documentation must be maintained by the Member and available for review by HUD and/or the Representative Member.
- (18) Prepare a Project Start-Up Report, when a project has cleared required reviews and the project is ready for commitment, and forward report to Representative Member for processing.
- (19) Establish and maintain project budgets.
- (20) Process requisitions and forwards them to Representative Member.
- (21) Receive payment from Representative Member and pay subrecipients or contractors or authorize direct payment to contractors.

R. The Housing Consortium Council shall

- 1. Define a strategy based on the needs of the Members.
- 2. Establish priorities for the use of the HOME funds.
- 3. Reallocate funds that remain in the HOME grant that have not been obligated after 6 months of the initial allocation date.
- 4. The Council will advise on the eligibility and feasibility of specific projects and ensure that any required matching funds for specific projects are provided.
- 5. Ensure that the program year start date for the consortium is on the same program year as the Community Development Block Grant (CDBG), which is July 1, thus ensuring there are no conflicting funding cycles.

SECTION IV B AFFIRMATIVE MARKETING POLICIES AND PROCEDURES

Statement of Policy:

In accordance with the Charleston/Kanawha Housing Consortium, commitment of non-discrimination and equal opportunity in housing, The Charleston/Kanawha Housing Consortium has established procedures to affirmatively market units rehabilitated for assigned under the HOME Investment Partnerships Program. These procedures are intended to further the objectives of Title VIII of the civil Rights Act of 1988 and Executive Order 11063.

The Charleston/Kanawha Housing Consortium believes that individuals of similar economic levels

in the same housing market area should have available to them a like range of housing choices regardless of their race, color, religion, sex, familiar status, handicap or national origin. Individuals eligible for public housing assistance or who have minor children should have available a like range of housing choices.

The Charleston/Kanawha Housing Consortium will carry out this policy through affirmative marketing procedures designed for the HOME Investment Partnerships Program.

Responsibility for Informing the Public Potential Tenants and Owners about Federal Fair Housing Laws and Affirmative Marketing Policies:

The Charleston/Kanawha Housing will inform the Public, Potential Tenants and Owners about its fair housing and affirmative marketing policy in the following manner:

- 1. Information regarding the policy will be included in all materials prepared by the Charleston/Kanawha Housing Consortium for program marketing, including press releases, advertising, program brochures, and application packages. The Equal Housing Opportunity logotype and slogan will be used in all printed information.
- 2. The Charleston/Kanawha Housing Consortium will sponsor an "Owner"s Workshop to discuss procedures and program requirements, including the affirmative marketing policy. Participating Owners shall be advised orally and in writing of this policy.
- 3. Provide information sheets to tenants of buildings to be rehabilitated through the HOME Program, including information on this policy and their rights under the Fair Housing Laws.
- 4. The Owners shall comply with the requirements of Title VI and title VIII of the civil Rights Acts of 1964 and 1968, respectively, which provide that (1) no person is to be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving financial assistance hereunder, and (2) no person shall discriminate in the sale or rental of housing, the financing of housing, or the provision of services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, handicap, or national origin.
- 5. The Owner shall not discriminate against any person because of their eligibility for housing assistance or because of the fact that they have minor children in the household.
- 6. The Owner shall maintain and provide to the Charleston/Kanawha Housing Consortium information on the racial, ethnic and gender characteristics of:
 - a. Tenants occupying units before rehabilitation:
 - b. Tenants moving from and, initially after rehabilitation, to completed units;

and

- c. Applicants for tenancy within 90 days following completion of rehabilitation. Owner may, at his sole discretion, maintain this information on applicants following this initial 90 day period to demonstrate compliance with this policy.
- 7. The Owner shall maintain appropriate records to document his good faith effort to affirmatively market units as required by this policy, including, but not limited to, copies of advertisements, special notices, etc.

ASSESSMENT AND CORRECTIVE ACTION:

The effectiveness of the affirmative marketing will be assessed as follows:

- 1. The Charleston/Kanawha Housing Consortium will review information required to be maintained by the Owner in Part 6 and 7 above. IF the required steps were taken, the Charleston/Kanawha Housing Consortium will determine that good faith efforts have been made.
- 2. Where there is evidence that the Owner has failed to take appropriate actions as called for above, including receipt of complaints by prospective tenants regarding discriminatory actions by the Owner, the Charleston/Kanawha Housing Consortium will proceed to contact the Owner to investigate the nature of the complaint, actions taken by the Owner, and corrective actions to be taken by the Owner in marketing the next available unit. The consortium reserves the right to require additional affirmative marketing procedures from those described above if determined necessary to achieve a good faith effort by Owner.
- 3. The Charleston/Kanawha Housing Consortium shall at least annually examine whether or not persons from a variety of racial and ethnic groups in the market area applied for or became tenants of units that were affirmatively marketed. If such groups are not represented at least proportionally to their presence in the market area, the Charleston/Kanawha Housing Consortium will review this policy to determine what changes, if any, will make the policy more effective in reaching these groups.

SECTION V B TERMS OF THE AGREEMENT

A. This agreement shall remain in full force and effect from the date of execution and approval by HUD for the period necessary to carry out all activities that will be funded. Provided that the Charleston/Kanawha Housing Consortium qualifies as a participating jurisdiction under the HOME Investment Partnerships Program. The program start date for the Consortium and all units of local government that are members of the Consortium shall coincide with the same program year for the Community Development Block Grant, HOME, Emergency Shelter Grant and the HOPWA programs.

THE CITY OF NITRO

Mayor, City of Nitro

Nitro City Council Meeting Minutes August 5, 2008

Call to Order: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending along with Mayor Casto were Recorder Rita Cox, Councilmen at Large Jim McKay, Dave Casebolt, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Treasurer John Young, and Attorney Phil Sword. Councilman at Large Bob Fields was absent.

The Invocation was given by Bill Fortune and the Pledge of Allegiance was led to Recorder Rita Cox.

COUNCILMAN BILL JAVINS MOVED THAT THE MINUTES OF JULY 15, 2008 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN CRAIG MATTHEWS. VOTING FOR THE MOTION WERE COUNCILMEN JAVINS, MATTHEWS, CASEBOLT, MCKAY, AND RECORDER COX. THE MOTION PASSED.

Mayor Casto introduced Nitro citizen Bill Fortune who reported on the Nitro Mission Team which has 14 churches in the local community involved. The group supports the food pantry, carpenters helpers, and Christmas baskets with a budget around \$20,000.00. The Italian Festival will be held September 6 from noon till 9:00 pm at Nitro Baptist Church and Holy Trinity Church. COUNCILMAN JOE SAVILLA MOVED THAT 2ND AVENUE BE CLOSED BETWEEN 23RD ST. AND 22ND ST. FOR THE DAY TO ACCOMODATE THE ITALIAN FESTIVAL. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION. Bill Fortune reported that the Mission Team served 57 families during the previous month.

NEW BUSINESS:

Councilman Dave Casebolt gave members of Council some written ideas for tethering laws pertaining to pets. He requested Council look at them and come up with ideas. COUNCILMAN CASEBOLT MOVED THAT THE TETHERING LAWS BE REFERRED TO THE ORDINANCE COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

Metro Trip to Louisville, KY: Mayor Casto told Council that he had signed up to make the trip with Ka. Co. Commissioner Kent Carper to study the metro government in Louisville, KY and that Treasurer John Young was going. He said there was room for several more. Councilman Savilla recommended that department heads be included.

OLD BUSINESS:

Committee Assignments and Appointments: Mayor Casto appointed John Montgomery to Chair the Ordinance Committee, Finance Committee will be headed by Treasurer John Young and all members of Council will be on the committee, and Councilman Joe Savilla will continue to chair the Fire and Police Committee.

Nitro Development Authority Report: Mayor Casto said he had been supplied with pamphlets that give an accounting of the NDA and were available in his office. Councilman Craig Matthews said that the 12 member board does not currently have a representative from Council. He stated that a financial statement should have been submitted. He said he would like to know what the future plans of the NDA are. Ivan Meadows who is a member of the NDA Board said they meet the second Tuesday of each month at 7:00 pm. Councilman Joe Savilla recommended a letter be sent to the NDA Board inviting officials to the Council meeting. Councilman Jim McKay said the NDA was formed by Council and he thought the

NDA should be developing the city with a plan brought in front of Council. Mayor Casto said he will send a letter asking them to report to Council.

Second Reading - Housing Consortium Ordinance: RECORDER RITA COX MOVED THAT THE HOUSING CONSORTIUM ORDINANCE BETWEEN CHARLESTON, BELLE, CLENDENIN, DUNBAR, MARMET, NITRO, ST. ALBANS, SOUTH CHARLESTON, CEDAR GROVE, AND THE COUNTY OF KANAWHA BE PASSED ON SECOND READING CREATING THE HOME INVESTMENT PARTNERSHIP PROGRAM TO PROVIDE SAFE, DECENT, AND AFFORDABLE HOUSING FOR LOW AND MODERATE INCOME CONSTITUENCES. THE MOTION WAS SECONCED BY COUNCILMAN BILL JAVINS. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

Excess Levy: Mayor Rusty Casto reminded Council the date for voting for the Excess Levy is September 27, 2008. He said that by passing the levy taxes would not be increased.

Kanawha Ave. S. Paving: Mayor Casto reported that a bid had been left at City Hall under the deadline for paving Ka. Ave. S. and was mistaken for a bill from WV Paving so it had not been included in the recent bidding process. WV Paving had increased their own bid to \$36,072.00. Councilman Savilla reminded Council that \$20,000.00 will be covered in a grant. Treasurer John Young said that the increase will be able to be covered by the City. COUNCILMAN JAVINS MOVED THAT COUNCIL ACCEPT THE BID OF \$36,072.00 WITH A SECOND BY COUNCILMAN JOE SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

TREASURER REPORT:

Treasurer John Young reported that due to the OPED (Other Post-Employment Benefits) reporting criteria \$130,000.00 has to come out of the budget but does not have to be sent in to the State. He reported the budget revision for 2008-2009 is as follows: the city will end fiscal year 2008 with a surplus of \$152,075.00. His recommendation is that \$3000.00 goes to the contingency fund, \$5000.00 be given to the Recorder's budget for the excess levy election, \$130,405.00 to the City Hall budget, and \$12,108.00 to the Firemen Pension. COUNCILMAN JOE SAVILLA MOVED COUNCIL ACCEPT THE BUDGET REVISIONS AS PRESENTED. COUNCILMAN BILL RACER SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE PASSAGE OF THE MOTION.

RECORDER RITA COX MOVED COUNCIL ADOPT A RESOLUTION TO SEND TO THE WV AUDITOR APPROVING THE BUDGET REVISIONS FOR FISCAL YEAR 2008-2009. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTING FOR THE RESOLUTION WERE COUNCILMAN SAVILLA, COUNCILMAN RACER, COUNCILMAN MATTHEWS, COUNCILMAN JAVINS, COUNCIL AT LARGE MCKAY, AND CASEBOLT AND RECORDER COX. THE MOTION PASSED.

ATTORNEY REPORT:

Phil Sword attended for City Attorney Troy Giatras. He said that their office was working on the municipal fee ordinance. Councilman Savilla asked for a determination of liability on the Haunted Trail and also how to proceed with the Convention and Visitors Bureau.

Councilman Matthews told Council of the Sept. 13 activities to be held at City Park called Harvest Fair Days. Park Avenue will be shut down between the pool and City Park. The proceeds will be split 50/50 with the show choir. There will be a yard and business decoration contest. COUNCILMAN MATTHEWS MOVED NITRO PARK AND RECREATION HAVE HARVEST FAIRS DAYS FESTIVAL THE WEEKEND OF SEPT. 13. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. Councilman Javins stressed the need to publicize the event. VOTE WAS UNANIMOUS FOR THE MOTION.

COUNCIL COMMENT:

Councilman Javins thanked the Police and Fire Dept.

Councilman Racer suggested the 39th St. Church use the park facilities.

Councilman Savilla said he is excited about the new Council.
Councilman Casebolt said he would report on the Streetscape at the next meeting.
Councilman McKay said he is ready for committee assignments so we can get started.

PUBLIC COMMENT:

Bob Schamber said he thought this was a good Council.

Laura Mallett thanked the city for her road repair. She has spoken with Debra Jordan who is over the Beautification Committee about future projects.

ADJOURNMENT:

COUNCILMAN JAVINS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

Introduced in Council 1st Reach Suly 15,2008 Introduced by Produced by Produced by	Passed by Council 2nd Reading Cougust 5,2068 Referred to
Bill No, a Bill authorizing and direction Consortium Cooperation Agreement between The County Commission, The Town of Belle, The Tollendenin, the Town of Marmet, the City of Nite	own of Cedar Grove, The Town of

Be it Ordained by the Council of the City of Jello, West Virginia:

Charleston/Kanawha County Housing Consortium for fiscal years 2009, 2010, 2011.

Albans, the City of Dunbar, the City of South Charleston to renew the

That the Mayor is hereby authorized and directed to enter in to a Housing Consortium Agreement between the City of Charleston, the Kanawha County Commission, the Town of Belle, the Town of Cedar Grove, the Town of Clendenin, the Town of Marmet, the City of Nitro, the Town of Pratt, the City of St. Albans, the City of Dunbar, the City of South Charleston to renew the Charleston/Kanawha County Housing Consortium for fiscal years 2009, 2010, 2011.

Rta Cox, Recorder

HOUSING CONSORTIUM COOPERATION BY AND BETWEEN THE CITY OF CHARLESTON, THE TOWN OF BELLE, THE TOWN OF CLENDENIN, THE CITY OF DUNBAR, THE TOWN OF MARMET, THE CITY OF NITRO, THE CITY OF SAINT ALBANS, THE CITY OF SOUTH CHARLESTON, THE TOWN OF CEDAR GROVE AND KANAWHA COUNTY

This **AGREEMENT** is made and entered into between the Town of Belle, Town of Clendenin, the City of Dunbar, the Town of Marmet, the City of Nitro the City of Saint Albans, the City of South Charleston, the Town of Cedar Grove (hereinafter the "Municipalities"), the City of Charleston and the Kanawha County Commission for and on behalf of Kanawha County, a political subdivision of the State of West Virginia (hereinafter referred to as ("County").

WHEREAS, Title II of the National Affordable Housing Act of 1990 provides for the creation of the HOME Investment Partnership Program (hereinafter referred to as ("HOME"): and

WHEREAS, the HOME regulations promulgated by the U.S. Department of Housing and Urban Development (HUD) at 24 CFR Part 92 authorizes units of general local government to enter into Housing Consortium Cooperation Agreements; and

WHEREAS, the Municipalities, the City of Charleston and County have determined that obtaining funding under the HOME Program as part of a Consortium Participating Jurisdiction will increase their ability to provide safe, decent and affordable housing for their low and moderate income constituencies.

NOW THEREFORE, the parties to the AGREEMENT do hereby agree as follows:

SECTION 1 B DEFINITIONS

The definitions contained in 24 CFR Part 92, Subpart A., paragraph 92.2 are incorporated herein by reference and made a part hereof, and the terms defined in this section have the meanings given them:

- A. "Act" means Title II, of the Cranston-Gonzalez National Affordable Housing Act (Pub.L.101-625), (42 U.S.C. 12701).
- B. "HOME Program" means a procedure established for the use of funds made available from HUD through the ACT to carry out multi-year housing strategies through acquisition, rehabilitation and new construction of housing tenant-based rental assistance.
- C. "HUD" means the United States Department of Housing and Urban Development.
- D. "Housing Strategy" means the Consolidated Plan as set out in 24 CFR Part 91 and encompasses a local government's housing needs, with a focus on affordable housing

for low-income families.

- E. "Regulations" means 24 CFR Part 92 HOME Investment in Affordable Housing Implementing Regulations as issued by HUD.
- F. "Member" means a unit of local government which as a signatory to this Agreement and therefore a member of the consortium for the purpose of carrying out eligible activities under 24 CFR Part 92.
- G. "Representative Member" means the unit of local government designated hereafter as the one member to act in a representative capacity for all members for the purpose of this agreement. The Representative Member will assume overall responsibility for ensuring that the consortium's HOME Program is carried out in compliance with the requirements of 24 CFR Part 92, 91 & 92.350(a) 5; and will assume responsibility for the requirements concerning the Consolidated Plan. City of Charleston is the Representative Member.

SECTION II B PURPOSE

This Agreement is to form a CONSORTIUM of ten (10) units of general local government geographically located for designation as a PARTICIPATING JURISDICTION under the ACT, said PARTICIPATING JURISDICTION to be known and hereinafter may be referred to as CHARLESTON/KANAWHA HOUSING CONSORTIUM.

The signatory parties agree to cooperate in undertaking, or assist in undertaking housing assistance activities under the HOME Investment Partnership Program in compliance with HUD regulations and the local Housing Strategy.

SECTION III B ADMINISTRATION

- A. The Municipalities, the City of Charleston and the County mutually agree that the City of Charleston shall act as the Representative Member for all participants in the Charleston/Kanawha Housing Consortium for the purposes of the Act. Since the City of Charleston has the sole administrative authority, the City of Charleston agrees to indemnify and hold the County harmless of all liability for consortium activities.
- B. The Municipalities, the City of Charleston and the County mutually agree that the City of Charleston, in its role as Representative Member, shall assume overall responsibility for insuring that the Charleston/Kanawha Housing Consortium's HOME Program is carried out in compliance with the requirements of the HOME Program, including requirements concerning the Consolidated Plan in accordance with HUD regulations in 24 CFR Parts 92 and 91, respectively, and the requirements of 24 CFR 92.350(a)(5). It is further agreed that no member of the Charleston/Kanawha Housing Consortium will obstruct the implementation of the Consolidated Plan approved by the Consortium.
- C. The County and municipalities agree to fully participate with the City of Charleston in

development and preparation of the Consolidated Plan.

- D. The City of Charleston assumes the entire cost of preparation of the Consolidated Plan.
- E. The Municipalities, the City of Charleston and the County shall participate jointly in the development of the Charleston/Kanawha Housing Consortium HOME Program. The Consortium will form a council known as the Housing Consortium Council. The Housing Consortium Council shall be consisted of two (2) members appointed by each the City of Charleston, the County and the Municipalities, for a total of six (6) appointees on the Council. The City of Charleston, the Municipalities and the County will mutually agree and appoint the Chairperson of the Council.
- F. The Council will define a strategy in sufficient detail to accommodate the collective and individual needs and priorities of any and all of the members constituting the Charleston/Kanawha Housing Consortium. The Council shall approve any Program changes or amendments' prior to action being taken by the Representative Member's governing body.
- G. The City of Charleston, as the Representative Member, and the County shall each be entitled to 50% of the available Home Project funding. This percentage is based upon the total Home Program Funding, less 10% administration costs and less 15% Community Housing Development Organization set-aside. CHDO activities above and beyond the minimum 15% shall be divided equally between the City of Charleston and County.

For example: \$935,000 Total Home Allocation

- 93,500 Less 10% Administration costs \$841,500 Total Project Fund Available - 126,225 Less 15% CHDO set-aside

\$715,275 Funds to be divided between the City of Charleston and the

County, i.e., \$357,637.50 for each.

Members of the consortium may elect to combine their allocations to carry out collaborative HOME activities. Any funds allocated to Members but remaining un-obligated 6 months after the initial allocation date will be recaptured and redistributed by the Housing Consortium Council. Uncommitted funds will be offered to the other members for reprogramming for eligible activities in accordance with the HOME Program regulations. The final decision for distribution of these funds will be made by the Housing Consortium Council.

H. Nothing in this Agreement will preclude the ability of the Municipalities, the City of Charleston or the County individually or jointly in applying for financial assistance under the State of West Virginia HOME Program. Furthermore, it is expressly agreed and understood that any specific projects eligible for HOME funding may be submitted to the Housing Consortium Council by any Member, any municipality located in the County, any authority, and/or non-profit housing agency for funding under the Consortium's annual HOME Entitlement Funds.

- I. Each Member is responsible for submitting in a timely manner to the Representative Member all information necessary for participation in the Charleston/Kanawha Housing Consortium as defined in the Regulations. This includes all information necessary for the Housing Strategy, the Program Description, Certifications, written agreements with subrecipients and performance reports.
- J. The City of Charleston will be responsible for any required matching funds for specific eligible projects as determined by HUD.
- K. The City of Charleston will be responsible for the administrative funds and allocate portions of these funds to eligible non-profits as determined by the Representative Member.
- L. Legal title to or ownership of all real and personal property, including, but not limited to, easements, acquired by virtue of the execution of or performance under this agreement is vested in City of Charleston.
- M. If any party terminates this agreement in whole or in part, all completed and incomplete portions of the project will become the property of the City of Charleston and disposition or completion of the uncompleted portions of the project will become the responsibility of the City of Charleston.
- N. This agreement shall be in effect for a period of three (3) fiscal years subject to the renewal for any additional period of time needed to complete all phases of the project, each of which renewal periods shall be limited to three (3) fiscal years, provided that, in addition to the right on non-renewal, any party hereto shall have the right to terminate this agreement on any 12-month anniversary of the date of this agreement by giving to the other parties 30 days written notice of such termination. The members of the consortium provide that the consortium will automatically be renewed for participation in successive three-year qualification periods. The Consortium Agreement must, at a minimum, remain in effect until the HOME funds from each of the Federal fiscal years of the qualification period are expended for eligible activities. No Consortium member may withdraw from the agreement while the agreement remains in effect. The representative member will notify each member of the Consortium in writing of its right not to participate for the successive three-year qualification period. The Consortium will adopt any amendment to the agreement to incorporate changes necessary to meet the requirements set forth in a Consortia Qualification Notice applicable for a subsequent three-year consortia qualification period.
- O. The City of Charleston will be responsible to amend the Consortium Agreement on behalf of the entire Consortium to add new members to the Consortium.

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- 2. The Charleston/Kanawha Housing Consortium will sponsor an "Owner"s Workshop to discuss procedures and program requirements, including the affirmative marketing policy. Participating Owners shall be advised orally and in writing of this policy.
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- 4. The Owners shall comply with the requirements of Title VI and title VIII of the civil Rights Acts of 1964 and 1968, respectively, which provide that (1) no person is to be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving financial assistance hereunder, and (2) no person shall discriminate in the sale or rental of housing, the financing of housing, or the provision of services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, handicap, or national origin.
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SECTION IV B AFFIRMATIVE MARKETING POLICIES AND PROCEDURES

Statement of Policy:

In accordance with the Charleston/Kanawha Housing Consortium, commitment of non-discrimination and equal opportunity in housing, The Charleston/Kanawha Housing Consortium has established procedures to affirmatively market units rehabilitated for assigned under the HOME Investment Partnerships Program. These procedures are intended to further the objectives of Title VIII of the civil Rights Act of 1988 and Executive Order 11063.

The Charleston/Kanawha Housing Consortium believes that individuals of similar economic levels

- I. Each Member is responsible for submitting in a timely manner to the Representative Member all information necessary for participation in the Charleston/Kanawha Housing Consortium as defined in the Regulations. This includes all information necessary for the Housing Strategy, the Program Description, Certifications, written agreements with subrecipients and performance reports.
- J. The City of Charleston will be responsible for any required matching funds for specific eligible projects as determined by HUD.
- K. The City of Charleston will be responsible for the administrative funds and allocate portions of these funds to eligible non-profits as determined by the Representative Member.
- L. Legal title to or ownership of all real and personal property, including, but not limited to, easements, acquired by virtue of the execution of or performance under this agreement is vested in City of Charleston.
- M. If any party terminates this agreement in whole or in part, all completed and incomplete portions of the project will become the property of the City of Charleston and disposition or completion of the uncompleted portions of the project will become the responsibility of the City of Charleston.
- N. This agreement shall be in effect for a period of three (3) fiscal years subject to the renewal for any additional period of time needed to complete all phases of the project, each of which renewal periods shall be limited to three (3) fiscal years, provided that, in addition to the right on non-renewal, any party hereto shall have the right to terminate this agreement on any 12-month anniversary of the date of this agreement by giving to the other parties 30 days written notice of such termination. The members of the consortium provide that the consortium will automatically be renewed for participation in successive three-year qualification periods. The Consortium Agreement must, at a minimum, remain in effect until the HOME funds from each of the Federal fiscal years of the qualification period are expended for eligible activities. No Consortium member may withdraw from the agreement while the agreement remains in effect. The representative member will notify each member of the Consortium in writing of its right not to participate for the successive three-year qualification period. The Consortium will adopt any amendment to the agreement to incorporate changes necessary to meet the requirements set forth in a Consortia Qualification Notice applicable for a subsequent three-year consortia qualification period.
- O. The City of Charleston will be responsible to amend the Consortium Agreement on behalf of the entire Consortium to add new members to the Consortium.

P. Each Member shall:

- (1) Provide information required for the preparation of the Consolidated Plan.
- (2) Assist with the preparation of all required plans and reports, as needed.
- (3) Obtain all local legislative and executive approvals.

and

- c. Applicants for tenancy within 90 days following completion of rehabilitation. Owner may, at his sole discretion, maintain this information on applicants following this initial 90 day period to demonstrate compliance with this policy.
- 7. The Owner shall maintain appropriate records to document his good faith effort to affirmatively market units as required by this policy, including, but not limited to, copies of advertisements, special notices, etc.

ASSESSMENT AND CORRECTIVE ACTION:

The effectiveness of the affirmative marketing will be assessed as follows:

- 1. The Charleston/Kanawha Housing Consortium will review information required to be maintained by the Owner in Part 6 and 7 above. IF the required steps were taken, the Charleston/Kanawha Housing Consortium will determine that good faith efforts have been made.
- 2. Where there is evidence that the Owner has failed to take appropriate actions as called for above, including receipt of complaints by prospective tenants regarding discriminatory actions by the Owner, the Charleston/Kanawha Housing Consortium will proceed to contact the Owner to investigate the nature of the complaint, actions taken by the Owner, and corrective actions to be taken by the Owner in marketing the next available unit. The consortium reserves the right to require additional affirmative marketing procedures from those described above if determined necessary to achieve a good faith effort by Owner.
- 3. The Charleston/Kanawha Housing Consortium shall at least annually examine whether or not persons from a variety of racial and ethnic groups in the market area applied for or became tenants of units that were affirmatively marketed. If such groups are not represented at least proportionally to their presence in the market area, the Charleston/Kanawha Housing Consortium will review this policy to determine what changes, if any, will make the policy more effective in reaching these groups.

SECTION V B TERMS OF THE AGREEMENT

A. This agreement shall remain in full force and effect from the date of execution and approval by HUD for the period necessary to carry out all activities that will be funded. Provided that the Charleston/Kanawha Housing Consortium qualifies as a participating jurisdiction under the HOME Investment Partnerships Program. The program start date for the Consortium and all units of local government that are members of the Consortium shall coincide with the same program year for the Community Development Block Grant, HOME, Emergency Shelter Grant and the HOPWA programs.

Q. The Representative Member shall:

- (1) Provide staff to manage the preparation, public hearing, and submission of the Consolidated Plan.
- (2) Provide staff to manage the preparation and submission of the HOME Program Description and its administration.
- (3) Prepare and submit all required notices, plans and performance and other reports as required by HUD.
- (4) Ensure that all HUD requirements are met both in the overall administration and in project administration.
- (5) Prepare guide form contracts, agreements, etc., for use by the Members.
- (6) Review, approve, and execute Project Funding Agreements for each project.
- (7) Monitor Members to ensure that they are complying with program requirements.
- (8) Take full responsibility for all federal requirements for its projects including:
 - (a) documentation of project eligibility,
 - (b) completing environmental reviews,
 - (c) ensuring labor compliance,
 - (d) negotiating and executing any required written agreements with any subrecipient or contractor receiving HOME assistance.
 - (e) ensuring post-completion compliance (e.g., housing affordability),
 - (f) and any other administrative requirements mandated by law or regulation.
- (9) Establish, account for, and maintain local HOME Investment Trust Fund account (including federal drawdowns and program income, contributions, etc.).
- (10) Process drawdowns from the Treasury Account (funds received within 48 to 72 hours).
- (11) Process payment requisitions approved by Member and disburse funds from the Local Account to the member and/or to their designated contractors.
- (12) Accept and account for contributions and payments and other program income to the local trust fund account.
- (13) Service HOME loans.
- (14) Supervise closeout of each annual grant.

THE CITY OF NITRO

Mayor, City of Nitro

RESOLUTION

At a regular session of the municipal council, held
(Month, day and year) Ligut
following order was made and entered:
SUBJECT: The revision of the Levy Estimate (Budget) of the
(Town or City of) Ity Tello. The following
resolution was offered:
RESOLVED: That subject to approval of the State Auditor as ex
officio chief inspector of public offices the municipal council
does hereby direct the budget be revised PRIOR TO THE EXPENDITURE
OR OBLIGATION OF FUNDS FOR WHICH NO APPROPRIATION OR INSUFFICIENT
APPROPRIATION CURRENTLY EXISTS, as shown on budget revision number
, a copy of which is entered as part of this record.
The adoption of the foregoing resolution having been moved by
The Coll, and duly seconded by
the vote thereon was as follows:
Test or No
Yes or No
Dane acella Yes or No
Get Care Yes or No
craig maltheur Yes) or No
WHEREUPON, Mayor Scisly (asta declared said resolution duly adopted, and it is therefore ADJUDGED and ORDERED that said
resolution be, and the same is, hereby adopted as so stated above,
and the <u>fromular blan fring</u> is authorized to fix his signature on the attached Request for Revision to Approved Budget" to be sent to the State Auditor for approval

LGSD BR 1180 (Rev. 2003)		REQUEST FOI: R	REQUEST FOI: REVISION TO APPROVED BUDGET			
			Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds			
Ora Ash, Director		_				
West Virginia State			on or insufficient appropria	ation currently exists.	Coal Severance	
200 West Main Stre		(§ 11-8-26a)			FUND 1	
Clarksburg, WV 26	302		City of Nitro		REV. NO.	
Phone: 627-2415 e	vt 5114		GOVERNMENTAL ENTIT		REV. NO. 1	
Fax: 627-2417	AC 0114		OOVERWINE TO THE ENTER		PG. OF NO.	
	.		DO Doy 200			
Person To Contact Budget Revision:	Regarding		PO Box 308 STREET OR P.O. BOX			
Budget Nevision.	John H Young		OTTLET OTT TO BOX			
Phone:	304 755-5066	Nitro, WV		25143		
Fax:	304 755-7502	CITY		ZIP CODE		
RECEIPTS: (net						
ACCOUNT	ACCOUNT	APPROVED	DEBIT	CREDIT	REVISED	
NUMBER	DESCRIPTION	AMOUNT	(INCREASE)	(DECREASE)	AMOUNT	
299	Fund Balance	34,592	33,600		68,192	
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	NET INCREASE/(DECR	EASE) Revenues	33,600			
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EXPENDITURES	6: (net each account c	ategory)				
			DEDIT	07-7		
ACCOUNT	ACCOUNT	APPROVED	DEBIT	CREDIT	REVISED	
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976 F	Public Safety			33,600	33,600	
750 s	Streets & Highways	34,592			34,592	
7.00	oreers & riighways	04,002	· ···· · · · · · · · · · · · · · · · ·		54,552	
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APPROVED BY THE STATE AUDITOR			Г	COUNTIES OF	ILŸ	
A LINE			1			
				TRANSFERS TO THE GENER FUNDS CREATED PURSUAN		
Υ:				§ 7-1-9, MUST BE ACCOMPAN	IIED BY PRIOR WRITTEN	
Local G	overnment Services Divis	ion	<u>L</u>	APPROVAL FROM THE STATI	E AUDITOR.	

REQUEST FOI: REVISION TO APPROVED BUDGET

Nitro City Council Meeting Minutes Tuesday, August 19, 2008

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending along with Mayor Casto were Recorder Rita Cox, Councilmen at Large Jim McKay, Dave Casebolt, and Bob Fields, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, and Ward 4 Councilman Bill Javins, Treasurer John Young, and City Attorney Troy Giatras.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman McKay and the Pledge of Allegiance was led by Recorder Rita Cox.

APPROVAL OF MINUTES: COUNCILMAN BILL JAVINS MOVED THE MINUTES OF AUGUST 5, 2008 BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

FUTURE COUNCIL DATES: Mayor Rusty Casto announced the next dates of Council are Tuesday, September 2, 2008 and Tuesday, September 16, 2008. The meetings will be held in Council Chambers at 7: 30 pm.

STREETSCAPE PRESENTATION: Sandy Saunders of the Code Enforcement Department presented a show of the proposed streetscape improvements that are being planned for a portion of the Nitro business district. A meeting had been held the day before with Bank St. business owners along with Councilman Dave Casebolt, Chuck Boggs, Mark Sanders, Joe Bird of Chapman Technical Group and Sandy Saunders. The proposed project will be in four phases beginning with the Easement Phase. The grant would be Federal and will require a 20% commitment from the city with federal government paying 80%. The portion paid by the city would be estimated to be \$50,000.00 to \$60,000.00. Councilman Dave Casebolt has requested that the parking lines on Bank St. be repainted. Mayor Casto reminded Council that Bank St. had been changed to Dave Perry Way. COUNCILMAN SAVILLA MOVED THAT THE AREA FORMERLY KNOWN AS BANK ST. CONTINUE TO BE CALLED AND MARKED AS DAVE PERRY WAY. THE MOTION WAS SECONDED BY DAVE CASEBOLT. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

NEW BUSINESS:

40TH STREET BRIDGE: Mayor Casto reported he had received word from the WV Dept. of Highways there would be a public meeting and informational workshop held on Sept. 9 from 4:00 pm to 7:00 pm in the Kathy Mattea Auditorium for the public input on the 40th Street Bridge and its replacement. Mayor Casto suggested the curve leading to the bridge could be straightened out. Councilman A. A. "Joe" Savilla said that the Army Corps of Engineers should be contacted because of the erosion on the creek bank leading up to the bridge. Councilman Savilla said he would like Mayor Rusty Casto to contact the Army Corps of Engineers concerning flood control in this area near the 40th St. Bridge. Sandy Saunders said a homeowner in that area had hired their own engineer to study the creek erosion and she would share it with Council when she received it.

CARDINAL TRAIN RESOLUTION: Mayor Casto presented Council with a Resolution in support of Amtrak and The Cardinal Train and urges Congress to continue to pay attention to the railroad. COUNCILMAN CRAIG MATTHEWS MOVE THE RESOLUTION BY THE CITY OF NITRO IN SUPPORT OF AMTRAK AND THE CARDINAL TRAIN BE PASSED. THE MOTION WAS SECONDED BY COUNCILMAN BOB FIELDS. Councilman Bob Fields said he had plans to ride the train soon and urged Congress to pay more attention to the trains and their funding. VOTE WAS UNANIMOUS FOR PASSAGE OF THE RESOLUTION.

NITRO DEVELOPMENT AUTHORITY: COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT COUNCILMAN JIM MCKAY BE APPOINTED TO THE NITRO DEVELOPMENT AUTHORITY BOARD AS THE COUNCIL REPRESENTATIVE. THE MOTION WAS SECONDED BY COUNCILMAN BILL RACER. Councilman McKay said he thought the NDA was responsible to Council to give more information and quarterly reports. He said according to WV Code the City has the power to call for an audit. He said that a letter had been sent asking the NDA to appear before the Council and they have not done so. He said that as Council representative he will assure Council the NDA will abide by WV Code. Councilman Matthews said Council is the only appointing authority to the NDA. He said he too is interested in the NDA and would like to have a list of officer. He said that they have until August 29 to respond with the financial report. He said he would like a certified letter sent to the NDA telling them the financial report is due by August 29. VOTE FOR THE MOTION WAS UNANIMOUS. COUNCILMAN CRAIG MATTHEWS MADE A MOTION THAT A CERTIFIED LETTER BE SENT TO THE NDA ASKING FOR THE ORGANIZATION TO SUPPLY THE 2007 YEAR END FINANCIAL STATEMENT AND THE QUARTERLY REPORTS. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Jim McKay brought up the number of members of the NDA Board. He suggested that Councilman Matthews, Councilman Racer and John Montgomery be appointed to the board. Mayor Casto said he was not sure of the legality of that. Councilman Craig Matthews said he would like to have that answered. COUNCILMAN JIM MCKAY MOVED THAT TROY GIATRAS CHECK THE LEGALITY OF THE NDA AND THE APPOINTING POWERS OF COUNCIL AND REPORT TO THE NEXT MEETING OF COUNCIL. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

A C & S INC. REPORT: Councilman Jim McKay referred to a recent local newspaper article about a business in Nitro named A C & S Inc. that makes bio- diesel fuel. He arranged a visit lead by employee and Nitro resident Mike Monday and Councilman McKay and several Council members and Treasurer John Young to tour part of the plant. Mr. Monday said the plant is the fourth largest chemical company in the Kanawha Valley. Currently eight counties are using bio-diesel fuel made there. Councilman McKay met briefly with Jeff Herholt of the WV Dept. of Energy concerning the use of this fuel. Mayor Casto said the city is under contract till November with KRT to buy fuel. Mayor Casto said Ka. Co. buses have to run on B5 to keep from voiding the warranty. Councilman A. A. "Joe" Savilla said that the use of bio-diesel will give some tax incentives. But also some research needs to be done on the effect on warranties on vehicles depending on whether it is B5 or B20. Councilman Casebolt said he was fold the price would be the same and he said these were all questions that need to be asked but he suggested we proceed. Councilman Savilla said he would like to see what the county will do. Mayor Casto said he thought it could go through the county level. He said that a tank could be put next to the city tanks. Councilman McKay said the company currently produces one million gallons per year but could go to as much as three million gallons. Councilman Casebolt said this could mean as much as 50 jobs.

TIME CLOCKS: Councilman McKay said it is his understanding that the city still uses the old sign in/sign out time sheets. He thinks all workers need time clocks and also the fuel usage for the city should be tracked and accounted for. Treasurer John Young said that the lack of time clocks caused a demerit in a recent EPA audit. Councilman Matthews said St. Albans and S. Charleston use time clocks for public works. Councilman Savilla said time clocks were used in Nitro at one time. Councilman Matthews said he had researched the cost of time clocks. The price starts about \$300.00 and can go as high as \$6000.00 for computer clocks. Councilman Savilla said the only two places he could see time clocks used would be public works and city hall and that emergency workers could not use them. Councilman Matthews said there is also a chance that they could cost the city money. Mayor Casto suggested this matter be discussed during the Monday meeting with Dept. Heads. Councilman Javins suggests this could go through the Vehicles and Equipment Committee.

EMERGENCY VEHICLES DECALS: Councilman McKay referred to the memo sent by Mayor Casto instructing all city vehicles with some exceptions have decals put on them. Councilman McKay said he agreed. Mayor Casto said some vehicles will not be marked for police work. Councilman Savilla said that some vehicles should not be marked. Councilman Matthews showed pictures of damaged vehicles

when decals are removed for the vehicles to be resold. He showed a picture of a simpler decal used on Charleston vehicles that did less damaged. Councilman Casebolt said he thought that vehicles were sufficiently marked such as police cars. Councilman Matthews read from WV Code that said the Fire Chief will be in charge of all markings on his vehicles. Mayor Casto instructed Troy Giatras to determine if the Fire Chief is in charge of decals.

OPEN CONTAINER ORDINANCE: City Attorney Troy Giatras addressed the question of whether businesses that sell alcoholic beverages can have an outside porch or deck for drinking. Mayor Casto asked if the city needs to pass an ordinance to allow this. Treasurer John Young said that he thought the main reason was for smoking. Recorder Cox said that the question was whether people could drink within sight of other people and did our ordinance need to be amended. Attorney Giatras said that his understanding was that it was allowed. He said every situation is different and would be incident specific but it should not be a problem. Mayor Casto said he did not want to put the police in a difficult position. He said it should not be a problem if a business has a patio or deck but it would still be taken on an individual case basis.

SNOW REMOVAL LAKEVIEW: Larry Shrewsbury attended to follow up on snow removal on the streets that are not within the city limits in Lakeview. He asked the Council to consider it. Councilman Savilla said that it should go before the Street Committee. COUNCILMAN MATTHEWS MOVED THAT THE QUESTION OF SNOW REMOVAL IN LAKEVIEW BE REFERRED TO THE STREET COMMITTEE WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

OLD BUSINESS:

COMMITTEE ASSIGNMENTS: Mayor Casto referred to the handout concerning Committee as signments. Councilman Savilla reminded Council that all Council members are ex-officio members of Committees. Councilman Casebolt said email would be a good way to communicate. Sandy Saunders said the City web page would be up and running soon. Councilman Matthews said he would like to part of Parks and Recreation and Grants. Councilman Javins had wanted Vehicle and Equipment added as a committee. Treasurer Young wanted Convention and Visitors Bureau and Business Assoc. Mayor Casto said he was impressed by the work of Streetscape. Boat Launch is headed by Councilman Bill Javins. Mayor Casto said he did not turn down any Council member who wanted to be on the agenda or on a committee. COUNCILMAN MCKAY MADE THE MOTION THAT THE COMMITTEES SET DOWN THIS DAY BE THE ONES CURRENTLY IN EFFECT. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

TETHERING LAW: Councilman Casebolt said they hoped to have that in Ordinance form soon because John Montgomery was working on it. Councilman Savilla said it was needed. Councilman Racer said the Dog Catcher Rodney Dunn did a very good job. Councilman Casebolt agreed but said he needed stronger laws to help him.

ATTORNEY REPORT: Troy Giatras said he should meet with the Convention and Visitors Committee to help set up and answer their questions. He said that litigation was low and he wants to work with the Convention and Visitors Committee in helping get that going.

TREASURERS REPORT: City Treasurer John Young reported that there is currently a balance of \$137,973.76 in Accounts Payable. He said in July we picked up the Fire and Police portion on the Pension. He indicated since there were five payrolls in July all departments are over budget on the payroll. He said the city had a net income of \$633,000.00 and the city currently owes \$99,354.00. He said his goal was to get the 2006 and 2007 pension portion of the fire and police pension by December.

SHIRLEY BURDICK: Shirley Burdick addressed Council about an ongoing dispute she has with a neighbor, Mrs. Delores Means and a structure that has been ordered to be torn down that Mrs. Burdick says is built on her property. The structure was not torn down as ordered and Mrs. Burdick asked Attorney

Troy Giatras when will the structure that is built partially on her property will be removed as ordered. He said that he can not control the process but it should go before the municipal court and eventually if it was appealed then before the circuit court and then the supreme court. Mrs. Burdick asked how she could stay informed about the process. Mr. Giatras said that Sandy Saunders could keep her informed. Mrs. Burdick asked how it will go before municipal court. Mayor Casto said Mr. Lindroth would be the person to handle that.

COUNCIL COMMENTS:

Councilman Javins spoke about attending the Ka. Co. Commission meeting and finding that the Tri-State Gaming is still working toward table games. They now have approximately 500 to 600 employees and plan to have 1000 by the end of the year. The entertainment complex will be up in two years with WV contractors and union workers. He also announced that Kanawha Ave. S. will be paved on Thursday.

Councilmen Matthews and Racer had no comments.

Councilman Savilla thanked everyone for their work.

Recorder Cox said that early voting for the excess levy election will be held in City Hall from Sept. 5 to Sept. 2 during regular business hours. There will be no early Saturday voting. The Nitro Womans Club would like to help with the Streetscape by committing to paying for one or two signs at the entrance to the city.

Councilman Fields says he is happy to be able to support the Cardinal Train and the Resolution in support of Amtrak.

Councilman Casebolt said he welcomes support from organizations for the Streetscape and that it will be a very big project. He said that community input is important. He also said Sandy Saunders had been working aggressively on eyesores and it is appreciated.

Councilman McKay had no comments.

PUBLIC COMMENTS:

Bob Schamber said he hopes that Council keeps and open mind about metro government.

ADJOURNMENT:

COUNCILMAN JIM MCKAY MOVED THE MEETING BE ADJOURNED WITH A SECOND FROM RECORDER RITA COX. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER



City of Nitro WV Resolution in Support of Amtrak and the Cardinal

Whereas, America needs a balanced, integrated transportation system, and the American people require multiple transportation choices; and

Whereas, passenger rail is a component of a modern, multi-modal transportation system and needs to have financial support, unified policy development, and oversight similar to that we afford to air, water, and highway transit modes; and

Whereas, the residents, visitors, and business community of our area need an improved and guaranteed passenger rail system to link our community to the hundreds of other cities served by rail in our nation and Canada; and

Whereas our section of the nation is underserved by Amtrak trains, having only Train 50 and 51, the Cardinal, which presently runs three days a week and could be far more effective as a daily train, with a baggage and dining car; and

Whereas, investment in rail passenger services in other sections of our country have resulted in significant ridership increases and increased citizen mobility; and

Whereas, Amtrak will continue to offer a growing role in offering transportation choices; and

Whereas, rail passenger services are recognized for their safety and energy efficiency;

Now, therefore, I, Rusty Casto, Mayor of Nitro, WV, do hereby proclaim that the city of Nitro supports Federal funding for Amtrak to a degree that allows continuation and improvements of existing services and expansion of services as warranted, and that this Proclamation be forwarded to the West Virginia congressional delegation in Washington, D.C.

IN witness whereof, I have hereunto set my hand a	and c	aused the	e Seal d	of the
City of Nitro to be affixed this— $49+h$ day of — $40-h$	qus:	‡ -,	2008.	

Mayor, City of Nitro WV

Contact info:

Chuck Riecks, Friends of Cardinal chair 304-776-2889 304-545-4232 Bonni McKeown 304-345-5383 Chuck Frostick, 304-344-8113

NITRO CITY COUNCIL MEETING MINUTES SEPTEMBER 2, 2008

CALL TO ORDER: Mayor Rusty Casto called the regularly scheduled meeting of Council to order at 7:30 pm in Council Chambers. Attending the meeting were Mayor Casto, Recorder Rita Cox, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Councilmen at Large Dave Casebolt, Bob Fields, and Jim McKay, Treasurer John Young and Acting City Attorney Phil Sword.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by A. J. Hill and the Pledge of Allegiance was led by Albert Walls.

Mayor Casto made reference to the recent explosion at the Bayer Plant and the quick response by Nitro Police and Fire Departments and Public Works employees. Councilman Savilla urged the city to establish what is owed for overtime and fuel costs in dealing with the explosion. Treasurer John Young said he was already making preparations on that matter. Councilman Racer, who works at Bayer, said it was a routine startup that had been performed many times before but had resulted in a terrible explosion this time resulting in one death and one badly burned employee.

APPROVAL OF MINUTES: COUNCILMAN BILL JAVINS MOVED THE MINUTES OF THE AUGUST 19, 2008 MEETING OF COUNCIL BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN A. A. "JOE" SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

FUTURE DATES OF COUNCIL: Mayor Rusty Casto announced the future dates of Council are Tuesday. September 16, October 7 and October 21, 2008 at 7:30 pm in Council Chambers.

KRT-AC&S: Mayor Casto asked Councilman Jim McKay for an update on the KRT and AC & S meeting. Councilman McKay introduced Dean Cordle, and employee of AC & S. Mr. Cordle said he had spoken with Denny Dawson of KRT and will schedule a meeting soon to discuss the possibility of using bio-diesel fuel produced here in Nitro by AC & S. He said the plant currently produces three million gallons per year and with Governor Manchin's Blueprint for Energy Independence for the State of West Virginia the use of bio-diesel will be more likely in the future.

ITALIAN DINNER: Mayor Casto introduced Katie King who announced there would be an Italian Dinner on September 5, 2008 to raise money for the Mission Team for Christmas Baskets. The tickets are \$10.00 each.

AGENDA ITEMS:

NEW BUSINESS:

2009 CALENDAR: Mayor Casto stated that it was time to start work on the 2009 calendar. COUNCILMAN SAVILLA MOVE THAT THE CITY OF NITRO ACCEPT BIDS ON THE PRINTING OF THE 2009 CALENDAR. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. Mayor Casto announced that prior to the October 7 Council meeting he would like for Council members to assemble to have pictures made for the 2009 calendar.

NITRO REGIONAL WASTEWATER UTILITY ANNOUNCEMENTS: Mayor Casto announced the once a month meeting time for the Nitro Regional Wastewater Utility will be at 2:00 pm on the fourth Tuesday of each month. He announced that the current accountant Max Lemma is retiring and the job has been offered to John Young.

BOARD OF ZONING APPEALS APPOINTMENTS: Mayor Rusty Casto announced there are currently two vacancies on the Board of Zoning Appeals and he would welcome nominations for appointments or volunteers to become members.

OLD BUSINESS:

STREETSCAPE: Councilman Dave Casebolt reported that the Streetscape was moving on and the Beautification Committee was continuing to have meetings concerning the area between the railroad tracks and Rt. 25. There is a program to be announced called Project Pride and he would have more details later.

HAUNTED TRAIL: Councilman Matthews said the status of the Haunted Trail was now waiting for insurance with Kanawha County Board of Education. Recorder Rita Cox reported that Helen Bukovinsky of Nitro High School had been contacted and a request had been made to add the City of Nitro with the Kanawha County School's insurance carrier due to the use of the practice field and Ridenour Lake and any other city facilities that are used by the school. The City of Nitro had just recently received a Certificate of Liability Insurance produced by the WV Board of Risk and Insurance Mgt. naming the City of Nitro as an additional insured.

VFW WAR MEMORIAL: Councilman Bob Fields said plans are progressing and donations are coming in on the Memorial planned for 21st and 1st Avenue. The National VFW said they would loan the remainder of the money needed to build. He said that the next concern was finding a contractor that would do the job. Councilman Savilla suggested that Gene Thompson of Ahearn could be contacted.

NDA: Mayor Rusty Casto announced that the NDA Board members will meet with members of Council at 6:00 pm on Wednesday to discuss their status. The meeting will be in the NDA Board Room.

ORDER AND NOTICE OF SPECIAL ELECTION FOR ADDITIONAL MUNICIPAL LEVY TO THE VOTERS OF THE CITY OF NITRO: Recorder Rita Cox reported that the excess levy election will be held Sept. 27, 2008 with early voting in City Hall weekdays Sept. 5 till Sept. 24. RECORDER RITA COX MOVED THAT THE RESOLUTION CALLING FOR AN ORDER AND NOTICE OF SPECIAL ELECTION FOR ADDITIONAL MUNICIPAL LEVY TO THE VOTERS OF CITY OF NITRO BE ADOPTED. THE MOTION WAS SECONDED BY COUNCILMAN A. A. "JOE" SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

EXCESS LEVY ELECTION POLLWORKERS: Recorder Rita Cox presented Council with a list of poll workers, alternates, and ballot commissioners for the Sept. 27, 2008 excess levy election.

RECORDER COX MOVED THAT THE LIST OF POLLWORKERS, ALTERNATES, AND BALLOT COMMISIONERS BE MADE A PART OF THE MINUTES. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

ATTORNEY REPORT: Acting City Attorney Phil Sword said in response to the question from the previous Council meeting concerning appointments to the NDA by Council that he was not able to find anything that would limit the appointments to one Council member. He said that the Council is the appointing agency.

TREASURER REPORT: Treasurer John Young said that a major upgrade is being done at Tristate the contractors and subcontractors are being contacted about paying their portion of B & O. He said he has been trying to find out who the contractors are. He said he will be supplying payroll information monthly.

COUNCIL COMMENT:

Councilman Bill Javins said that by all reports the table games at Tri-State Gaming Center are doing well.

Councilman Craig Matthews reminded Council that Harvest Days will be held the weekend of Sept. 12th, with many events such as a 5K run, car show, motorcycle show, pig roast and talent contest. He urged all to attend. Debra Jordan reported there would be live bands, food and other events.

Councilman Racer had no comments.

Councilman Savilla thanked the emergency workers and public works employees who responded to

the explosion at Bayer.

Recorder Cox referred to the information on Storm water (MS4) that was supplied by A. J. Hill.

Councilman Fields said he was concerned that he was not aware of the explosion the night it happened and thought in the future members of Council should be informed.

Councilman Casebolt referred to the snow removal request from Lakeview. Carl Barlow was in attendance to represent the homeowners and said he would carry back any information. Councilman Savilla said the Street Committee had made a trip to the area. Their consensus was that since the city is already out there to remove snow from the incorporated areas why don't the rest of the areas become part of the city. Recorder Cox reported that it would be necessary for the Homeowners Assoc. to add the City of Nitro as an additional insured. Councilman Savilla said he thought if the city were to charge for snow removal that \$3000.00 would be a reasonable amount. Mr. Barlow said he would carry the information to the Homeowners and get back to Council. Councilman Casebolt said he is working on the Dog Ordinance and would like to have it on the agenda for the next meeting. He said cleaning up after a dog when it is being walked and cleaning up the area it is tethered should also be in the ordinance. Councilman Casebolt said he would like a letter sent to WV Am. Water and signed by the Mayor concerning the 2 inch water line on Bailes Drive. He said that he questions the liability of the inadequate line. Mayor Casto said there had been a meeting set up concerning this with the Fire Chief.

Councilman Jim McKay thanked the police, fire and public works for the response to the explosion at Bayer. He said he was glad to be meeting with the Nitro Development Authority.

PUBLIC COMMENT:

Bob Schamber asked the date of the levy election, September 27, 2008. He said the Seniors were making a trip to Amish Country that day. He said the Seniors were able to pay for a cell phone for the Senior bus driver.

Laura Mallett said she appreciated the ring down during the fire at Bayer.

Ivan Meadows said the geese are back at the park and he considers it a health hazard.

Joseph Savilla of the Nitro Police Department thanked A. J. Hill and the Public Works Department on behalf of Chief Jack Jordan for their response to the Bayer fire and explosion.

COUNCILMAN SAVILLA MOVED THE MEETING BE ADJOURNED. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION

RUSTY CASTO, MAYOR

RITA COX. RECORDER.

Resolution No. 08-	Res	oluti	on N	o. 08-	
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A Resolution setting forth an order calling for a special election for additional municipal levy in the City of Nitro, Kanawha and Putnam Counties, West Virginia.

ORDER AND NOTICE OF SPECIAL ELECTION FOR ADDITIONAL MUNICIPAL LEVY TO THE VOTERS OF CITY OF NITRO

That at a regular meeting of the Council of the City of Nitro, State of West Virginia, Held on the 1st day of July, 2008, as provided by law, the following order was made and entered of record, to wit:

The Council of the City of Nitro being of the opinion that the maximum levies for current expenses authorized by Article 8, Chapter 11 of the Code of West Virginia, as amended, will not provide sufficient funds for the payment of current expenses of the City of Nitro, including expenditures for the purpose or purposes hereinafter set forth, and that an election should be held to increase such levies under the provisions of Section 16m Article 8, Chapter 11 of the Code, as amended, it is hereby ordered:

- 1. That the purpose or purposes for which additional funds are needed is/are as follows:
 - A. Street maintenance and repair
 - B. Parks and recreation
 - C. Firemen's Wages
 - D. Street Lighting
 - E. Policemen's Wages
 - F. Library
 - G. Fire Hydrant Rental
- 2. That the approximate amount fore each purpose is as follows: (Annual Total)
 - A. \$35,042.00
 - B. \$26,008.00
 - C. \$70,194.00
 - D. \$41,709.00
 - E. \$136,693.00
 - F. \$47,029.00
 - G. \$12,765.00

Total: \$369,440.00

- 3. That the total approximate amount for said purpose or purposes is: (Grand total for levy term)
 - A. \$175,211.00
 - B. \$130,042.00
 - C. \$350,968.00
 - D. \$208,546.00
 - E. \$683,463.00
 - F. \$235,143.00
 - G. \$63,827.00

Grand Total: \$1,847,200.00

4. That the separate and aggregate assessed valuation of each class of taxable property within City Of Nitro is as follows:

Class II

\$ 79,205,850.00

Class IV

\$ 144,642,834.00

5. That the proposed additional rate of levy in cents per one hundred dollars of assessed valuation On each class of property is as follows:

Class II 10.66 cents Class IV 21.32 cents

- 5a. That in the event separate and aggregate assessed value of each class of taxable property Within the City of Nitro increases during the term of the special excess levy, the levy rate shall Be adjusted so that the projected tax collection will not exceed \$369,440.00 in any fiscal Year.
- 6. That the proposed years to which the additional levy shall apply are the fiscal years beginning July 1, 2009, July 1, 2010, July 1, 2011, July 1, 2012 and July 1, 2013.
- 7. That the City Council will not issue bonds upon the approval of proposed levy.
- 8. That the question of such additional levy shall be submitted to a vote at a Special Election to be Held on the 27th day of September, 2008.
- 9. That notice calling such election shall be given by the publication of this order at least once Each week for two successive weeks before said election in two newspapers of opposite politics And of general circulation in the territory which the election is held. If there is only one Newspaper published in the county, said publication shall be made therein. All the provisions Of the laws concerning general elections shall apply as far as they are practicable, except that a Separate ballot shall be used at such election when held in connection with any other election.
- 10. That the ballot to be used at such election shall be in the following form.

NITRO EXCESS LEVY ELECTION SEPTEMBER 27, 2008 POLL WORKERS, ALTERNATES, AND BALLOT COMMISSIONERS

PRECINCTS 22-23	RESA 39 TH STREET				
R CLERK	MICHAEL TODD RAYNES-3945 39 TH ST.	415-2907			
D CLERK	PARTICIA A. SLACK-4038 40 TH ST.	7550711			
R SUPPLY COMM.	ALICE SHAFER-3509 35 TH ST.	755-9387			
D COMM. ESCORT	MONOKA JANE BROGAN-121 BAILES DR.	755-1487			
D COMINI. ESCORT	WONORA JANE BROGAN-121 BAILES DR.	755-1467			
PRECINCT 349	NITRO WOMANS CLUB				
R CLERK ESCORT	WILLIAM ROBERT FINCH-111 FAIRVIEW DR.	776-8411			
D CLERK	HAROLD WHITE-2720 27 TH ST.	755-2346			
D SUPPLY COMM.	JACI WHITE-2720 27 TH ST.	755-2346			
R COMMISSIONER	ALMA M. BOGGESS-64 31 ST ST.	755-2544			
PRECINCT 350	NITRO ELEMENTARY SCHOOL				
R CLERK	ANGIE REED-124 MAIN AVENUE	755-1211			
D CLERK	SANDRA DORSEY-1127 11 TH ST.	755-4913			
D SUPPLY COMM.	DONNA WILCOX-103 DUPONT AVE.	755-5531			
R COMM. ESCORT	SHEILA REED-124 MAIN AVE.	755-1211			
R COMMI. ESCORT	SHEILA REED-124 MAIN AVE.	755-1211			
PRECINCT 352	NITRO HIGH SCHOOL				
D CLERK	SAMANTHA SAYRE-401 MAIN AVE. APT 5	395-1905			
R CLERK	SHIRLEY HOFFMAN-1321 MAIN AVE.	755-2280			
D SUPPLY COMM.	SHARON HILL-2134 21 ST ST.	755-2400			
R COMM. ESCORT	JESSICA HOFFMAN-1312 MAIN AVE.	755-1154			
DDECDICT 254	TWIN CITY BIBLE CHURCH				
PRECINCT 354	I WIN CIT I BIBLE CHURCH				
D CLERK	REBECCA EARLENE PRIDDY-1 WASH. AVE.	755-5886			
R CLERK	BETTY COOK-223 JAMESTOWN RD.	755-9771			
D SUPP. COMM.	WANDA SMITH-203 WALKER ST.	727-7801			
R COMM. ESCORT	DOLORES MCGUCKEN-1816 18 TH ST.	755-3123			
AT TEDNIATES					
ALTERNATES DEMOCRATS					
	2611 26 TH ST.	755 1040			
EILEEN MORGAN		755-1243			
PATTI D. WALKER	205 WALKER ST.	727-4233			
REPUBLICANS					
CHARLES SHAFER	3509 35 TH ST.	755-9387			
RON COLLEY	366 SCENIC DR. ST. ALBANS, WV 25177	727-2667			
BALLOT COMMISSIONERS					
R BESS STAHL	1914 19 TH ST.	755-3443			
D LEONARD WOMBLI	E 1360 VALENTINE CIRCLE	533-6059			

NITRO CITY COUNCIL MEETING MINUTES TUESDAY, SEPTEMBER 16, 2008

CALL TO ORDER: Mayor Casto called the meeting to order at 7:30 pm. Attending along with Mayor Rusty Casto were Recorder Rita Cox, Councilmen at Large Dave Casebolt, Bob Fields, and Jim McKay, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Acting City Attorney Phil Sword, and City Treasurer John Young. Ward 1 Councilman A. A. "Joe" Savilla was absent.

INVOCATION/PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was led by Bob Schamber and the Invocation was presented by Andy Shamblin.

APPROVAL OF MINUTES: COUNCILMAN CRAIG MATTHEWS MOVED THAT THE MINUTES OF SEPTEMBER 2, 2008 BE APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN BILL RACER. VOTE WAS UNANIMOUS FOR THE MOTION.

FUTURE DATES OFF COUNCIL: Mayor Rusty Casto announced the next two dates of Council are October 7 and October 21, 2008. Mayor Casto indicated the first Tuesday in November will be election day. COUNCILMAN JIM MCKAY MOVED THAT THE COUNCIL MEETINGS FOR NOVEMBER BE HELD ON MONDAY, NOVEMBER 10 AND TUESDAY, NOVEMBER 18, 2008. THE MOTION WAS SECONDED BY COUNCILMAN BOB FIELDS. VOTE WAS UNANIMOUS FOR THE MOTION'S PASSAGE.

CITIZEN OF THE MONTH: Mayor Rusty Casto asked Councilman Dave Casebolt to introduce the September Citizen of the Month, Andy Shamblin who is a senior at Nitro High School.

OLD BUSINESS:

LOUISVILLE METRO GOVERNMENT TRIP: Councilman Bob Fields said the trip was informational but he did not feel like he got that much from the trip. Councilman Craig Matthews said he felt like the concept is being pushed. Councilman Matthews said the County Council would take the place of the City Councils. Councilman Fields said he felt like some services would be duplicated.

STREETSCAPE: Councilman Dave Casebolt informed Council the deadline for the grant application of the Steetscape program through the DOH is November 8, 2008. Because of that he said the City needs to confirm \$60,000.00 would be committed for next year's budget for the city's portion. COUNCILMAN DAVE CASEBOLT MOVED THAT THE CITY OF NITRO APPROVE FUNDS UP TO \$60,000.00 BE COMMITTED FOR THE 2008-2009 BUDGET FOR THE STREETSCAPE PROGRAM WITH A SECOND BY COUNCILMAN JIM MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS. Councilman Fields said he wanted to be sure the Library carpet is replaced from damages suffered during the tire fire. Treasurer Young said the money was available currently.

FIRST READING DOG ORDINANCE: Acting City Attorney Phil Sword presented Council with the Dog Ordinance. COUNCILMAN MATTHEWS MOVED THE ORDINANCE BE READ BY TITLE ONLY. THE MOTION WAS SECONDED BY COUNCILMAN CASEBOLT. VOTE WS UNANIMOUS FOR PASSAGE OF THE MOTION TO READ THE ORDINANCE BY TITLE ONLY. Acting City Attorney Phil Sword read the Ordinance by title only: AN ORDINANCE AMENDING DOG ORDINANCE AS TO THE CARE AND RESTRAINT OF DOGS NOT RESTRAINING DOGS FOR MORE THAT THREE HOURS IN A 24 HOUR PERIOD, NOT RESTRAINING IN EXTREME WEATHER, NO MORE THAT SIX DOGS. COUNCILMAN DAVID CASEBOLT MOVED THE ORDINANCE BE PASSED ON FIRST READING BY TITLE ONLY WITH A SECOND BY COUNCILMAN BILL JAVINS. THE MOTION PASSED WITH UNANIMOUS APPROVAL.

FIRST READING DUI ORDINANCE: COUNCILMAN JIM MCKAY MOVED THE ORDINANCE BE INTRODUCED BY TITLE ONLY WITH A SECOND BY COUNCILMAN DAVE CASEBOLT. Acting City Attorney Phil Sword read the ordinance by title only: DRIVING UNDER THE INFLUENCE AND WRECKLESS DRIVING UNDER THE TITLE OF DRIVING UNDER THE INFLUENCE. COUNCILMAN MATTHEWS MOVED THE MOTION BE PASSED ON FIRST READING WITH A SECOND BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR PASSAGE OF THE ORDINANCE.

Santani e a Pilita e e e

COMMITTEES: Councilman Craig Matthews explained his stand on committee participation saying that while all Council members are welcomed to attend meetings he feels there should be a definite and finite number on committees so they will know when a quorum is present. He suggested Council members look over the lists and make changes when needed.

HARVEST FAIR DAYZ: Councilman Matthews reported that Sept. 13 event was successful. There was \$340.00 raised for the 5k and 3k walk with trophies being donated. There were 28 runners and 2 walkers. The Cornhole Tournament consisted of 10 teams and raised \$250.00. He thanked the Police and Fire Dept. for their help. He said it had the potential to be a great event. He thanked Debra Jordan for her work.

NEW BUSINSESS:

WALK TO SCHOOLD DAY, OCTOBER 8, 2008: Councilman Casebolt said that Wednesday, October 8 will be National Walk to School Day and he presented Council with a Proclamation to that subject. COUNCILMAN DAVID CASEBBOLT MOVED THAT WEDNESDAY, OCTOBER 8, 2008 BE DECLARED WALK TO SCHOOL DAY FOR NITRO. THE MOTION WAS SECONDED BY RECORDER RITA COX. The plan he announced was to assemble at Nitro Park to be prepared to walk at 8:00 am to Nitro Elementary. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

ANNEXATION: Mayor Casto said he has approached the residents of Bailes Drive about coming into the City of Nitro and that he is also interested in Rt. 25 past the current limits so that Nitro would extend across the Kanawha River from Walnut St. in St. Albans., COUNCILMAN BOB FIELDS MOVED THAT S & S ENGINEERING BE AUTHORIZED TO WRITE THE SPECIICATIONS FOR THESE AREAS AND IT BE PRESENTED TO THE KANAWHA COUNTY COMMISSION. THE MCTION WAS SECONDED BY COUNCILMAN JIM MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION. Mayor Casto asked Ronnie King if the WV Am Water Co. had been approached. Ronnie King said an attempt had been made to schedule a meeting. He said that a 2 inch line runs up the hill but a 6 inch line is needed with a possible cost of a million dollars.

HOMECOMING PARADE: COUNCILMAN DAVE CASEBOLT MOVED THAT NITRO HIGH SCHOOL HAVE THE ANNUAL HOMECOMING PARADE ON SEPT. 26 AT 6:00 PM WITH POLICE ESCORT AND TWO FIRE TRUCKS. THE MOTION WAS SECONDED BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

PROJECT PRIDE: Councilman Dave Casebolt reported that the goal of the project is to build pride in the city and the committees are to work toward that goal, updating ordinances, cleaning up the city in general, with mission statements coming from each committee. Councilman Bill Javins suggested the Brownfields Project be added to this.

ROOF/CITY HALL: Mayor Casto announced he would like to form a committed to tend to physical needs of City Hall such as the leaking roof and thermostat problems. COUNCILMAN JIM MCKAY MOVED THAT A COMMITTEE BE FORMED CONSISTING OF MAYOR CASTO, RECORDER COX, TREASURER YOUNG, CHIEF JORDAN AND COUNCILMAN FIELDS TO ADDRESS CITY HALL NEEDS. THE MOTION WAS SECONDED BY COUNCILMAN CASEBOLT WITH A UNANIMOUS VOTE FOR THE MOTION TO PASS.

ORDINANCE COMMITTEE: Committee Chairman John Montgomery said the Committee would meet at 7:00 pm Thursday in Council Chambers. He would like to have input on Ordinances to be drafted and amendments made. Capt. Gene Javins requested that Police and Fire Depts. Be consulted on pertinent ordinances.

TREASURER REPORT: Treasurer John Young said that the 2006-2007 audit had been completed and he is waiting for a report. He said Debra Jordan did a great job at the pool this past season. He said the property tax is coming in and he had not needed to tap the line of credit or the \$100,000.00 that was put in an account for emergencies.

ATTORNEY REPORT: Acting City Attorney Phil Sword said his office was working on the ordinance to collect delinquent fees.

COUNCIL COMMENTS:

Mayor Casto said the Council picture for the 2009 City Calendar would be taken prior to the Oct. 7 meeting. He reported that he had attended the Sept. 9 public hearing on the 40th St. bridge. He had suggested that 31st East Road be repaired to permit passage for emergency vehicles and asked that Council suggest that in writing to the DOH. If a temporary bridge is built it will take two summers, if not it will take one summer. Ronnie King suggested 31st St. E. be made one way towards Cross Lanes. COUNCILMAN MCKAY MOVED THAT THE QUESTION OF 31ST ST. E. BEING MADE ONE WAY GOING AWAY FROM NITRO WHILE THE 40TH ST. BRIDGE IS BEING REPLACED BE SENT TO THE STREET COMMITTEE. THE MOTION WAS SECONDED BY COUNCILMAN CASEBOLT. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Javins said that the letter to Lakeview was just a draft. Recorder Cox said she did not have a copy of the insurance paper stating Nitro was an additional insured on the Lakeview Homeowners Insurance. Councilman Javins said he thought the Harvest Dayz has the potential to be a big success.

Councilman Matthews thanked Public Works for the response to some problems he had recently. Recorder Cox thanked Debra Jordan for the work on Harvest Dayz.

Councilman Fields said he thought it was important to insure the Fire and Police Pensions are protected.

Councilman Casebolt said he was part of a mentoring program at Nitro Elementary and encouraged others to do so.

Councilman McKay said he met with the Nitro Development Authority recently and shared the paperwork with Council that he received. COUNCILMAN MCKAY MOVED THAT JOHN MONTGOMERY BE APPOINTED TO THE NDA BOARD. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNAN!MOUS FOR THE MOTION TO PASS. Councilman McKay is waiting to hear more from AC & S about bio diesel. He thanked the Police Dept. for quick response to a Community Center problem.

PUBLIC COMMENTS:

Bob Schamber said Nitro Seniors supply a cell phone for the Van Driver, a Senior Show was a success, and he passed on a compliment he had been told on the plantings on 1st Ave.

John Montgomery reminded people of the levy vote.

Laura Mallett said she thought Council was working well together.

Eleanor Raynes offered a tree for Christmas usage.

COUNCILMAN MATTHEWS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN RACER. THE MOTION PASSED.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

ORDINANCE NO. 68 -

An Ordinance to amend article 505 of the Codified Ordinances of the City of Nitro, West Virginia, by adding thereto three sections designated 505.29, 505.30 and 505.31, relating to the care and restraint of dogs; providing definitions; prohibiting the owner of a dog within the City from leaving a dog outside and restrained for longer than three hours in a twenty-four hour period; requiring enclosed shelter during extreme weather conditions; describing restraints that are deemed to be unreasonable; providing exceptions; providing penalties; prohibiting the keeping of more than six dogs on any lot, dwelling, or structure unless certain conditions are satisfied; and authorizing the issuance of a special permit if the owner seeks to keep more than six dogs.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that article 505 of the Codified Ordinances of the City of Nitro, West Virginia, be amended and reenacted by adding thereto three new sections designated 505.29, 505.30 and 505.31, all to read as follows:

ARTICLE 505 Animals and Fowl 505.29. UNLAWFUL RESTRAINT OF A DOG

- (a). Definitions. In this ordinance the following terms shall have the meaning ascribed herein.
 - (1) "City" means the City of Nitro, West Virginia.
- (2) "Collar" means any collar constructed of nylon, leather, or similar material, specifically designed to be used for a dog.
 - (3) "Owner" means a person who owns or has custody or control of a dog.
- (4) "Properly fitted" means, with respect to a collar, a collar that measures the circumference of a dog's neck plus at least one inch.
- (5) "Restraint" means a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley system.
- (b). Unlawful restraint of dog.
- (1) An owner of any dog or dogs maintained within the City may not leave that dog or dogs outside and unattended by use of a restraint that unreasonably limits the dog's movement for a period of time longer than three hours in any twenty-four hour time frame.
- (2) All dogs shall be provided and enclosed shelter during extreme weather conditions, including conditions in which:
 - (i) the actual or effective outdoor temperature is below 32 degrees

Fahrenheit;

(ii) the actual or effective outdoor temperature is above 90 degrees

Fahrenheit; or

- (iii) a a thunderstorm or tornado warning has been issued for the jurisdiction by the National Weather Service.
- (c) In this section, a restraint unreasonably limits a dog's movement if the restraint:
- (1) uses a collar that is pinch-type, prong-type, or choke-type or that is not properly fitted to the dog;
 - (2) is a length shorter than the greater of:
- (A) five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail; or
 - (B) 10 feet;
 - (3) is in an unsafe condition; or
 - (4) causes injury to the dog.
- (d). Exceptions. Subsection (b) of this ordinance does not apply to:
- (1) a dog restrained to a running line, pulley, or trolley system and that is not restrained to the running line, pulley, or trolley system by means of a pinch-type, prongtype, choke-type, or improperly fitted collar;
- (2) a dog restrained in compliance with the requirements of a camping or recreational area as defined by a federal, state, or local authority or jurisdiction;
- (3) a dog restrained for a reasonable period, not to exceed three hours in a 24-hour period, and no longer than is necessary for the owner to complete a temporary task that requires the dog to be restrained;
- (4) a dog restrained while the owner is engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by this state if the activity for which the license is issued is associated with the use or presence of a dog; or
- (5) a dog restrained while the owner is engaged in conduct directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.
- (e). Penalty.
 - (1) The owner commits an offense if the owner knowingly violates this ordinance.
- (2) A City police officer or animal control officer who has probable cause to believe that an owner is violating this ordinance shall provide the owner with a written statement of that fact. The statement must be signed by the officer and plainly state the date on which and the time at which the statement is provided to the owner.
- (3) A person commits an offense if the person is provided a statement described by the foregoing subsection (b) and fails to comply with this ordinance within 24 hours of the time the owner is provided the statement.
- (4) If a person fails to comply with this ordinance with respect to more than one dog, the person's conduct with respect to each dog constitutes a separate offense.
 - (5) Upon being found guilty in the City municipal court:
- (A) For the first offense, the owner shall be punishable by a fine of \$50.00, and the owner shall be required to correct the deficiency within 72 hours immediately succeeding the imposition of the municipal court's judgment.
 - (B) For each subsequent offense after the first offense, the owner shall be

punishable be a fine of \$100.00, and the owner shall be required to correct the deficiency within 72 hours immediately succeeding the imposition of the municipal court's judgment.

- (C) All fines levied and paid under the authority of this ordinance shall be used to defray the City's expenses related to the humane treatment of dogs.
- (f) This ordinance does not prohibit a person from walking a dog with a hand-held leash.

505.30. Restriction on number of dogs.

- (a) No person shall own, keep or harbor more than six dogs on any lot, premises, dwelling, building, structure, boat or living accommodation unless:
- (1) Properly licensed as a commercial kennel in compliance with the zoning ordinance; or
 - (2) Approved for a special permit under the provisions of section 505.31; or
- (3) Previously granted a variance for the keeping of more than six dogs from the board of zoning appeals. The variance shall remain in effect until such time as the property is no longer in compliance with the conditions set forth in said variance.

505.31. Restriction on number of dogs: special permit.

- (a) The intent of the special permit application is to allow responsible pet owners to keep or harbor more than six dogs if adequate conditions exist in which the animals will not cause damage, hazard, nuisance, or be a detriment to any persons or property.
- (b) Any person desiring to keep or harbor more then six dogs shall submit a written application for a special permit with a humane officer. The special permit application shall include a copy of a site plan of the subject property showing all structures, fences and open space.
- (c) A humane officer may grant a special permit if the following conditions are met:
- (1) The subject property is larger than 3,600 square feet, unless the dogs are kept predominately indoors; and
- (2) The dogs must be kept indoors, in a secure area with a fence of sufficient height and durability to prohibit the dog(s) from escaping, or in a secure area effectively controlled by electronic device; and
- (3) Adequate shelter as defined by the humane association be provided for each dog; and
- (d) Applicants shall not be eligible for a special permit if they are known in the neighborhood or community for causing disruptions related to dogs.
- (e) Special permits are nontransferable. A change in the number or type of dogs, or changes in the residence or ownership of the dogs shall require a new special permit.
- (f) The fee for a special permit shall be \$50.00.
- (g) A previously approved special permit may be rejected or revoked at any time if the humane officer determines the issuance of a special permit has caused damage, hazard, nuisance, dangerous conditions, or is a detriment to any person or property.

(h) Any person aggrieved by the denial or granting of a special permit shall have the right to appeal to the City Council.

NOTE: The purpose of this ordinance is to provide guidance in the care and maintenance of dogs.

Strike-throughs indicate language that is being removed from the ordinance. Underlining indicates language that is being added to the ordinance.

Passedon/st

Rading 9/16/08

Hossel on and

Teading -10/7/08

ORDINANCE NO.: 08- 08

Introduced in Council

ept. 16,2008

Adopted by Council:

Oct. 7

, 2008

Introduced by:

Referred to:

AN ORDINANCE ON DRIVING UNDER THE INFLUENCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA

333.01

DRIVING UNDER THE INFLUENCE

- (a) Any person who:
- (1) Drives a vehicle in this municipality while he or she:
 - (A). Is under the influence of alcohol, or
 - (B). Is under the influence of any controlled substance; or
 - (C). Is under the influence of any other drug; or
 - (D). Is under the combined influence of alcohol and any Controlled substance or any other drug;
 - (E). Has an alcohol concentration in his or her blood of eight Hundredths of one percent or more, by weight, and
- (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure; and
- (3) commits the act or failure in reckless disregard of the safety of others and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death if guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two years nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.
- (b) Any person who:
- (1) Drives a vehicle in this municipality while he or she:

- (A). Is under the influence of alcohol;
- (B). Is under the influence of any controlled substance;
- (C). Is under the influence of any other drug;
- (D). Is under the combined influence of alcohol and any controlled substances or any other drug:
- (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and
- (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.
- (C) Any person who:
- (1) Drives a vehicle in this municipality while he or she:
 - (A) Is under the influence of alcohol,
 - (B) Is under the influence of any controlled substance;
 - (C) Is under the influence of any other drug;
 - (D) Is under the combined influence of alcohol and any controlled substance or any other drug; or
 - (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, and
- (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year, which jail terms is to include actual confinement of not less than twenty-four hours, and shall be fined not less then two hundred dollars nor more than one thousand dollars.
- (d) Any person who:
- (1) Drives a vehicle in this municipality while he or she:
 - (A) Is under the influence of alcohol;
 - (B) Is under the influence of any controlled substance;
 - (C) Is under the influence of any other drug:
 - (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent by weight;

- (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to six months and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (e) Any person who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars. A person sentenced pursuant to this subdivision shall received credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (f) Any person who, being an habitual used of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this municipality is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail terms is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (g) Any person who:
- (1) Knowingly permits his or her vehicle to be driven in this municipality by any person who:
 - (A) Is under the influence of alcohol;
 - (B) Is under the influence of any controlled substance:
 - (C) Is under the influence of any other drug;
 - (D) Is under the combined influence of alcohol and any controlled substance or any other drug;
 - (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;
- (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.
- (h) Any person who knowingly permits his or her vehicle to be driven in this municipality by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall

be fined not less than one hundred dollars nor more than five hundred dollars.

(I) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twentyfive dollars nor more than one hundred dollars. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a, of Chapter 17 of the West Virginia State Code. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of this subsection or subsection (a), (b), (c), (d), (e), (f), (g), or (h) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

- (I) Any person who:
 - (1). Drives a vehicle in this municipality while he or she:
 - (A). Is under the influence of alcohol;
 - (B). Is under the influence of any controlled substance;
 - (C) In under the influence of any other drug;
 - (E). Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and
- (2) The person while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, which jail terms is to include actual confinement of not less than forty-eight hours and shall be fined not less than two hundred dollars nor more than one thousand dollars.
- (k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g), or (l) of this section, for the second offense under this section, is guilty of a

misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

- (I) Any person violating any provision of subsection (b), (c), (d), (e), (f), (g), or (I) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than three years, and the court may, in it discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.
- (m) For purposes of subsections (k) and (l) of this section relating to the second, third and subsequent offenses, the following types of convictions are to be regarded as convictions under this section:
- (1) Any conviction under the provisions of this subsection (a), (b), (c), (d), (e), (f), or (g) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.
- (2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f), (g), or (h) of this section, which offense occurred within the ten year period immediately preceding the date of the arrest in the current proceeding.

Passed on first reading: September 16, 2008.

Passed and adopted on second reading:

Rusty Casto, Mayor

Recorder

OFFICIAL INTERNATIONAL WALK TO SCHOOL DAY PROCLAMATION

WHEREAS, hundreds of children could be saved each year if communities take steps to make pedestrian safety a priority,

WHEREAS, a lack of physical activity plays a leading role in rising rates of obesity, diabetes and other health problems among children and being able to walk or bicycle to school offers an opportunity to build activity into daily routine,

WHEREAS, driving students to school by private vehicle contributes to traffic congestion and air pollution.

WHEREAS, an important role for parents and caregivers is to teach children about pedestrian safety and become aware of the difficulties and dangers that children face on their trip to school each day and the health and environmental risks related to physical inactivity and air pollution.

WHEREAS, community leaders and parents can determine the "walkability" of their community by using a walkability checklist.

WHEREAS, community members and leaders should make a plan to make changes to enable children to safely walk and bicycle in our communities and develop a list of suggestions for improvements that can be done over time.

WHEREAS, children, parents and community leaders around the world are joining together to walk to school and evaluate walking and bicycling conditions in their communities.

Now Therefore, Be it Resolved, that I, Rusty Casto, Mayor of the City of Nitro, proclaim October 8, 2008 "INTERNATIONAL WALK TO SCHOOL DAY" in the City of Nitro and encourage everyone to consider the safety and health of children today and everyday.

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NITRO CITY COUNCIL MEETING MINUTES OCTOBER 7, 2008

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending with Mayor Casto were Recorder Rita Cox, Councilmen at Large Dave Casebolt, Bob Field, and Jim McKay, Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, and Ward 4 Councilman Bill Javin, City Treasurer John Young, and City Attorney Richie Robb

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Andy Shamblin and the Pledge of Allegiance was led by Delmar Byrd.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN BILL JAVINS MOVED THAT THE MINUTES OF SEPTEMBER 16, 2008 BE APPROVED AS WRITTN WITH A SECOND BY COUNCILMAN JIM MCKAY. VOTING FOR THE MOTION WERE COUNCILMEN MCKAY, CASEBOLT, FIELDS, RACER, MATTHEWS, AND JAVINS, AND RECORDER COX. COUNCILMAN SAVILLA ABSTAINED FROM VOTING. THE MOTION CARRIED.

Mayor Casto introduced the newly appointed City Attorney, Richie Robb. COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT THE APPOINTMENT OF ATTORNEY RICHIE ROBB AS CITY ATTORNEY FOR NITRO BE APPROVED BY COUNCIL. THE MOTION WAS SECONDED BY COUNCILMAN BILL JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

Mayor Casto introduced Sara Janey Bragg who addressed Council asking that a Proclamation be approved in support of her uncle, John Janey, who served 19 years as a policeman. The person convicted of the murder of John Janey is asking to be paroled. COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT COUNCIL APPROVE THE PROCLAMATION IN SUPPORT OF JOHN JANEY AND OPPOSING THE PAROLE WITH A SECOND BY COUNCILMAN CRAIG MATTHEWS. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

Mayor Casto introduced Nitro Attorney Harvey Peyton. He said his office has been on 1st Ave. for 32 years. He would like to offer daffodil bulbs to be planed along the highway on 1st Ave. COUNCILMAN JIM MCKAY MOVED THE DAFFODIL BULBS BE ACCEPTED AND PLANTED ON 1st AVENUE. THE MOTION WAS SECONDED BY COUNCILMAN DAVID CASEBOLT. VOTE WAS UNANIMOUS FOR THE MOTION.

FUTURE DATES OF COUNCIL:

COUNCILMAN BILL JAVINS MOVED THE NOVEMBER 4, 2008 MEETING OF COUNCIL BE MOVED TO NOVEMBER 3, 2008 BECAUSE OF ELECTION DAY. THE MOTION WAS SECONDED BY COUNCILMAN A. A. "JOE" SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

OLD BUSINESS:

COUNCILMAN SAVILLA MOVED THAT ALBERT WALLS BE APPOINTED TO THE BOARD OF ZOING APPEALS. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

SECOND READING DOG ORDINANCE: COUNCILMAN CASEBOLT MOVED THE DOG ORDINANCE REFERRING TO TETHERING BE READ BY TITLE ONLY WITH A SECOND BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION. City Attorney Robb read the ordinance by title only: AN ORDINANCE AMENDING DOG ORDINANCE AS T CARE AND RESTRAINT OF DOGS, NOT RESTRAINING DOGS OR MORE THAT THREE HOURS IN A 24 HOUR PERIOD, NOT RESTRAINING IN EXTREME WEATHER, NO MORE THAT SIX DOGS. COUNCILMAN SAVILLA MOVED THE ORDINANCE BE PASSED ON SECOND READING WITH A SECOND BY COUNCILMAN RACER. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

SECOND READING DUI ORDINANCE: COUNCILMAN SAVILLA MOVED THE ORDINANCE BY READING OF TITLE ONLY WITH A SECOND BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. City Attorney Richie Robb read the Title Of the DUI Ordinance: DRIVING UNDER THE INFLUENCE AND WRECKLESS DRIVING UNDER THE TITLE OF DRIVING UNDER THE INFLUENCE. COUNCILMAN SAVILLA MOVED THE ORDINANCE BE PASSED ON SECOND READING WITH A SECOND BY COUNCILMAN RACER. THE MOTION PASSED WITH A UNANIMOUS VOTE.

CARPET BIDS NITRO LIBRARY: Recorder Rita Cox distributed the three bids received for replacement of the library carpeting with the bids being for carpet squares from ESC for \$14,816.20, A1 for \$8920.00 for carpet and \$13,142.70 for carpet squares and for carpet squares from Carpet Craft for \$11,200.00. COUNCILMAN MATTHEWS MOVED THAT THE SELECTION BE REFERRED TO THE LIBRARY COMMITTEE AND BE PRESENTED TO NEXT COUNCILWITH A SECOND BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

LETTER OF RECOMMENDATION FOR BIO DIESEL: COUNCILMAN MOVED THAT COUNCIL SEND A LETTER TO DENNIS DAWSON OF KRT SUPPORTING AND RECOMMENDING THE USE OF BIO DIESEL FUEL. THE MOTION WAS SECONDED BY COUNCILMAN CASEBOLT. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

CERTIFICATION OF NITRO EXCESS LEVY ELECTION: RECORDER RITA COX MOVED THAT THE EXCESS LEVY ELECTION OF SEPTEMBER 27, 2008 BE CERTIFIED AS IT STANDS FOLLOWING THE CANVASS OF OCTOBER 3, 2008 WITH THE VOTE BEING 302 FOR THE LEVY AND 213 AGAINST THE LEVY AND FAILING TO GET THE REQUIRED 60% VOTE THE LEVY DID NOT PASS. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS. Councilman McKay said that due to he failure of the levy to pass he felt is should be presented to the voters if there is time before the 2009-2010 budget is prepared since it represented approximately \$370,000,00 of the budget. Recorder Cox asked Treasurer John Young approximately what it cost to run a third election this year and if the city has the money. He said it was approximately \$8500,00 to \$10,000,00 and he thought it was important to find the money. COUNCILMAN MATTHEWS MOVED THAT THE CITY HOLD ANOTHER VOTE FOR THE EXCESS LEVY DURING THE CURRENT FISCAL YEAR. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTING FOR THE MOTION WERE COUNCILMEN MCKAY, CASEBOLT, FIELDS. SAVILLA. RACER, MATTHEWS, AND JAVINS. VOTING AGAINST THE MOTION WAS RECORDER COX. MAYOR CASTO ABSTAINED FROM VOTING. THE MOTION CARRIED.

COMMITTEE ASSIGNMENTS: Councilman Matthews presented Council with an update list of Committee assignments. He noted that he had put pertinent people on committees such as fire, police and public workers.

NEW BUSINESS:

FIRST READING AMENDING HOTEL MOTEL OCCUPANCY TAX ORDINANCE: COUNCILMAN MATTHEWS MOVED THAT THE ORDINANCE BE READ BY TITLE ONLY WITH A SECOND BY RECORDER COX. VOTE WAS UNANIMOUS FOR THE MOTION. City Attorney Richie Robb was directed to read the ordinance. AN ORDINANCE AMENDING THE HOTEL MOTEL OCCUPANCY TAX FROM 3% TO 6%. COUNCILMAN SAVILLA MOVED THAT THE ORDINANCE BE PASSED ON FIRST READING. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION.

FIRST READING ORDINANCE PROVIDING TAX CREDIT TO QUALIFIED BUSINESSES: COUNCILMAN SAVILLA MOVED THAT THE READING OF THE TAX CREDIT ORDINANCE BE TABLED. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS WITH A UNANIMOUS VOTE FOR THE MOTION.

CODIFIED ORDINANCE: Recorder Cox asked that this agenda item be deferred to a future meeting date.

COAL SEVERANCE FUND: COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT THEIR BE A RESOLUTION PASSED AUTHORIZING A COAL SEVERANCE FUND ACCOUNT AT HUNTINGTON BANKS. THE MOTION WAS SECONDED BY COUNCILMAN MATTHEWS. THE MOTION PASSED WITH UNANIMOUS VOTE.

GRANT WRITER: Councilman McKay asked that this item be tabled for a future meeting. TREASURER REPORT: John Young said that the failure of the levy vote was upsetting. He said while the city is getting in better financial shape he still requires that all purchases be signed off on by Mayor Casto or the treasurer. The payments from Tri-State Racing are behind schedule Councilman Matthews asked if the municipal service fee payments are still under collected. John Young said that they are delinquent by \$200,000.00 or more and that the current law does not give them much to work with to go after the money. Recorder Cox asked how the city was doing with overtime. Mr. Young said that he was working on keeping it down. Councilman Javins asked if the city was using the state bidding system. Mr. Young said that we were to the best of his knowledge.

COUNCIL COMMENTS:

Councilman Javins said he wanted to be sure past due B&O and municipal service fees were being collected and thanked John Montgomery for all the work he has done on ordinances. He said the Ordinance Committee would be meeting Oct. 16 at 7:00. He welcomed Richie Robb and thanked Tri-state for the donation to the Children's Park.

Councilman Matthews said that he valued the fire department and volunteer departments but there was recently a fire in another community in Poca and there was no volunteer response. He said services may have to be limited outside the city limits. COUNCILMAN MATTHEWS MOVED THAT THE ISSUE OF GOING OUTSIDE THE CITY LIMITS BE MOVED TO THE FIRE AND POLICE COMMITTEE FOR RESOLUTION. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION.

Councilman Savilla thanked Tri-State Racetrack for the recent evening where Nitro Children's Handicap Accessible Playground was given \$5000.00. He said he would like to see the municipal service fees collected.

Recorder Cox said she was happy to see an attorney with the integrity of Richie Robb join the city. Councilman Fields said he would like to see Recorder Cox receive help during the levy election. He introduced Delmar Byrd who said the VFW has raised approximately \$6000.00 for the memorial.

Councilman Casebolt welcomed attorney Richie Robb. COUNCILMAN CASEBOLT MOVED THE CITY APPROVE THE SERVICE AGREEMENT WITH THE LAKEVIEW HOMEOWNERS ASSOCIATION AS TO SNOW REMOVAL. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR HE MOTION TO PASS.

Councilman McKay welcomed Richie Robb and said he appreciated the work Recorder Cox did on the levy election.

PUBLIC COMMENTS:

Bob Schamber said he will announce the levy at the Senior Center and he thought we currently had a good council. He said he was donating \$100.00 to the library for carpet.

Casey Mathes said he is concerned about the direction of the city and was speaking up for firefighters in his union. He was interested in the long term plan of the city.

A man spoke up about his dog that was killed by the police dog. Capt. Javins said that information and report would be forthcoming.

ADJOURNMENT: COUNCILMAN MATTHEWS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

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ADJOURNMENT: COUNCILMAN MATTHEWS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX RECORDE

ORDINANCE NO. 08-

An Ordinance to amend article 505 of the Codified Ordinances of the City of Nitro, West Virginia, by adding thereto three sections designated 505.29, 505.30 and 505.31, relating to the care and restraint of dogs; providing definitions; prohibiting the owner of a dog within the City from leaving a dog outside and restrained for longer than three hours in a twenty-four hour period; requiring enclosed shelter during extreme weather conditions; describing restraints that are deemed to be unreasonable; providing exceptions; providing penalties; prohibiting the keeping of more than six dogs on any lot, dwelling, or structure unless certain conditions are satisfied; and authorizing the issuance of a special permit if the owner seeks to keep more than six dogs.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that article 505 of the Codified Ordinances of the City of Nitro, West Virginia, be amended and reenacted by adding thereto three new sections designated 505.29, 505.30 and 505.31, all to read as follows:

ARTICLE 505 Animals and Fowl 505.29. UNLAWFUL RESTRAINT OF A DOG

- (a). Definitions. In this ordinance the following terms shall have the meaning ascribed herein.
 - (1) "City" means the City of Nitro, West Virginia.
- (2) "Collar" means any collar constructed of nylon, leather, or similar material, specifically designed to be used for a dog.
 - (3) "Owner" means a person who owns or has custody or control of a dog.
- (4) "Properly fitted" means, with respect to a collar, a collar that measures the circumference of a dog's neck plus at least one inch.
- (5) "Restraint" means a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley system.
- (b). Unlawful restraint of dog.
- (1) An owner of any dog or dogs maintained within the City may not leave that dog or dogs outside and unattended by use of a restraint that unreasonably limits the dog's movement for a period of time longer than three hours in any twenty-four hour time frame.
- (2) All dogs shall be provided and enclosed shelter during extreme weather conditions, including conditions in which:
 - (i) the actual or effective outdoor temperature is below 32 degrees

Fahrenheit;

(ii) the actual or effective outdoor temperature is above 90 degrees

Fahrenheit; or

- (iii) a a thunderstorm or tornado warning has been issued for the jurisdiction by the National Weather Service.
- (c) In this section, a restraint unreasonably limits a dog's movement if the restraint:
- (1) uses a collar that is pinch-type, prong-type, or choke-type or that is not properly fitted to the dog;
 - (2) is a length shorter than the greater of:
- (A) five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail; or
 - (B) 10 feet;
 - (3) is in an unsafe condition; or
 - (4) causes injury to the dog.
- (d). Exceptions. Subsection (b) of this ordinance does not apply to:
- (1) a dog restrained to a running line, pulley, or trolley system and that is not restrained to the running line, pulley, or trolley system by means of a pinch-type, prongtype, choke-type, or improperly fitted collar;
- (2) a dog restrained in compliance with the requirements of a camping or recreational area as defined by a federal, state, or local authority or jurisdiction;
- (3) a dog restrained for a reasonable period, not to exceed three hours in a 24-hour period, and no longer than is necessary for the owner to complete a temporary task that requires the dog to be restrained;
- (4) a dog restrained while the owner is engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by this state if the activity for which the license is issued is associated with the use or presence of a dog; or
- (5) a dog restrained while the owner is engaged in conduct directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.
- (e). Penalty.
 - (1) The owner commits an offense if the owner knowingly violates this ordinance.
- (2) A City police officer or animal control officer who has probable cause to believe that an owner is violating this ordinance shall provide the owner with a written statement of that fact. The statement must be signed by the officer and plainly state the date on which and the time at which the statement is provided to the owner.
- (3) A person commits an offense if the person is provided a statement described by the foregoing subsection (b) and fails to comply with this ordinance within 24 hours of the time the owner is provided the statement.
- (4) If a person fails to comply with this ordinance with respect to more than one dog, the person's conduct with respect to each dog constitutes a separate offense.
 - (5) Upon being found guilty in the City municipal court:
- (A) For the first offense, the owner shall be punishable by a fine of \$50.00, and the owner shall be required to correct the deficiency within 72 hours immediately succeeding the imposition of the municipal court's judgment.
 - (B) For each subsequent offense after the first offense, the owner shall be

punishable be a fine of \$100.00, and the owner shall be required to correct the deficiency within 72 hours immediately succeeding the imposition of the municipal court's judgment.

- (C) All fines levied and paid under the authority of this ordinance shall be used to defray the City's expenses related to the humane treatment of dogs.
- (f) This ordinance does not prohibit a person from walking a dog with a hand-held leash.

505.30. Restriction on number of dogs.

- (a) No person shall own, keep or harbor more than six dogs on any lot, premises, dwelling, building, structure, boat or living accommodation unless:
- (1) Properly licensed as a commercial kennel in compliance with the zoning ordinance; or
 - (2) Approved for a special permit under the provisions of section 505.31; or
- (3) Previously granted a variance for the keeping of more than six dogs from the board of zoning appeals. The variance shall remain in effect until such time as the property is no longer in compliance with the conditions set forth in said variance.

505.31. Restriction on number of dogs: special permit.

- (a) The intent of the special permit application is to allow responsible pet owners to keep or harbor more than six dogs if adequate conditions exist in which the animals will not cause damage, hazard, nuisance, or be a detriment to any persons or property.
- (b) Any person desiring to keep or harbor more then six dogs shall submit a written application for a special permit with a humane officer. The special permit application shall include a copy of a site plan of the subject property showing all structures, fences and open space.
- (c) A humane officer may grant a special permit if the following conditions are met:
- (1) The subject property is larger than 3,600 square feet, unless the dogs are kept predominately indoors; and
- (2) The dogs must be kept indoors, in a secure area with a fence of sufficient height and durability to prohibit the dog(s) from escaping, or in a secure area effectively controlled by electronic device; and
- (3) Adequate shelter as defined by the humane association be provided for each dog; and
- (d) Applicants shall not be eligible for a special permit if they are known in the neighborhood or community for causing disruptions related to dogs.
- (e) Special permits are nontransferable. A change in the number or type of dogs, or changes in the residence or ownership of the dogs shall require a new special permit.
- (f) The fee for a special permit shall be \$50.00.
- (g) A previously approved special permit may be rejected or revoked at any time if the humane officer determines the issuance of a special permit has caused damage, hazard, nuisance, dangerous conditions, or is a detriment to any person or property.

(h) Any person aggrieved by the denial or granting of a special permit shall have the right to appeal to the City Council.

NOTE: The purpose of this ordinance is to provide guidance in the care and maintenance of dogs.

Strike-throughs indicate language that is being removed from the ordinance. indicates language that is being added to the ordinance.

Passed on Passed on

Hassed on Ind Rading 10/7/08

ORDINANCE NO.: 08- 08

Introduced in Council

Adopted by Council:

VCt. 7 , 2008

Introduced by:

Referred to:

AN ORDINANCE ON DRIVING UNDER THE INFLUENCE

Craig

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA

333.01

DRIVING UNDER THE INFLUENCE

- (a) Any person who:
- (1) Drives a vehicle in this municipality while he or she:
 - (A). Is under the influence of alcohol, or
 - (B). Is under the influence of any controlled substance; or
 - (C). Is under the influence of any other drug; or
 - (D). Is under the combined influence of alcohol and any Controlled substance or any other drug;
 - (E). Has an alcohol concentration in his or her blood of eight Hundredths of one percent or more, by weight, and
- (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure; and
- (3) commits the act or failure in reckless disregard of the safety of others and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death if guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two years nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.
- (b) Any person who:
- (1) Drives a vehicle in this municipality while he or she:

- (A). Is under the influence of alcohol;
- (B). Is under the influence of any controlled substance;
- (C). Is under the influence of any other drug;
- (D). Is under the combined influence of alcohol and any controlled substances or any other drug:
- (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and
- (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.
- (C) Any person who:
- (1) Drives a vehicle in this municipality while he or she:
 - (A) Is under the influence of alcohol.
 - (B) Is under the influence of any controlled substance;
 - (C) Is under the influence of any other drug;
 - (D) Is under the combined influence of alcohol and any controlled substance or any other drug; or
 - (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, and
- (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year, which jail terms is to include actual confinement of not less than twenty-four hours, and shall be fined not less then two hundred dollars nor more than one thousand dollars.
- (d) Any person who:
- (1) Drives a vehicle in this municipality while he or she:
 - (A) Is under the influence of alcohol;
 - (B) Is under the influence of any controlled substance;
 - (C) Is under the influence of any other drug:
 - (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent by weight;

- (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to six months and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (e) Any person who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars. A person sentenced pursuant to this subdivision shall received credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (f) Any person who, being an habitual used of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this municipality is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail terms is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (g) Any person who:
- (1) Knowingly permits his or her vehicle to be driven in this municipality by any person who:
 - (A) Is under the influence of alcohol;
 - (B) Is under the influence of any controlled substance:
 - (C) Is under the influence of any other drug;
 - (D) Is under the combined influence of alcohol and any controlled substance or any other drug;
 - (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;
- (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.
- (h) Any person who knowingly permits his or her vehicle to be driven in this municipality by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall

be fined not less than one hundred dollars nor more than five hundred dollars.

(I) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twentyfive dollars nor more than one hundred dollars. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a, of Chapter 17 of the West Virginia State Code. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of this subsection or subsection (a), (b), (c), (d), (e), (f), (g), or (h) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

- (I) Any person who:
 - (1). Drives a vehicle in this municipality while he or she:
 - (A). Is under the influence of alcohol;
 - (B). Is under the influence of any controlled substance;
 - (C) In under the influence of any other drug;
 - (E). Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and
- (2) The person while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, which jail terms is to include actual confinement of not less than forty-eight hours and shall be fined not less than two hundred dollars nor more than one thousand dollars.
- (k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g), or (l) of this section, for the second offense under this section, is guilty of a

misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

- (I) Any person violating any provision of subsection (b), (c), (d), (e), (f), (g), or (I) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than three years, and the court may, in it discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.
- (m) For purposes of subsections (k) and (l) of this section relating to the second, third and subsequent offenses, the following types of convictions are to be regarded as convictions under this section:
- (1) Any conviction under the provisions of this subsection (a), (b), (c), (d), (e), (f), or (g) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.
- (2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f), (g), or (h) of this section, which offense occurred within the ten year period immediately preceding the date of the arrest in the current proceeding.

Passed on first reading: September 16, 2008.

Passed and adopted on second reading: _

Rusty Casto, Mayor

Recorder

ORDINANCE NO).	

An Ordinance to amend and reenact section 727.01, Article 727 of the Codified Ordinances of the City of Nitro, West Virginia, and to enact sections 727.02, 727.03, 727.04, 727.05, 727.06, 727.07,727.08, 727.09, 727.10, 727.11, 727.12, 727.13, 727.14, 727.15 727.16, and 727.17, all relating to the Hotel/Motel Occupancy Tax: providing definitions; imposition of the tax, establishing the rate of tax; providing guidance for collection of the tax when the sale is by on a credit basis; requiring the Nitro Convention and Visitor's Bureau to annually file a financial statement with the City Council; requiring the consumer to pay tax; requiring collection and accounting by hotel operator; prohibiting the hotel or hotel operator from making certain representations; establishing an exemptions for government agencies or employees; directing the disposition of proceeds; establishing liability of the hotel operator for failure to collect or remit; requiring the total amount collected to be remitted; providing when returns and remittances generally; establishing the administrative procedures to be utilized; establishing violations and penalties; requiring the payment of interest and penalties; establishing the priority of tax in receivership, bankruptcy, similar proceedings; establishing the liability of officers of associations or corporations; and requiring the maintenance of complete records.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that section 727.01, Article 727 of the Codified Ordinances of the City of Nitro, West Virginia, be amended and reenacted, and that Article 727 be further amended by adding thereto 16 new sections, designated 727.02, 727.03, 727.04, 727.05, 727.06, 727.07, 727.08, 727.09, 727.10, 727.11, 727.12, 727.13, 727.14, 727.15, 727.16, and 727.17, all to read as follows:

ARTICLE 727. HOTEL OCCUPANCY TAX

§ 727.01. HOTEL/MOTEL OCCUPANCY TAX Definitions.

(a) Upon every person engaging or continuing within the City in the business of operating a hotel or motel for use or occupancy there is hereby levied, and shall be

collected a tax of three percent (3%) of the consideration paid for the use or occupancy of a hotel/motel room. The tax shall be imposed on the consumer and shall be collected by the hotel/motel operator as part of the consideration paid for the occupancy of a hotel/motel room.

(b) Such consideration shall not include the amount of tax imposed on the transaction under West Virginia Code Article 11-15 or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel/motel room.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed herein, except where the context clearly indicates a different meaning:

- (a). "Consideration paid" or "consideration" means the amount received in money, credits, property or other consideration for or in exchange for the right to occupy a hotel room.
- (b). "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. The term shall not be construed to mean the government of the United States, its agencies or instrumentalities, or the government of the state or any political subdivision of the state.
- (c) "Convention and visitor's bureau" means the Nitro Convention and Visitor's Bureau, which shall be nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the City.
- (d). "Convention center" means a convention facility owned by the City or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourist and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances to the convention center.
- (e). "Fiscal year" means the year beginning July 1 and ending June 30 of the next calendar year.

- (f). "Historic sites" means any site listed on the United States National Register of Historic Places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county or a nonprofit historical association and are open, from time to time, to accommodate visitors.
- (g). "Hotel" means any facility or building, publicly or privately owned (including a facility located in a state, county or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term shall include but is not limited to boardinghouses, hotels, motels, inns, courts, lodges, cabins and tourist homes. The term shall include state, county and city parks offering accommodations as set forth in this article. The term shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home, university or college housing unit, or any facility providing fewer than three hotel rooms, or any tent, trailer or camper campsites; however, where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term shall, if otherwise applicable, apply to such accommodations for the purposes of this tax.
- (h). "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purposes of this article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (i). "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term shall not be construed to mean a banquet room, meeting room or any other room not primarily used for or in conjunction with sleeping accommodations.
- (j). "Net proceeds" means the gross amount of tax collection less the amount of tax lawfully refunded.
- (k). "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music of all types, the dramatic

arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals and plays.

- (I). "Recreational facilities" means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreational facilities, whether of a like or different nature, that are owned by the city.
- (m). "Tax", "taxes" or "this tax" means the hotel occupancy tax authorized by this article.
- (n). "Taxing authority" means the city.
- (o). "Taxpayer" means any person liable for the tax authorized by this article.

§ 727.02. Imposition.

There is imposed a municipal hotel tax upon all hotels located within the corporate limits of the City, including any hotels owned by the state or by any political subdivision of the state. The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room; provided, that the tax shall not be imposed on any consumer occupying a hotel room for 30 or more consecutive days.

§ 727.03. Rate.

The rate of tax imposed by this article shall be six percent of the consideration paid for the use or occupancy of a hotel room. Such consideration shall not include the amount of tax imposed on the transaction under article 15, chapter 11 of the Code of West Virginia of 1931, as amended, or charges for meals, valet service, room service, telephone service, or other charges or consideration not paid for use or occupancy of a hotel room.

§ 727.04. Collection when sale on credit.

A hotel operator doing business wholly or partially on a credit basis shall require the consumer to pay the full amount of tax due upon a credit sale at the time such sale is made or within 30 days thereafter.

§ 727.05. Consumer to pay tax; collection and accounting by hotel operator; hotel or hotel operator not to make certain representations.

(a) The consumer shall pay to the hotel operator the amount of tax imposed by the city, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator, who shall account for and remit to the city all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle tax collected under this article with the proceeds of the rental of hotel accommodations. The city's claim shall be enforceable against and shall be superior to all other claims against the moneys so commingled, excepting only claims of the State for moneys held by the hotel pursuant to the provisions of article 15, chapter 11 of the Code of West Virginia of 1931, as amended. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until they shall have been remitted to the taxing authority as provided in this article.

(b) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.

§ 727.06. Exemptions for government agencies or employees.

- (a) Hotel room occupancy billed directly to the federal government shall be exempt from this tax; however, rooms paid for by a federal government employee for which reimbursement is made shall be subject to this tax.
- (b) Hotel room occupancy billed directly to the State or its political subdivisions shall be exempt from this tax; however, rooms paid for by an employee of the State for which reimbursement is made shall be subject to this tax.

§ 727.07. Disposition of proceeds.

(a) Generally. The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of the city and.

§ 727.05. Consumer to pay tax; collection and accounting by hotel operator; hotel or hotel operator not to make certain representations.

(a) The consumer shall pay to the hotel operator the amount of tax imposed by the city, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator, who shall account for and remit to the city all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle tax collected under this article with the proceeds of the rental of hotel accommodations. The city's claim shall be enforceable against and shall be superior to all other claims against the moneys so commingled, excepting only claims of the State for moneys held by the hotel pursuant to the provisions of article 15, chapter 11 of the Code of West Virginia of 1931, as amended. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until they shall have been remitted to the taxing authority as provided in this article.

(b) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.

§ 727.06. Exemptions for government agencies or employees.

- (a) Hotel room occupancy billed directly to the federal government shall be exempt from this tax; however, rooms paid for by a federal government employee for which reimbursement is made shall be subject to this tax.
- (b) Hotel room occupancy billed directly to the State or its political subdivisions shall be exempt from this tax; however, rooms paid for by an employee of the State for which reimbursement is made shall be subject to this tax.

§ 727.07. Disposition of proceeds.

(a) Generally. The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of the city and,

after appropriation, shall be expended only as provided in subsections (b) and (c) of this section.

- (b) Required expenditures. At least 50 percent of the net revenue receivable by the city during the fiscal year pursuant to this article shall be transmitted to the Nitro Convention and Visitor's Bureau for the promotion of conventions and tourism: Provided, That if a convention and visitor's bureau is not located within the City, the required percentage of the net revenues received from this tax shall be distributed to the convention and visitor's bureau in Putnam County and Kanawha County as required by West Virginia Code 7-18-1 et seq. and such distribution shall be made based on the revenue received from the hotels located in those counties: Provided, however, That the distribution to the convention and visitor's bureau in Putnam County and Kanawha County shall cease when operation of the Nitro Convention and Visitor's Bureau commences.
- (c) Permissible expenditures. After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenues receivable by the city during the fiscal year pursuant to this article may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:
- (1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities, including but not limited to arenas, auditoriums, civic centers and convention centers.
- (2) The payment of principal or interest, or both, on revenue bonds issued to finance such convention facilities.
 - (3) The promotion of conventions.
- (4) The construction, operation or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition).
 - (5) The promotion of the arts.
 - (6) Historic sites.
 - (7) Beautification projects.

§7-18-08. Annual reports by convention and visitor's bureaus.

Each year, on or before the fifteenth day of August, the Nitro Convention and Visitor's Bureau shall file with the City a statement, including an income statement and balance sheet, showing all amounts of Hotel Occupancy Tax appropriated to the Nitro Convention and Visitor's Bureau and all expenditures of Hotel Occupancy Tax made by the Nitro Convention and Visitor's Bureau for the prior fiscal year.

§ 727.09. Liability of hotel operator for failure to collect or remit.

If any hotel operator fails to collect the tax authorized by and levied pursuant to this article, or shall fail to properly remit such tax to the taxing authority, he shall be personally liable for such amount as he failed to collect or remit; however, such hotel operator shall not be held liable for failure to collect such tax if the hotel operator can, by good and substantial evidence, prove the refusal of the purchaser to pay such tax, despite the diligent effort in good faith of the hotel operator to collect the tax.

§ 727.10. Total amount collected to be remitted.

No profit shall accrue to any person as a result of the collection of the tax authorized by this article. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy of six percent for the occupancy of hotel rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as provided in this article.

§ 727.11. Returns and remittances generally.

The tax authorized by this article shall be due and payable in monthly installments on or before the 15th day of the calendar month next succeeding the month in which the tax accrued; however, for credit sales in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for the purposes of this article, be regarded as having accrued until either the date on which it is received by the hotel operator or the expiration of the 30-day payment period set forth in section 727.04, whichever shall first occur. The hotel operator shall, on or before the 15th day of each month, prepare and deliver to the city a return for the

preceding month, in the form prescribed by the city. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax as the city may require. A remittance for the amount of the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.

§ 727.12. Administrative procedures generally.

The administrative procedures for the assessment, collection and refund of the tax authorized by this article shall conform as closely as possible to those for the business and occupation tax; Provided, That the city treasurer is authorized to establish different or additional procedures to aid in the efficient administration of the tax.

§ 727.13. Violations and penalties.

- (a) It shall be unlawful for any person to willfully refuse to collect or to pay the tax or to willfully refuse to make the return required to be made by this article; or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud any taxing authority; or to willfully evade the payment of the tax, or any part of the tax; or for any person to willfully aid or abet another in any attempt to evade the payment of the tax, or any part of the tax; or for any officer, partner or principal of any corporation or association to willfully make or willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this article, with the intent to evade the payment of such tax.
- (b) Any person willfully violating any of the provisions of this article shall, for the first offense, be guilty of a misdemeanor and upon conviction shall be subject to the penalty set forth in section 101.99 of these Codified Ordinances.
- (c) Every prosecution for any offense arising under this article shall be commenced within three years after the offense was committed, notwithstanding any provision of these Codified Ordinances to the contrary.
- (d) Proceedings against any person under this section shall be initiated in the county of the state wherein such person resides if any element of the offense occurs in such county of residence, or if no element of the offense occurs in such county of residence,

in Kanawha County.

- (e) For the purposes of this section, the term:
- (1) "Willfully" means the intentional violation of a known legal duty to perform any act required to be performed by any provision of this article in respect of which the violation occurs; provided, that the mere failure to perform any act shall not be a willful violation under this article. A willful violation of this article requires that the defendant have had knowledge of or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.
- (2) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the City of payment of any tax which there is a known legal duty to pay.
- (3) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intention that such representation or concealment be relied upon by the city.

§ 727.14. Interest and penalties.

- (a) The tax imposed and levied by this article, if not paid when due, shall bear interest at the rate of six percent per annum from the due date of the return until paid.
- (b) If any hotel operator fails to make the return of any quarterly installment required by this article, or makes his return but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of five percent of the tax for the first month, or fraction of a month, of delinquency and one percent of the tax for each succeeding month, or fraction of a month, of delinquency; provided, that if such failure is due to responsible cause, the city treasurer may waive in whole or in part these penalties.
- (c) Interest and penalties may be collected in the same manner as the tax imposed by this article.

§ 727.15. Priority of tax in receivership, bankruptcy, similar proceedings.

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise of the property or estate of any person, all taxes due and unpaid authorized under this article shall be paid from the first money available for distribution in priority to all claims and liens, except taxes and debts due to the United States, which, under federal law, are given priority over the debts and liens created by municipal ordinance for this tax. and taxes and debts due to the state. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid which are chargeable against the person whose property or estate is in administration or distribution.

§ 727.16. Liability of officers of associations or corporations.

If the taxpayer is an association or corporation, the officers actually participating in the management or operation of the association or corporation shall be personally liable. jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties which may be imposed by state law, city ordinance, or other authority may be enforced against such officers as against the association or corporation which they represent.

§ 727.17. Records.

Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three years unless the taxing authority shall consent in writing to their destruction within that period or shall require that they be kept for a longer period.

Passed on First Reading: <u>October</u> 7, 2008

Passed on Second Reading: <u>November</u> 3, 2008



BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NITRO:

That on Tuesday, October 7, 2008 by a vote of ____ in favor and ____ opposed;

The City of Nitro hereby requests the Mayor of the City of Nitro to set up a Coal Severance Fund Account at the Huntington Bank in the City if Nitro.

Those allowed to sign on said account will be: Mayor Rusty Casto, Recorder Rita Cox, Treasurer John Young and Payroll Clerk Mary Beth Burt.

Rusty Casto, Mayor

Rita/Cox, Recorder

City of Nitro, West Virginia Official Levy Election September 27,2008 Official Results

1:33 PM

	Pct 349	Pct. 350	Pct. 352	Pct. 354	Pct. 22/23	Canvass	TOTAL
For the Levy	32	80	80	62	46	2	302
Against the Levy	9	60	58	59	27	0	213

Certificate of Election

The State of West Virginia,							
Landwha - Tuly County, ss.							
To WY Secretary & State:							
This is to certify that at the Servy Election held on the 37th day of Apt							
This is to certify that at the Election held on the day of Election held on the							
In the year Two Thousand and for the, within and for the							
of							
You were duly elected to the office of Nitro Excession erry Election							
of said I by the Levy 302 against 213 you having received the							
highest number of votes given for that office, at said election, as appears by the Abstract of Votes now on file in this office.							
In Witness Whereof, I have hereto subscribed my name at							
West Virginia, this							
The day of October A.D. 2008							
Jula Of Record County Clerk							
Deputy							

NITRO CITY COUNCIL MEETING MINUTES OCTOBER 21, 2008

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm. Attending with Mayor Casto were Councilmen at Large Jim McKay, Dave Casebolt, Bob Fields, Councilmen Craig Matthews, Javins, Savilla, and Recorder Rita Cox, Treasurer John Young and Attorney Richie Robb. Councilman Bill Racer was absent.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman McKay and the Pledge of Allegiance was led by Delmar Byrd.

FUTURE DATES OF COUNCIL: The future dates of Council were announced for November 3 and November 18, 2008.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN JAVINS MOVED THE MINUTES OF THE OCTOBER 7, 2008 MEETING OF COUNCIL BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

OLD BUSINESS:

RESOLUTION FOR SPECIAL ELECTION FOR ADDITIONAL MUNICIPAL LEVY: RECORDER COX MOVED THE RESOLUTION CALLING FOR AN ORDER AND NOTICE OF SPECIAL ELECTION FOR ADDITIONAL MUNICIPAL ELECTION FOR JANUARY 31, 2009 BE APPROVED. THE MOTION WAS SECONDED BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR PASSAGE AND APPROVAL OF THE RESOLUTION.

SECOND READING AMENDING HOTEL MOTEL OCCUPANCY TAX ORDINANCE: City Attorney said this item would not be addressed due to the need for a public hearing prior to the second reading.

LIBRARY COMMITTEE RECOMMENDATION ON CARPET BIDS: Councilman Bob Fields said that the Library Committee after reviewing the bids for carpeting recommended the bid from ESC Carpeting be accepted. Company president Mr. Chapman agreed to accept payments with the total cost being \$14,816.20. COUNCILMAN MATTHEWS MOVED THE RECOMMENDATION OF THE LIBRARY COMMITTEE ACCEPTING THE BID FROM ESC FOR \$14,816.20 BE ACCEPTED WITH A SECOND FROM COUNCILMAN SAVILLA. Karen Boggess thanked Council for the support. Councilman McKay asked what brought the committee to this decision. Councilman Fields said this company had the experience with these type of carpet squares which made replacement easier and less costly in the long run. VOTE WAS UNANIMOUS FOR THE MOTION TO PASS.

NEW BUSINESS:

TRICK OR TREAT/HALLOWEEN HOEDOWN: COUNCILMAN MATTHEWS MOVED THAT TRICK OR TREAT BE HELD FROM 6:00 TO 8:00 PM ON OCTOBER 30, 2008 AND THE HOEDOWN BE HELD FROM 6:00 TO 9:00 PM WITH TRAFFIC BEING BLOCKED ON 2ND AVE. FROM 21ST ST. TO 19TH ST. COUNCILMAN SAVILLA SECONDED THE MOTION. VOTE WAS UNANIMOUS FOR THE MOTION.

TREASURER REPORT: John Young reported that the finances were still on track but that approval for all purchases still had to be made by the Treasurer or Mayor. Councilman McKay asked the status of the Municipal Fee collection and the possibility of that being turned to a collection agency. Treasurer Young said that was a possibility but 35 to 40% has to be given to the collection agency. He said he was working with the Richie Robb before putting it out of the city.

Treasurer Young said the Police Dept. had received a grant for DUI checkpoints through the holiday season. Also, work on I64 being done next year will call for police overtime that will be paid by the WV Dept. of Highways.

ATTORNEY REPORT: Attorney Robb said he has been meeting with the Ordinance Committee on the 1st and 3rd Thursday of each month with the next meetings being Nov. 6 and 20 at 7:00 pm in Council Chambers. The areas of concentration are taxes, fees collections and dilapidated homes and vehicles. He said he is also looking at the City Charter. Mayor Casto said he would talk with Randy McDavid about the money owed by the Nitro Businessmen Association.

COUNCIL COMMENTS:

Councilman Javins had no comments.

Councilman Savilla asked that his brother Ben be kept in prayers.

Recorder Cox said two bids had been received for the 2009 calendars. RECORDER COX MOVED THAT A COMMITTEE BE FORMED CONSISTING OF RECORDER COX, MAYOR CASTO AND COUNCILMAN MATTHEWS TO MAKE A RECOMMENDATION TO COUNCIL ON THE SELECTION OF THE RECIPIENT OF THE CALENDAR BID. THE MOTION WAS SECONDED BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION'S PASSAGE.

Councilman Fields said two contractors were donating labor toward the War Memorial and money was being raised. Delmar Byrd said approximately \$16,000.00 had been raised for the VFW sponsored memorial.

Councilman Casebolt had no comment.

Councilman McKay said he had supplied Council with financial reports from the NDA. He said the NDA had commended the Fire Dept.

Mayor Casto said the Beautification Committee will help with the daffodils donated by Harvey Peyton. That committee consists of Albert and Thelma Walls and Debbie Jordan.

PUBLIC COMMENTS:

Bob Schamber donated \$100.00 to the Library Carpet.

Debra Jordan said sign up for Christmas baskets will be Nov.8 and there will be a \$5.00 bean dinner that day at the Presbyterian Church with proceeds going to the baskets.

Karen Boggess said on Oct. 27 there will be a Monster Mash party at the Library.

Ronnie King said there was a recent meeting with Loss Prevention from the insurance carrier. He said the Loss Prevention Committee was the Ward Council at one time.

ADJOURNMENT: COUNCILMAN MATTTHEWS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

Daco	lution	No. 08	_
Keso	uuuon	NO. UO	-

A Resolution setting forth an order calling for a special election for additional municipal levy in the City of Nitro, Kanawha and Putnam Counties, West Virginia.

ORDER AND NOTICE OF SPECIAL ELECTION FOR ADDITIONAL MUNICIPAL LEVY TO THE **VOTERS OF CITY OF NITRO**

That at a regular meeting of the Council of the City of Nitro, State of West Virginia, held on the 21" day of October, 2008, as provided by law, the following order was made and entered of record, to wit:

The Council of the City of Nitro being of the opinion that the maximum levies for current expenses authorized by Article 8, Chapter 11 of the Code of West Virginia, as amended, will not provide sufficient funds for the payment of current expenses of the City of Nitro, including expenditures for the purpose or purposes hereinafter set forth, and that an election should be held to increase such levies under the provisions of Section 16m Article 8, Chapter 11 of the Code, as amended, it is hereby ordered:

- 1. That the purpose or purposes for which additional funds are needed is/are as follows:
 - A. Street maintenance and repair
 - B. Parks and recreation
 - C. Firemen's Wages
 - D. Street Lighting
 - E. Policemen's Wages
 - F. Library
 - G. Fire Hydrant Rental
- 2. That the approximate amount for each purpose is as follows: (Annual Total)
 - A. \$35,042.00
 - B. \$26,008.00
 - C. \$70,194.00
 - D. \$41,709.00
 - E. \$136,693.00
 - F. \$47,029,00
 - G. \$12,765.00

Total: \$369,440.00

- 3. That the total approximate amount for said purpose or purposes is: (Grand total for levy term)
 - A. \$175,211.00
 - B. \$130,042.00
 - C. \$350,968.00
 - D. \$208,546.00
 - E. \$683,463.00
 - F. \$235,143.00
 - G. \$63,827.00

Grand Total: \$1,847,200.00

4. That the separate and aggregate assessed valuation of each class of taxable property within City Of Nitro is as follows:

\$ 79,205,850.00 Class II

Class IV

\$ 144,642,834.00

5. That the proposed additional rate of levy in cents per one hundred dollars of assessed valuation On each class of property is as follows:

Class II 10.66 cents Class IV 21.32 cents

- 5a. That in the event separate and aggregate assessed value of each class of taxable property Within the City of Nitro increases during the term of the special excess levy, the levy rate shall Be adjusted so that the projected tax collection will not exceed \$369,440.00 in any fiscal Year.
- 6 That the proposed years to which the additional levy shall apply are the fiscal years beginning July 1, 2009, July 1, 2010, July 1, 2011, July 1, 2012 and July 1, 2013.
- 7. That the City Council will not issue bonds upon the approval of proposed levy
- 8 That the question of such additional levy shall be submitted to a vote at a Special Election to be Held on the 31st day of January, 2009.
- That notice calling such election shall be given by the publication of this order at least once Each week for two successive weeks before said election in two newspapers of opposite politics. And of general circulation in the territory which the election is held. If there is only one Newspaper published in the county, said publication shall be made therein. All the provisions. Of the laws concerning general elections shall apply as far as they are practicable, except that a Separate ballot shall be used at such election when held in connection with any other election.

I hat the ballot to be used at such election shall be in the following form

OFFICIAL BALLOT

OFFICIAL LEVY ELECTION

City of Nitro, West Virginia

January 31, 2009

Special election to authorize additional levies for the fiscal years beginning July 1, 2009, July 1, 2010, July 1, 2011, July 1, 2012, and July 1, 2013, for the following purposes:

A. Street maintenance and repair

\$35,042.00

B. Parks and recreation

\$26,008.00

C. Firemen's wages

\$70,194.00

D. Street lighting

\$41,709.00

E. Policemen's wages

\$136,693.00

F. Library

\$47,029.00

G. Fire hydrant rental

\$12,765.00

According to the order of the City Council entered on the 21st day of October, 2008.

The additional Lavy shall be on Class II property 10.66 cents, on Class IV property 21.32 cents per \$100 of assessed valuation.

For the Levy

Against the Levy

INSTRUCTIONS TO VOTERS: Those favoring the additional levy, place an "X" in the square before "For the Levy." Those against such levy, place an "X" in the square before "Against the Levy."

NITRO CITY COUNCIL MEETING MINUTES NOVEMBER 3, 2008

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending with Mayor Casto were Recorder Rita Cox, Councilmen Bill Javins, Jim McKay, Craig Matthews, and Attorney Richie Robb. Absent were Councilmen Bill Racer, Bob Fields, Dave Casebolt, and Treasurer John Young.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman A. A. "Joe" Savilla and the Pledge of Allegiance was led by Bob Schamber.

FUTURE DATES OF COUNCIL: Mayor Casto announced the future dates of Council are November 18, December 2 and December 16. All meetings are at 7:30 and in Council Chambers unless otherwise announced.

APPROVAL OF COUNCIL MINUTES: Recorder Cox requested that the approval of the October 21 minutes of Council be postponed till the next Council Meeting.

OLD BUSINESS:

ORDINANCE TO AMEND HOTEL/MOTEL OCCUPANCY TAX - PUBLIC HEARING: Attorney Robb said the notice of public hearing on the Ordinance to Amend Hotel/Motel Occupancy Tax was published in the Charleston Gazette and Daily Mail on October 29, 2008. Attorney Richie Robb announced that the current tax on hotel/motel occupancy in the city is 3% on each room and the public hearing was to entertain comments and questions on the proposed passage of the Amendment to the current ordinances raising the amount to 6%. He said that half of the revenue received can go to recreation, tourism and to set up a convention and visitors bureau that will be staffed by a full time employee. The only current motel within the city limits is in Putnam County and that the money from the tax would go to the Putnam County Convention and Visitors Bureau. Councilman McKay said he would like to keep the money for the city to use and possibly a convention and visitors bureau could be paired with a war museum to keep down costs. He said he had talked with Councilman Fields about the possibility. Councilman Matthews said possibly a committee could be formed to look at the cost of doing this. Attorney Robb said the commitment to a convention and visitors bureau would be based on the fiscal year. Bob Schamber said he thought the money should be pursued for the city to use. Ronnie King said that possibly the NDA could get involved and help with the cost. Councilman McKay said that possibly the NDA could donate space for the museum and convention and visitors bureau as a way to offset costs.

ORDINANCE TO AMEND HOTEL/MOTEL OCCUPANCY TAX - SECOND READING/ADOPTION: COUNCILMAN A. A. "JOE" SAVILLA MOVED THAT THE ORDINANCE TO AMEND AND REENACT ARTICLE 727 RELATING TO AN INCREASE IN HOTEL/MOTEL OCCUPANCY TAX FROM 3% TO 6% BE PASSED AND ADOPTED ON SECOND READING. THE MOTION WAS SECONDED BY COUNCILMAN CRAIG MATTHEWS. Attorney Robb said the law must be followed as to the usage of the money from this ordinance. Councilman Jim McKay said there were plenty of places to use the money. VOTE WAS UNANIMOUS FOR PASSAGE OF THE MOTION. VOTING FOR THE MOTION WERE COUNCILMEN MCKAY, RACER, SAVILLA, MATTHEWS, AND JAVINS AND RECORDER COX.

2009 CALENDAR BID RECOMMENDATION: Recorder Cox said that she had met with Councilman Matthews and Mayor Casto following the previous Council meeting. After looking at the two bids received for the 2009 calendar the recommendation of the committee was to award the bid to Color Craft of Charleston, WV with the bid being \$5785.00. Debbie Jordan said the ads are \$125.00.

STREETSCAPE REPORT: This item was tabled until a future meeting.

HALLOWEEN HOEDOWN REPORT: Councilman Matthews said the Oct. 30 Hoedown was very successful. There were approximately 450 children in the costume contest, 2500 bags of candy, 1500 hot dogs. He commended Debbie Jordan for her hard work, the FOP Lodge, Nitro Police and Firemen's Assoc., A. J. Hill, and Tristate Racetrack. The thanked all for their hard work and said it was a big success. He added that he thought Councilman Savilla's suggestion of cutting out trick or treating was a good idea or possibly having a shorter time frame during daylight hours.

NEW BUSINESS:

CHRISTMAS PARADE: COUNCILMAN MATTHEWS MOVED THE CITY CHRISTMAS PARADE BE HELD AT 6:00 PM DECEMBER 6 ON FIRST AVENUE WITH A SECOND BY COUNCILMAN JAVINS. VOTE WAS UNANIMOUS FOR THE MOTION. Councilman Matthews introduced Cheryl McGown wants to start a tradition with a tree lighting ceremony following the parade on 21st St. and 1st Ave. She said someone could read the Christmas Story, and the Antique Mall would supplies cooking and hot cider and also have music and candle lighting. She said that 10% of the profits that day at the Antique Mall will go to the Nitro Mission Team for food baskets. She introduced Jerri Craigo and Terry Thompson from the Antique Mall.

TREASURER REPORT: John Young was not present so there was no Treasurers Report.

ATTORNEY REPORT: Attorney Richie Robb said a petition had been presented by residents on Cedar St. to have it abandoned from Main Ave. to Dupont Ave., Wash. Ave. and to Kanawha Ave. COUNCILMAN SAVILLA MOVED THE PETITION PRESENTED TO THE CITY BY RESIDENTS OF CEDAR ST. BE SENT TO THE PLANNING COMMISSION WITH A SECOND BY COUNCILMAN MATTHEWS. VOTING FOR THE MOTION WERE COUNCILMEN MCKAY, SAVILLA, RACER, MATTHEWS AND JAVINS AND RECORDER COX. THE MOTION PASSED.

Attorney Robb said the Ordinance Committee would meet at 7:00 pm November 6 in Council Chambers. He had supplied an agenda and would like Treasurer John Young, Sandy Saunders and Jay Gibson to attend. He also wanted representatives of the police and fire department to attend.

COUNCIL COMMENTS:

Mayor Casto said Dagostine Toy Run would be held Dec. 13. He said Ridenour Lake is in good shape and reminded Council of the trip to Louisville.

Councilman Javins said the Hoedown was a great success.

Councilman Matthews said the NDA nomination should be held at the next meeting and the members of the NDA should be invited. He suggested that Lock St. to Boundary be made one way. Capt. Javins said that there needs to be a concentration in that area due to people not following the speed limit. Councilman Matthews said there was another recent incident of a fire in Cross Lanes and the Nitro Fire Dept. had to cover for the volunteer fire depts.

Councilman Savilla said he recently attended Cheerleading competition at Capital High where the Nitro Cheerleaders won the MSAC. Mayor Casto suggested they come to the next meeting.

Recorder Cox said she and John Young had attended training at Flatwoods sponsored by the WV Auditor's Office.

Councilman McKay said there was a very good police presence on Halloween night. He said he thought annexation of the "donut hole" should be pursued.

PUBLIC COMMENTS:

Bob Schamber said he will try to help get out the vote for the levy, the hoedown helps keep down Halloween vandalism, and city employees can join the Monsanto Credit Union.

Capt. Javins said the Halloween Hoedown was originally called PROJECT SAFER STREETS to keep children safe on Halloween night.

Delmar Byrd said the Flag Memorial broke ground with Statewide donating labor and Leonards Electric giving products at cost.

ADJOURNMENT: COUNCILMAN JAVINS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN MATTHEWS. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA\COX, RECORDER

ORDINANCE NO. OS

An Ordinance to amend and reenact section 727.01, Article 727 of the Codified Ordinances of the City of Nitro, West Virginia, and to enact sections 727.02, 727.03, 727.04, 727.05, 727.06, 727.07,727.08, 727.09, 727.10, 727.11, 727.12, 727.13, 727.14, 727.15 727.16, and 727.17, all relating to the Hotel/Motel Occupancy Tax; providing definitions; imposition of the tax, establishing the rate of tax; providing guidance for collection of the tax when the sale is by on a credit basis; requiring the Nitro Convention and Visitor's Bureau to annually file a financial statement with the City Council; requiring the consumer to pay tax; requiring collection and accounting by hotel operator; prohibiting the hotel or hotel operator from making certain representations; establishing an exemptions for government agencies or employees; directing the disposition of proceeds; establishing liability of the hotel operator for failure to collect or remit; requiring the total amount collected to be remitted; providing when returns and remittances generally; establishing the administrative procedures to be utilized; establishing violations and penalties; requiring the payment of interest and penalties; establishing the priority of tax in receivership, bankruptcy, similar proceedings; establishing the liability of officers of associations or corporations; and requiring the maintenance of complete records.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that section 727.01, Article 727 of the Codified Ordinances of the City of Nitro, West Virginia, be amended and reenacted, and that Article 727 be further amended by adding thereto 16 new sections, designated 727.02, 727.03, 727.04, 727.05, 727.06, 727.07, 727.08, 727.09, 727.10, 727.11, 727.12, 727.13, 727.14, 727.15, 727.16, and 727.17, all to read as follows:

ARTICLE 727. HOTEL OCCUPANCY TAX

§ 727.01. HOTEL/MOTEL OCCUPANCY TAX Definitions.

(a) Upon every person engaging or continuing within the City in the business of operating a hotel or motel for use or occupancy there is hereby levied, and shall be

collected a tax of three percent (3%) of the consideration paid for the use or occupancy of a hotel/motel room. The tax shall be imposed on the consumer and shall be collected by the hotel/motel operator as part of the consideration paid for the occupancy of a hotel/motel room.

(b) Such consideration shall not include the amount of tax imposed on the transaction under West Virginia Code Article 11-15 or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel/motel room.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed herein, except where the context clearly indicates a different meaning:

- (a). "Consideration paid" or "consideration" means the amount received in money, credits, property or other consideration for or in exchange for the right to occupy a hotel room.
- (b). "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. The term shall not be construed to mean the government of the United States, its agencies or instrumentalities, or the government of the state or any political subdivision of the state.
- (c) "Convention and visitor's bureau" means the Nitro Convention and Visitor's Bureau, which shall be nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the City.
- (d). "Convention center" means a convention facility owned by the City or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourist and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances to the convention center.
- (e). "Fiscal year" means the year beginning July 1 and ending June 30 of the next calendar year.

- (f). "Historic sites" means any site listed on the United States National Register of Historic Places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county or a nonprofit historical association and are open, from time to time, to accommodate visitors.
- (g). "Hotel" means any facility or building, publicly or privately owned (including a facility located in a state, county or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term shall include but is not limited to boardinghouses, hotels, motels, inns, courts, lodges, cabins and tourist homes. The term shall include state, county and city parks offering accommodations as set forth in this article. The term shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home, university or college housing unit, or any facility providing fewer than three hotel rooms, or any tent, trailer or camper campsites; however, where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term shall, if otherwise applicable, apply to such accommodations for the purposes of this tax.
- (h). "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purposes of this article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (i). "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term shall not be construed to mean a banquet room, meeting room or any other room not primarily used for or in conjunction with sleeping accommodations.
- (j). "Net proceeds" means the gross amount of tax collection less the amount of tax lawfully refunded.
- (k). "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music of all types, the dramatic

arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals and plays.

- (I). "Recreational facilities" means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreational facilities, whether of a like or different nature, that are owned by the city.
- (m). "Tax", "taxes" or "this tax" means the hotel occupancy tax authorized by this article.
- (n). "Taxing authority" means the city.
- (o). "Taxpayer" means any person liable for the tax authorized by this article.

§ 727.02. Imposition.

There is imposed a municipal hotel tax upon all hotels located within the corporate limits of the City, including any hotels owned by the state or by any political subdivision of the state. The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room; provided, that the tax shall not be imposed on any consumer occupying a hotel room for 30 or more consecutive days.

§ 727.03. Rate.

The rate of tax imposed by this article shall be six percent of the consideration paid for the use or occupancy of a hotel room. Such consideration shall not include the amount of tax imposed on the transaction under article 15, chapter 11 of the Code of West Virginia of 1931, as amended, or charges for meals, valet service, room service, telephone service, or other charges or consideration not paid for use or occupancy of a hotel room.

§ 727.04. Collection when sale on credit.

A hotel operator doing business wholly or partially on a credit basis shall require the consumer to pay the full amount of tax due upon a credit sale at the time such sale is made or within 30 days thereafter.

§ 727.05. Consumer to pay tax; collection and accounting by hotel operator; hotel or hotel operator not to make certain representations.

(a) The consumer shall pay to the hotel operator the amount of tax imposed by the city, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator, who shall account for and remit to the city all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle tax collected under this article with the proceeds of the rental of hotel accommodations. The city's claim shall be enforceable against and shall be superior to all other claims against the moneys so commingled, excepting only claims of the State for moneys held by the hotel pursuant to the provisions of article 15, chapter 11 of the Code of West Virginia of 1931, as amended. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until they shall have been remitted to the taxing authority as provided in this article.

(b) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.

§ 727.06. Exemptions for government agencies or employees.

- (a) Hotel room occupancy billed directly to the federal government shall be exempt from this tax; however, rooms paid for by a federal government employee for which reimbursement is made shall be subject to this tax.
- (b) Hotel room occupancy billed directly to the State or its political subdivisions shall be exempt from this tax; however, rooms paid for by an employee of the State for which reimbursement is made shall be subject to this tax.

§ 727.07. Disposition of proceeds.

(a) Generally. The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of the city and,

- after appropriation, shall be expended only as provided in subsections (b) and (c) of this section.
- (b) Required expenditures. At least 50 percent of the net revenue receivable by the city during the fiscal year pursuant to this article shall be transmitted to the Nitro Convention and Visitor's Bureau for the promotion of conventions and tourism: Provided, That if a convention and visitor's bureau is not located within the City, the required percentage of the net revenues received from this tax shall be distributed to the convention and visitor's bureau in Putnam County and Kanawha County as required by West Virginia Code 7-18-1 et seq. and such distribution shall be made based on the revenue received from the hotels located in those counties: Provided, however, That the distribution to the convention and visitor's bureau in Putnam County and Kanawha County shall cease when operation of the Nitro Convention and Visitor's Bureau commences.
- (c) Permissible expenditures. After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenues receivable by the city during the fiscal year pursuant to this article may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:
- (1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities, including but not limited to arenas, auditoriums, civic centers and convention centers.
- (2) The payment of principal or interest, or both, on revenue bonds issued to finance such convention facilities.
 - (3) The promotion of conventions.
- (4) The construction, operation or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition).
 - (5) The promotion of the arts.
 - (6) Historic sites.
 - (7) Beautification projects.

§7-18-08. Annual reports by convention and visitor's bureaus.

Each year, on or before the fifteenth day of August, the Nitro Convention and Visitor's Bureau shall file with the City a statement, including an income statement and balance sheet, showing all amounts of Hotel Occupancy Tax appropriated to the Nitro Convention and Visitor's Bureau and all expenditures of Hotel Occupancy Tax made by the Nitro Convention and Visitor's Bureau for the prior fiscal year.

§ 727.09. Liability of hotel operator for failure to collect or remit.

If any hotel operator fails to collect the tax authorized by and levied pursuant to this article, or shall fail to properly remit such tax to the taxing authority, he shall be personally liable for such amount as he failed to collect or remit; however, such hotel operator shall not be held liable for failure to collect such tax if the hotel operator can, by good and substantial evidence, prove the refusal of the purchaser to pay such tax, despite the diligent effort in good faith of the hotel operator to collect the tax.

§ 727.10. Total amount collected to be remitted.

No profit shall accrue to any person as a result of the collection of the tax authorized by this article. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy of six percent for the occupancy of hotel rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as provided in this article.

§ 727.11. Returns and remittances generally.

The tax authorized by this article shall be due and payable in monthly installments on or before the 15th day of the calendar month next succeeding the month in which the tax accrued; however, for credit sales in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for the purposes of this article, be regarded as having accrued until either the date on which it is received by the hotel operator or the expiration of the 30-day payment period set forth in section 727.04, whichever shall first occur. The hotel operator shall, on or before the 15th day of each month, prepare and deliver to the city a return for the

preceding month, in the form prescribed by the city. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax as the city may require. A remittance for the amount of the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.

§ 727.12. Administrative procedures generally.

The administrative procedures for the assessment, collection and refund of the tax authorized by this article shall conform as closely as possible to those for the business and occupation tax; Provided, That the city treasurer is authorized to establish different or additional procedures to aid in the efficient administration of the tax.

§ 727.13. Violations and penalties.

- (a) It shall be unlawful for any person to willfully refuse to collect or to pay the tax or to willfully refuse to make the return required to be made by this article; or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud any taxing authority; or to willfully evade the payment of the tax, or any part of the tax; or for any person to willfully aid or abet another in any attempt to evade the payment of the tax, or any part of the tax; or for any officer, partner or principal of any corporation or association to willfully make or willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this article, with the intent to evade the payment of such tax.
- (b) Any person willfully violating any of the provisions of this article shall, for the first offense, be guilty of a misdemeanor and upon conviction shall be subject to the penalty set forth in section 101.99 of these Codified Ordinances.
- (c) Every prosecution for any offense arising under this article shall be commenced within three years after the offense was committed, notwithstanding any provision of these Codified Ordinances to the contrary.
- (d) Proceedings against any person under this section shall be initiated in the county of the state wherein such person resides if any element of the offense occurs in such county of residence, or if no element of the offense occurs in such county of residence,

in Kanawha County.

- (e) For the purposes of this section, the term:
- (1) "Willfully" means the intentional violation of a known legal duty to perform any act required to be performed by any provision of this article in respect of which the violation occurs; provided, that the mere failure to perform any act shall not be a willful violation under this article. A willful violation of this article requires that the defendant have had knowledge of or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.
- (2) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the City of payment of any tax which there is a known legal duty to pay.
- (3) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intention that such representation or concealment be relied upon by the city.

§ 727.14. Interest and penalties.

- (a) The tax imposed and levied by this article, if not paid when due, shall bear interest at the rate of six percent per annum from the due date of the return until paid.
- (b) If any hotel operator fails to make the return of any quarterly installment required by this article, or makes his return but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of five percent of the tax for the first month, or fraction of a month, of delinquency and one percent of the tax for each succeeding month, or fraction of a month, of delinquency; provided, that if such failure is due to responsible cause, the city treasurer may waive in whole or in part these penalties.
- (c) Interest and penalties may be collected in the same manner as the tax imposed by this article.

§ 727.15. Priority of tax in receivership, bankruptcy, similar proceedings.

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise of the property or estate of any person, all taxes due and unpaid authorized under this article shall be paid from the first money available for distribution in priority to all claims

and liens, except taxes and debts due to the United States, which, under federal law, are given priority over the debts and liens created by municipal ordinance for this tax. and taxes and debts due to the state. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid which are chargeable against the person whose property or estate is in administration or distribution.

§ 727.16. Liability of officers of associations or corporations.

If the taxpayer is an association or corporation, the officers actually participating in the management or operation of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties which may be imposed by state law, city ordinance, or other authority may be enforced against such officers as against the association or corporation which they represent.

§ 727.17. Records.

Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three years unless the taxing authority shall consent in writing to their destruction within that period or shall require that they be kept for a longer period.

Passed on First Reading: <u>October</u> 7, 2008

Passed on Second Reading: <u>Moventuer</u> 3, 2008

, Mayor

CITY OF NITRO COUNCIL MINUTES NOVEMBER 18, 2008

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Attending with Mayor Casto were Recorder Rita Cox, Councilmen at Large Jim McKay, Dave Casebolt, and Bob Fields, Ward 1 Councilman A. A. "Joe" Savilla, Ward 3 Councilman Craig Matthews, and Ward 4 Councilman Bill Javins, and City Treasurer John Young. Absent were City Attorney Richie Robb and Ward 2 Councilman Bill Racer.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation and Pledge were led my members of the 2008 girls soccer team.

FUTURE DATES OF COUNCIL: Mayor Casto announced the future dates of Council are to be Tuesday, December 2, 2008 and Tuesday, December 16, 2008.

APPROVAL OF COUNCIL MINUTES: COUNCILMAN SAVILLA MOVED THE MINUTES OF OCTOBER 21 AND NOVEMBER 4, 2008 MEETINGS OF COUNCIL BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN JAVINS. Councilman Matthews requested a correction be made in the November 4, 2008 minutes referring to Councilman Racer being in attendance to show that Councilman Racer was not in attendance. Recorder Cox said she would make that correction. VOTING FOR THE MOTION WERE COUNCILMEN MCKAY, SAVILLA, MATTHEWS AND JAVINS AND RECORDER COX. ABSTAINING WERE COUNCILMEN CASEBOLT AND FIELDS. THE MOTION CARRIED.

NITRO HIGH SCHOOL GIRLS SOCCER: Mayor Casto introduced the 2008-2009 girls soccer team to honor them for winning the WV State Championship.

OLD BUSINESS:

DAFFODIL PLANTING: Mayor Casto invited all members of Council and the public to attend a public thank you to Harvey Peyton and Public Works and press coverage of the final daffodil bulbs being planted on Thursday, November 20, 2008 at 2:00 pm across from the Peyton Law Offices. Hot chocolate will be served. Mayor Casto announced that Harvey Peyton will be December Citizen of the Month.

FIRST READING TAX ORDINANCE AMENDING ORDINANCE 96-05 AND AN ORDINANCE TO PROVIDE ECONOMIC DEVELOPMENT TAX CREDITS TO BE APPLIED AGAINST THE BUSINESS AND OCCUPATION TAX BY BUSINESS THAT SATISFY THE STATED QUALIFICATIONS: John Montgomery, Chairman of the Ordinance Committee, presented Council with a First Reading of the Ordinance to Provide Econmic Development Tax Credits to bed Applied against the Business and Occupation Tax. He stated the Ordinance came out of the Nov. 6 meeting of the Ordinance Committee and contains recommendations made by that committee. City Attorney Richie Robb had reviewed the ordinances and concurs with it. By passing this ordinance it would amend Ord. 96-05 which was originally enacted for the Nitro Marketplace development. Ordinance 96-05 could not be used again after January 1, 2009 and the amended ordinance would contain four classes of businesses eligible for tax credits: manufacturing; tangible property, real or personal; service business; business that furnish property for hire. The ordinance requires a business to have a five employees or an annual yearly income of \$500,000.00 or more. It is a four year decreasing ordinance: 100% year one; 75% year two, 50% year 3; and 25% year four. In the case of expansion tax credits will apply to income from the expansion. The credit can transfer to another owner. The tax credit will also apply to businesses annexed into the city. The tax credit cannot be used by business using Ord. 96-05. Non-payment of B&O will negate tax credit. The Treasurer will review and make recommendations and Council will vote for or against tax credit being

extended. The effective date would be January 1, 2008. Mr. Montgomery said the ordinance will require a public hearing to be held due to the fact that revenue is involve. COUNCILMAN SAVILLA MOVED THE ORDINANCE AMENDING ORDINANCE 96-05 AND AN ORDINANCE TO PROVIDE ECONOMIC DEVELOPMENT TAX CREDITS TO BE APPLIED AGAINST THE BUSINESS AND OCCUPATION TAX BY BUSINESS THAT SATISFY THE STATED QUALIFICATIONS BE PASSED ON FIRST READING. THE MOTION WAS SECONDED BY COUNCILMAN MCKAY. VOTE WAS UNANIMOUS FOR THE MOTION. Mr. Montgomery recommended the public meeting be held prior to or during the next Council meeting and advertisement be done for that. Recorder Cox said she would do that.

STREETSCAPE UPDATE: Councilman Casebolt said that the first application for Streetscape had been submitted and it would be approximately six to twelve weeks before there was a response. If this application is accepted then a grant application will have to be done. Councilman Casebolt asked if the City had a grant writer. Mayor Casto said that Robin Smith was potentially a grant writer. Councilman Casebolt asked if money has to be approved for a grant writer. Councilman Savilla suggested that Marshall University be approached for assistance in grant writing. Councilman Casebolt said the grant work would have to be in by the end of March.

NITRO DEVELOPMENT AUTHORITY REPORT: Councilman McKay said the Authority met the previous Tuesday and he distributed a copy of the financial information. He said the nominations for board members should be ready in December and Councilman McKay should have them by January. He also reported that members of the NDA would like to be involved in beautification. He also said the War Museum and the VFW and the Convention and Visitor Bureau could operate together to save operating costs.

NEW BUSINESS:

SPEED LIMIT REDUCTION KANAWHA AVE. S., MICHIGAN AVE, AND CONNECTING STREETS: Councilman Javins said he had received a petition from homeowners on Kanawha Ave. S. requesting a speed limit reduction on their street from 25 mph to 15 mph. He said the Nitro Police Department recommended the following streets be reduced: Michigan Ave., Old County Road, Spring St., River Ave., Dupont Lane and Owens St. COUNCILMAN JAVINS MOVED THE SPEED LIMIT REDUCTION BE MOVED TO STREET COMMITTEE WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

ATTORNEY REPORT: City Attorney Richie Robb was not in attendance.

TREASURER REPORT: City Treasurer John Young referred Council to the financial statement through October. By October 31st the City of Nitro had brought in 31% of the projected revenue. The city has spent 36% of the annual budget and has received a net income of \$219,413.00 which has to keep the city going through February and taxes begin coming in during March. Also revenue is down on lottery receipts. There is no definite amounts coming in from table games. Councilman Savilla asked if the recommendation would be from the Treasurer to go carefully with spending. Treasurer Young said he would advise that. He said that there is a proposed 9% increase on the PEIA health insurance. Councilman Javins asked if the Mayor and Treasurer are still signing off on purchases. Mayor Casto said that was still the policy. Treasurer Young said the Nitro Police Dept. had received grant money to pay overtime for DUI checkpoints through the holiday and a \$30,000.00 grant had been received for seven rear view mirror cameras and one radar. Councilman Matthews asked the status of the grant application for the Nitro Fire Dept.'s request to the county for a compressor. Treasurer Young said he thought it had been approved but they had not finished the paper work on it. He said the roof of City Hall is leaking very badly and was going to have to be dealt with. Mayor Casto said there is an air conditioner on the roof which complicates the project.

COUNCIL COMMENTS:

Mayor Casto informed Council that a meeting would be held on Dec. 11, 2008, time to be announced, concerning the request of residents to abandon Cedar St. He also wished Council a Happy Thanks giving.

Councilman Javins thanked Councilman McKay on his work with the NDA and John Montgomery on his work on Ordinances.

Councilman Matthews thanked Public Works for work on Christmas Lights. He said the ceremony following the parade on Dec. 6 will be held at the corner of 21st St. and 1st Ave. along with the Nitro High Show Choir and others. Bank St. will be closed for the ceremony.

Councilman Savilla wished everyone a Happy Thanksgiving and commented on the fact that there are a lot of health problems. He also said there was a problem on Bailes Drive and 40th St. and asked Mayor Casto to follow up on it.

Recorder Cox reported that prior to the next Council meeting, December 2, 2008 at 7:00 pm a representative from RC & D, Jackie Byars, will be having a public meeting. She thanked Councilman McKay, Treasurer John Young, and John Montgomery for their work and she thanked Councilman Craigt Matthews for his work in Parks and Recreation.

Councilman Fields thanked the City for the carpet at the Library on behalf of Karen Boggess. She invited Council to come and see the carpet. Mayor Casto thanked Councilman Fields for his help in the project.

Councilman Casebolt asked about the possibility of a pedestrian walkway when 40th St. bridge is being replaced. Councilman Savilla said he did not have knowledge of that. He did know that the slip on 31st St. may be repaired for emergency vehicles.

Councilman McKay wished everyone a Happy Thanksgiving and thanked people for attending the meeting. He thanked John Montgomery for his work on ordinances and thanked John Young for his work.

PUBLIC COMMENTS:

Bob Schamber said he thought this was a good Council and is happy to see Christmas lights. He said the Library carpet looks very good.

Capt. Javins said a letter needs to written to Bank St. businesses about closing for Dec. 6.

ADJOURNMENT:

COUNCILMAN MATTHEWS MOVED THE MEETING BE ADJOURNED WITH A SECOND BY COUNCILMAN SAVILLA. VOTE WAS UNANIMOUS FOR THE MOTION.

RUSTY CASTO, MAYOR

RITA COX, RECORDER

ORDINANCE NO OS -

An Ordinance to amend and reenact Ordinance 96-05 of the Ordinances of the City of Nitro, West Virginia, and to enact Section 711.33, Article 711 of the Codified Ordinances of the City of Nitro, West Virginia, all relating to business and occupation tax credits, prohibiting the usage of Ordinance 96-05 to grant any new business and occupation tax credits after a specified date; authorizing a new business and occupation tax credit for certain qualified businesses: providing definitions; authorizing a four year decreasing tax credit for qualified new or expanded manufacturing businesses; authorizing a four year decreasing tax credit for qualified new or expanded retail and wholesale business facilities; authorizing a four year decreasing tax credit for qualified new or expanded service business facilities; authorizing a four year decreasing tax credit for qualified new or expanded multi-unit commercial business facilities; authorizing a four year decreasing tax credit for qualified annexed manufacturing, retail and wholesale, service, and multi-unit commercial business facilities; requiring jobs created to be within the City; authorizing the transfer of credit to the purchaser of a qualified business; authorizing the City treasurer to develop necessary forms; authorizing the City Treasurer to audit businesses using the tax credit; requiring the forfeiture of credit use by a taxpayer not paying the B&O tax in a timely manner; and authorizing the City Treasurer to make determinations on the forfeiture or carry-over of the tax credit.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NITRO, WEST VIRGINIA that Ordinance 96-05 be amended and reenacted, and that Article 711 of the Codified Ordinances of the City of Nitro, West Virginia be amended and reenacted by adding thereto a new section designated 711.33, all to read as follows:

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, putting the City at a competitive disadvantage; 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 following:

The mayor may 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 as a result of constructing and developing or expanding a commercial or industrial facility; provided that any such agreement shall contain the following provisions:

- a. An agreement by the developer that the commercial or industrial facility will provide a minimum of fifty (50) new jobs within twelve (12) months of the first day of occupation of the facility; and
- b. That Council review and approve any agreement proposed to be entered into between the City and/or the Nitro Development Authority with any industrial or 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: Provided, That on and after the first day of January, two thousand nine, this Ordinance 96-05 may not be used to grant any new tax credit or tax rebate to be applied against the municipal B&O tax imposed by Article 711 of the Codified Ordinances of the City of Nitro, West Virginia.

AN ORDINANCE TO PROVIDE ECONOMIC DEVELOPMENT TAX CREDITS TO BE APPLIED AGAINST THE BUSINESS AND OCCUPATION TAX BY BUSINESSES THAT SATISFY THE STATED QUALIFICATIONS

ARTICLE 711

Business and Occupation Tax

711.33. ECONOMIC DEVELOPMENT TAX CREDIT.

- (a). On and after the first day of January, two thousand nine, only the following tax credits may be used as incentives for the development and/or expansion of business properties in the City: Provided, That for purposes of this ordinance, in addition to the terms defined in Section 711.01 of the ordinances, the following terms shall have the meaning ascribed herein.
 - (1). "Affiliate" means and includes all persons, as defined in this section, which

are affiliates of each other, when either directly or indirectly:

- (A) One person controls or has the power to control the other, or
- (B) A third party or third parties control or have the power to control two persons, the two thus being affiliates. In determining whether concerns are independently owned and operated and whether or not an affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.
 - (C). The term "affiliate" includes a member of an affiliated group.
- (2). "Annexed business facility" means a business facility that is annexed into the City subsequent to the first day of January, two thousand nine.
- (3). "Base year employment" means the average employment within the City, which the qualified business utilized to conduct business taxable under Article 711 of these Ordinances during the twelve-month period immediately preceding first application for this credit.
- (4). "Business facility" means a building, or several buildings in a given area that are constructed in accordance with a development plan approved by the City Treasurer, such building or buildings to be primarily used for the buying and selling of goods and services including management information services. "Business facility" shall also include a factory, mill, plant, refinery, warehouse, or building or complex of buildings, including the land upon which it is located, and all machinery, equipment and other real and tangible personal property located at or within such facility that is used in connection with the operation of such facility in the manufacturing, compounding or preparing of tangible personal property for sale, profit or commercial use, and in the business of providing a manufacturing service. "Business facility" shall not include residential buildings used by transient individuals for temporary residential purposes or facilities used for gambling purposes.
 - (5). "City" means the City of Nitro, West Virginia.

- (6). "Corporation" includes any corporation, a joint-stock company and any association or other organization that is classified as a corporation under federal income tax law.
- (A) The term "corporation" includes a limited liability company if it is taxable as a corporation under federal income tax law.
- (7). "Expanded business facility" means any business facility situated in the City, other than a new business facility or annexed business facility, resulting from the acquisition, construction, reconstruction, installation or erection of improvements or additions to that existing business facility if such improvements or additions are purchased or constructed on or after the first day of January, two thousand nine.
- (8). "Full-time employee" means a permanent hourly employee of an eligible taxpayer, who is a West Virginia domiciled resident, and works in a qualified business more than eighteen hundred hours during the entire twelve-month period ending on the last day of the taxable year of the qualified business, such hours to include any combination of hours worked at the qualified business, hours of employer paid vacation leave and other employer paid leave, but shall not include unemployment compensation. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.
- (A). No combination of part-time, seasonal or temporary employees may be considered equivalent to a full-time employee.
- (B). No person who is not an employee (such as an independent contractor) may be considered a full-time employee.
- (C). An employee who moves to West Virginia in order to become a West Virginia domiciled resident in order to fill a new job may be counted as a full-time employee if he or she otherwise qualifies as a full-time employee.
- (9). "Management information services" means, and is limited to, data processing, data storage, data recovery and backup, programming recovery and

backup, telecommunications, computation and computer processing, computer programming, electronic information, and data management activities, or any combination of such activities, when not subject to regulation by the West Virginia Public Service Commission, when such activity or activities are carried on for the purpose of managing, planning for, organizing or operating any industrial or commercial business, or any enterprise, facility or facilities of an industrial or commercial business regardless of whether such industrial or commercial business or enterprise facility is located in this City.

- (10). "Mayor" means the Mayor of the City of Nitro, West Virginia.
- (11). "New business facility" means a business facility, other than an expanded business facility or an annexed business facility, that on or after the first day of January, two thousand nine, is newly constructed, purchased or leased by the taxpayer and located within the boundaries of the City, and is employed by the taxpayer in the conduct of a business the gross income of which is taxable pursuant to Article 711 of these ordinances. The facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to the business facility is to lease it to another person or persons. The facility may not have been purchased or leased by the taxpayer from a related or affiliated person.
- (12). "New employee" means a person residing and domiciled in this State, who was hired by the taxpayer to fill a new position or a new job in this City which previously did not exist in the taxpayer's existing business facility in this City prior to the date on which the taxpayer's qualified investment is placed in service or use in this City, or which came into existence when the taxpayer's qualified investment was placed in service or use in this City. In no case shall the number of new employees directly attributable to such investment for purposes of this credit exceed the total net increase in the taxpayer's employment in this City: Provided, That persons filling jobs saved as a direct result of taxpayer's qualified investment in property purchased or leased for business expansion on or after the first day of January, two thousand nine, may be

treated as new employees filling new jobs if the taxpayer certifies the material facts to the City Treasurer and the City Treasurer expressly finds that:

- (A) But for the new employer purchasing the assets of a business in bankruptcy under chapter seven or eleven of the United States Bankruptcy Code and such new employer making qualified investment in property purchased or leased for business expansion, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs so saved would have been lost; or
- (B) But for taxpayer's qualified investment in property purchased or leased for business expansion in this City, taxpayer would have closed its business facility in this City and the employees of the taxpayer located at such facility would have lost their jobs: Provided, however, That this certification may not be made unless the City Treasurer finds that the taxpayer is insolvent as defined in 11 U.S.C. § 101(31) or that the taxpayer's business facility was destroyed in whole or in significant part by fire, flood or other act of God.
- (13). "New job" means a job at a qualified business located in this City, which did not exist in this City with the employer as of the first day of the second calendar month preceding the calendar month in which the qualified investment in the qualified business came into service or use.
- (14). "Ordinances" means the Codified Ordinances of the City of Nitro, West Virginia and those ordinances enacted by the City but which have not been incorporated into said Codified Ordinances of the City of Nitro, West Virginia.
- (15). "Partnership" means and includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, which is classified as a partnership for federal income tax purposes for the taxable year.
- (A) The term "partnership" may include a limited liability company if it is not taxable as a corporation under federal income tax law.

- (16). "Person" includes any natural person, corporation, partnership or limited liability company.
- (17). "Property" means real property, and improvements thereto, and new, tangible personal property, but only if such property was constructed, or purchased, on or after the passage of this section for use as a component part of an ongoing business operation located within the City. This term includes only tangible personal property with respect to which depreciation is allowable in determining the personal income tax or corporate net income tax liability of the business taxpayer, and has a useful life at the time the property is placed in service or use in this City of four years or more. Property acquired by written lease for a primary term of five years or longer, if used as a component part of an expanded business facility, shall be included within this definition. "Property", within the meaning of this definition, shall not include:
- (A). Repair costs, including materials used in the repair, unless for federal income tax purposes the cost of the repair shall be capitalized and not expended;
 - (B). Motor vehicles licensed by the Department of Motor Vehicles;
 - (C). Airplanes;
 - (D). Off premise transportation equipment; or
- (E). Property which is acquired incident to the purchase of the stock or assets of a taxpayer, or which is property was or had been used by the seller in the seller's business in the City: Provided, That, the City Treasurer may waive this disqualification.
- (18). "Qualified business" means any business subject to the business and occupation taxes imposed by Article 711 of the Ordinances that, after the passage of this section, and in the first twelve (12) months of the business' existence in the City makes qualified investment in a new business facility that results in the next succeeding twenty-four (24) months in a full-time average work force of at least five (5) persons or a yearly gross income as defined in section 711.01 of this Article of at least five hundred thousand dollars (\$500,000.00): Provided, That if the qualified investment is in an expanded business facility, the qualified investment shall occur in the first twelve (12)

months after approval is granted under subsection (k) of this section, and during the next succeeding twenty-four (24) months the qualified business' full-time average yearly work force shall increase by at least five (5) persons over base year employment or the qualified business' yearly gross income as defined in section 711.01 of this Article shall increase by at least five hundred thousand dollars (\$500,000). "Qualified business" shall also include an affiliated group of taxpayers if such group elects to file a West Virginia consolidated corporation net income tax return under W. Va. Code § 11-24-1 et seq.

(19) "Qualified investment" means a monetary investment, other than investment for regular or normal maintenance purposes, in either a new or expanded business facility located within the municipal boundaries of the City.

(b) Manufacturing Business.

(1) Any qualified business taxable under Section 711.06 of this Article shall be eligible for a decreasing tax credit to be taken over a period of four years, and applied against the taxpayer's business and occupation tax liability arising under said section 711.06. The first taxable year, for purposes of this tax credit, shall commence on the first day of the taxpayer's fiscal year immediately succeeding the month in which the qualified investment is first placed in service or use: Provided, That for purposes of this tax credit, each subsequent tax year shall commence on the anniversary date of the first taxable year. The total amount of the tax credit taken may not exceed the total amount of the qualified investment. The tax credit herein authorized shall be calculated as follows.

(A). New manufacturing business facility.

Calculation of Tax Credit.

	Percent of B&O tax liability
Year	used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%

4 th year	25%
5 th year	0%

(B). Expanded manufacturing business facility. The tax credit treatment accorded to the qualified investment in a qualified expanded manufacturing business facility shall be the same as that accorded to a qualified new manufacturing business facility: Provided, That the tax credit shall only apply to that incremental portion of the gross income directly attributable to the qualified investment in the expanded business facility. Upon determining the portion upon which the tax credit shall be applied, the tax credit shall be calculated as follows.

Calculation of Tax Credit.

	Percent of B&O tax liability
Year	used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(c) Retail or Wholesale Business.

- (1) Any qualified business that commences retail or wholesale sales activities within the corporate limits of the City that are taxable under Section 711.07 of this Article shall be eligible for a decreasing tax credit to be taken over a period of four years, and applied against the taxpayer's business and occupation tax liability arising under said section 711.07. The first taxable year, for purposes of this tax credit, shall commence on the first day of the taxpayer's fiscal year immediately succeeding the month in which the qualified investment is first placed in service or use: Provided, That for purposes of this tax credit, each subsequent tax year shall commence on the anniversary date of the first taxable year. The total amount of the tax credit taken may not exceed the total amount of the qualified investment. The tax credit herein authorized shall be calculated as follows.
 - (A). New retail or wholesale business facility.

Calculation of Tax Credit.

	Percent of B&O tax liability
Year	used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(B). Expanded retail or wholesale business facility. The tax credit treatment accorded to the qualified investment in a qualified expanded retail or wholesale business facility shall be the same as that accorded to a qualified new retail or wholesale business facility: Provided, That the tax credit shall only apply to that incremental portion of the gross income directly attributable to the qualified investment in the expanded retail or wholesale business facility. Upon determining the portion upon which the tax credit shall be applied, the tax credit shall be calculated as follows.

Calculation of Tax Credit.

	Percent of B&O tax liability
Year	used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(d) Service Business.

(1) Any qualified business taxable under Section 711.11 of this Article shall be eligible for a decreasing tax credit to be taken over a period of four years, and applied against the taxpayer's business and occupation tax liability arising under said section 711.11: Provided, That a service business that, at the time of the passage of this section, is paying taxes to the City under the service classification for work performed within the City, although its principal place of business is without the City, shall be

eligible for a credit upon location of its principal place of business within the City. The first taxable year, for purposes of this tax credit, shall commence on the first day of the taxpayer's fiscal year immediately succeeding the month in which the qualified investment is first placed in service or use: Provided, That for purposes of this tax credit, each subsequent tax year shall commence on the anniversary date of the first taxable year. The total amount of the tax credit taken may not exceed the total amount of the qualified investment. The tax credit herein authorized shall be calculated as follows.

(A). New service business facility.

Calculation of Tax Credit.

	Percent of B&O tax liability
Year	used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(B). Expanded service business facility. The tax credit treatment accorded to the qualified investment in a qualified expanded service business facility shall be the same as that accorded to a qualified new service business facility: Provided, That the tax credit shall only apply to that incremental portion of the gross income directly attributable to the qualified investment in the expanded business facility. Upon determining the portion upon which the tax credit shall be applied, the tax credit shall be calculated as follows.

Calculation of Tax Credit.

	Percent of B&O tax liability
Year	used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%

5th year 0%

(e) Rental Income Credit.

- (1) Any qualified business taxable under Section 711.12 of this Article that is a multi-unit commercial building facility constructed and placed in service or use on or after the first day of January, two thousand nine shall be eligible for a decreasing tax credit to be taken over a period of four years, and applied against the taxpayer's business and occupation tax liability arising under said section 711.12. The first taxable year, for purposes of this tax credit, shall commence on the first day of the taxpayer's fiscal year immediately succeeding the month in which the qualified investment is first placed in service or use: Provided, That for purposes of this tax credit, each subsequent tax year shall commence on the anniversary date of the first taxable year. The total amount of the tax credit taken may not exceed the total amount of the qualified investment. The tax credit herein authorized shall be calculated as follows.
 - (A). New multi-unit commercial business facility.

Calculation of Tax Credit.

	Percent of B&O tax liability
Year	used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th vear	0%

(B). Expanded multi-unit commercial business facility. The tax credit treatment accorded to the qualified investment in a qualified expanded multi-unit commercial business facility shall be the same as that accorded to a qualified new multi-unit commercial business facility: Provided, That the tax credit shall only apply to that incremental portion of the gross income directly attributable to the qualified investment in the expanded retail or wholesale business facility. Upon determining the portion upon which the tax credit shall be applied, the tax credit shall be calculated as follows.

Calculation of Tax Credit.

	Percent of B&O tax liability
Year	used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(f). Annexed business facility. Any annexed business facility that is subject to tax under Section 711.06, 711.07, 711.11 or 711.12 of these ordinances shall be classified as a qualified business facility eligible for a decreasing tax credit to be taken over a period of four years and applied against the taxpayer's business and occupation tax liability arising under said Section 711.06, 711.07, 711.11 or 711.12. The first taxable year, for purposes of this tax credit, shall commence on the first day of the taxpayer's fiscal year immediately succeeding the month in which the business facility is annexed into the City: Provided, That for purposes of this tax credit, each subsequent tax year shall commence on the anniversary date of the first taxable year. The tax credit herein authorized shall be calculated as follows.

(A). Annexed business facility.

Calculation of Tax Credit.

	Percent of B&O tax liability
Year	used as a tax credit
1 st year	100%
2 nd year	75%
3 rd year	50%
4 th year	25%
5 th year	0%

(g). In order for a business to qualify for this credit, the jobs created shall be located within the City and shall be utilized in the qualified business' activities in the City that

are taxable under Section 711.06, 711.07, 711.11 or 711.12 of these Ordinances. In addition, the jobs created shall be retained for the full term of the credit in order for the credit to be applicable: Provided, That if the number of qualifying jobs at any time drops below the base year employment level plus fifty, the credit shall be lost.

- (h) Credits for the Purchase of Existing Businesses.
- (1) Any qualified manufacturing, retailing, wholesaling, service or multi-unit commercial building facility or business taxable under Section 711.06, 711.07, 711.11 or 711.12 of this Article that is purchased by another person may qualify for the tax credit herein authorized, such credit to be applied against any increase in tax liability after such sale has been consummated: Provided, That the credit shall only apply to that incremental portion of gross income which is greater than the average gross income generated by the preceding business over the previous three years.
- (2) Any current tax credit that an existing qualified business may have is eligible for transfer to the person purchasing the business: Provided, That only the remaining term of the existing credit may be transferred. Any such transfer of an existing tax credit to the person purchasing the business shall make such business ineligible for the credit available under the foregoing subsection (h)(1).
- (i) A person will not qualify to use the tax credit authorized by this section if at the time of application the person is using a tax credit or tax rebate under the authority of Ordinance 96-05: Provided, That this restriction will cease to be effective at the time the person is no longer using a tax credit or tax rebate that is authorized under Ordinance 96-05.
- (j) Any taxpayer authorized to use the tax credit provided in this section that does not pay when required any B&O tax imposed by Article 711 of the Ordinances immediately forfeits any future use of the tax credit. Other than notifying the non-complying taxpayer that the taxpayer has forfeited its authorization to use the credit, the City Treasurer is not required to provide a hearing or any other procedure: Provided, That if the taxpayer can demonstrate that the required payment of B&O taxes did in fact occur

within the time stated in Sections 711.17 and 711.18 of this Article 711, the City Treasurer shall authorize the taxpayer's continued use of the tax credit.

- (k) The City Treasurer shall develop such forms as are necessary to facilitate the application and approval of any business seeking to qualify for this tax credit. The forms at a minimum shall require the business' name, address, federal employers identification number, the activities of the business, the number of employees of the business, the projected amount of qualified investment, and any other information the City Treasurer determines to be necessary. The City Treasurer shall provide information regarding this tax credit section to any business that requests it. Upon receipt of all of the relevant information, the City Treasurer shall recommend to the City Council that it either approve or disapprove the application. Upon receipt of the Treasurer's recommendation, the City Council shall vote to either approve or disapprove the application.
- (I) In order to assure the tax credit herein authorized is being properly utilized by each business determined by the City to be qualified to use the tax credit, the City Treasurer may, in person or by duly appointed agent, make examination of the books, records and papers, and audit the accounts of any such business, and may take the evidence, on oath, of any person whom he may believe shall be in possession of any relevant information. As soon as possible after procuring such information as the City Treasurer may be able to obtain that substantiates improper use of the tax credit, he shall proceed to assess the tax due and shall notify the business assessed of the amount of tax due. If the taxpayer shall refuse to pay the amount of tax due, the City Treasurer is authorized to pursue any and all action necessary to collect the amount of tax so assessed.
- (m) City Treasurer Determinations and Denials. The City Treasurer is hereby authorized to make any necessary determinations regarding forfeiture or carryover of the tax credits authorized by this section. Further, the City Treasurer, subject to review by Council, may determine that a particular tax credit application violates the spirit and

intention of this section, and deny the credit on that basis.

Passed on First Reading: November 18, 2008

Passed on Second Reading: December 2, 2008

Rusty Casto, Mayor, City of Nitro

Rita Cox, Recorder, City of Nitro

NOTE: The purpose of this Ordinance is to prohibit the granting of new business and occupation tax credits under the authority of Ordinance 96-05, and to authorize a new four year decreasing business and occupation tax credit to qualified businesses.

Strike-throughs indicate language that is being removed from the ordinance. Underlining indicates language that is being added to the ordinance.

NITRO CITY COUNCIL MEETING MINUTES DECEMBER 2, 2008

CALL TO ORDER: Mayor Rusty Casto called the meeting to order at 7:30 pm in Council Chambers. Also attending with Mayor Casto were Recorder Rita Cox. Ward 1 Councilman A. A. "Joe" Savilla, Ward 2 Councilman Bill Racer, Ward 3 Councilman Craig Matthews, Ward 4 Councilman Bill Javins, Councilmen at Large Dave Casebolt, Bob Fields and Jim McKay, City Treasurer John Young, and City Attorney Richie Robb.

INVOCATION/PLEDGE OF ALLEGIANCE: The Invocation was given by Councilman A. A. "Joe" Savilla the Pledge of Allegiance was led by John Montgomery.

FUTURE DATES OF COUNCIL: Mayor Casto announced the future dates of Council are December 16, 2008 and January 6, 2009 and January 20, 2009.

APPROVAL OF MINUTES: COUNCILMAN BILL JAVINS MOVED THE MINUTES OF NOVEMBER 18, 2008 BE APPROVED AS WRITTEN WITH A SECOND BY COUNCILMAN CRAIG MATTHEWS. VOTING FOR THE MOTION WERE RECORDER COX, COUNCILMEN MCKAY, CASEBOLT, FIELDS, SAVILLA, MATTHEWS AND JAVINS. COUNCILMAN RACER ABSTAINED FROM VOTING. THE MOTION CARRIED.

OLD BUSINESS:

LEVY VOTE. Mayor Casto announced the vote on the excess levy will be held January 31, 2009 with early voting being held in the Recorder's Office from 9:00 to 12:00 and 1:00 to 4:00 weekdays beginning January 9 and ending January 28, 2009. Recorder Cox reported that the Nazarene Church in Sattes Circle will probably be the new polling place for Ward 4. Mayor Casto said he would like for Council to come up with two names each to meet with him concerning the levy. Councilman Savilla asked Treasure John Young what portion of the levy will be paid by Nitro Marketplace. He responded that he is currently researching it. Attorney Robb said that the city can use public money to advertise that a levy election is taking place but cannot promote it with public funds. That can only be done with private donations. Councilman McKay said the NDA will help promote the levy and the marquee on 21st and 1st Ave. will be available for the Council to use.

PUBLIC HEARING CONCERNING TAX ORDINANCE AMENDING ORDINANCE 96-05 AND AN ORDINANCE TO PROVIDE ECONOMIC DEVELOPMENT TAX CREDITS RELATING TO INCENTIVES FOR BUSINESS AND OCCUPATION TAXES BEING CONSIDERED FOR ADOPTION BY THE COUNCIL OF THE CITY OF NITRO: Mayor Casto announced the public hearing was open. John Montgomery, co-chair of the Ordinance Committee, explained that by adopting this current reading of the ordinance the Ordinance to Provide Economic Development Tax Credits, the Ordinance 96-05 would no longer be in effect. The new ordinance will be for businesses with five or more employees or a yearly gross of \$500,000.00 or more. The Business and Occupation tax will be for four years; 100% for the first year. 75% for the second year, 50% for the third year, and 25% for the fourth and final year. Councilman Craig Matthews said he had heard comments from the community that Council should not be the decision maker on this issue and his response is that Council has a right to keep unwanted, undesirable businesses out of the City. Councilman Jim McKay said the Ordinance Committee has worked on this ordinance for some time and had reduced the number of employees originally suggested of an affected businesses to help smaller businesses and it was not his intent to bring in adult entertainment. Mayor Casto called for more public comment and getting no response, closed the public hearing.

SECOND READING TAX ORDINANCE AMENDING ORDINANCE 96-05 AND AN ORDINANCE TO PROVIDE ECONOMIC DEVELOPMENT TAX CREDITS TO BE APPLIED AGAINST THE BUSINES AND OCCUPATION TAX THAT SATISFY THE STATED QUALIFICATIONS: