

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
SEPTEMBER 23, 2002**

Mayor Garland S. Novosad declared a Regular Meeting duly open for the transaction of business at 7:08 p.m. Mayor Garland S. Novosad led the opening devotion and then led the pledge of allegiance.

Councilmembers present were: Mayor Garland S. Novosad, Councilmembers V. L. Wiley, Jr., Darryl Darnell, Ken Freese, Don Mueller, Domingo Montalvo, Jr, and Bryce D. Kocian.

Councilmember absent was: None.

Staff members present were: City Manager, Andres Garza, Jr., Finance Director Joyce Vasut, Deputy City Secretary Lisa Stavena, Assistant to City Manager Jackie Wheeler, Police Chief Tim Guin, Public Works Director Phillip Bush, Building Official Ronnie Bollom, EMS Director John Kowalik, Community Services Director Jo Knezek, and City Attorney Paul Webb.

Visitors present were: Ron Sanders Wharton Journal-Spectator, Paul Daly with KULP, David Schroeder with WEDCo, Bill Snyder, Lewis Fortenberry, Christine Evanicky, Billie Jones, Susan Welch, Gregory Sauls, Johnnie Roberts, Glenn Erdelt, Carlos Cotton, Garland Mann, Loretta Jackson, Anthony Rachunek, Lynda Nichols, Karen Munoz, Lee Allen, Jim Butler, Cherry Grant, Melanie Ivy, Cynthia Ivy, Karen Smith, Loretta Jackson, Cherry Grant, Jonathan Palmer, Johnny Roberts, and Barry Mangum.

The third item on the agenda was Public Comments. Lewis Fortenberry addressed the City Council regarding the Airport Hangar Rates. Mr. Fortenberry stated that the user fees from the Airport cover all expenses, unlike the Civic Center that must use funds from the others sources. He then stated that with the possibility of the storm coming to Wharton, plywood was limited. He stated that since four mills had closed and Zarsky Lumber Company would do the best they could to meet the needs of the community.

Christine Evanicky addressed the City Council regarding the crosswalk on Alabama Road from Avenue C to Hodges Lane. She stated that the city was growing, and a crosswalk needed to be installed not just for the children but for the growth of the community. She then stated that the Wharton Independent School District would not drop off the children on the road off Hodges Lane. Mrs. Evanicky stated that Don Hillis recommended she speak to the City Council about the matter.

Loretta Craft addressed the City Council regarding the crosswalk on Alabama Road from Avenue C to Hodges Lane. She stated that twenty-six children have to cross the street, and parents are afraid to let the children cross the street for their safety.

Cherry Grant addressed the City Council regarding the crosswalk on Alabama Road from Avenue C to Hodges Lane. She stated that she was a single parent, unable to pick her children up from school, and has observed many children crossing the street. She then publicly thanked Councilmember Darryl Darnell about his concern for the crosswalk. No action was taken.

The fourth item on the agenda was the Wharton Moment. Mayor Garland S. Novosad stated that a meeting was scheduled to meet with the Wharton Independent School District, Nursing Homes, Gulf Coast Medical Center, and City Staff on Wednesday, September 25, 2002 if necessary to discuss the actions to be taken in preparation for the storm.

Councilmember Bryce D. Kocian publicly recognized Lewis Fortenberry for being named Citizen of the Year by the 100 Club. He then welcomed Melanie Ivy, Wharton County Junior College Student attending the City Council meeting as part of a class requirement. No action was taken.

The fifth item on the agenda was to review and consider Recommendation from the Planning Commission:

A. Request by Reliant Energy to sub-divide property located at 1407 North Richmond Road, known as the Wharton Service Center, described by metes and bounds in the William Kinchele a/k/a Wm. Kincheloe League, Aabstract 38, a/k/a Wharton, Block 60-Ext., Lot 26B. City Manager Andres Garza, Jr. presented a memorandum dated September 17, 2002 from the Planning Commission Chairman A. J. Rath recommending the City Council approve the request by Reliant Energy. Mr. Gregory Sauls addressed the City Council regarding the subdivision of the property, and stated that this was a process in order to sell the property. He then stated that if the buyer agreed to the terms, then an easement would not be required. After some discussion, Councilmember Don Mueller made a motion to approve the request by Reliant Energy to sub-divide property located at 1407 North Richmond Road, known as the Wharton Service Center, described by metes and bounds in the William Kinchele a/k/a Wm. Kincheloe League, Aabstract 38, a/k/a Wharton, Block 60-Ext., Lot 26B. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The sixth item discussed on the agenda was to review and consider the City of Wharton Financial Report for the month of August 2002. Finance Director Joyce Vasut presented the financial report for the month of August 2002 and stated that the fiscal year was at 92%. Mrs. Vasut stated that the general fund revenues were at 94.23% and the expenditures were at 90.16%. The total ad valorem taxes collected were \$1,788,877. The sales tax for the month of July 2002 was \$92,206 with \$64,137 to the City and \$32,069 to WEDCo. The TexPool balance for July 2002 was \$2,920,132.12 with an average monthly yield of 1.8709%. After some discussion, Councilmember Bryce D. Kocian made a motion to approve the Financial Report for the month of August 2002. Councilmember Don Mueller seconded the motion. All voted in favor.

The seventh item discussed on the agenda was to review and consider a resolution designating a City of Wharton Representative to the Houston-Galveston Area Council 2003 General Assembly. City Manager Andres Garza, Jr. presented a draft copy of the letter dated September 6, 2002 requesting the City of Wharton to appoint a representative and an official alternate to Houston-Galveston Area Council (HGAC) 2003 General Assembly. He stated that on

September 24, 2001, the City Council designated Councilmember Domingo Montalvo, Jr. as the City of Wharton representative for the 2002 HGAC General Assembly and Councilmember Donald Mueller as the alternate, and presented a copy of the Resolution No. 2001-46 for their review. He then presented a draft copy of the resolution designating the City of Wharton representative and alternate to the HGAC 2003 General Assembly. After some discussion, Councilmember Darryl Darnell made a motion to appoint V. L. Wiley, Jr. as the Designating City of Wharton Representative to the Houston-Galveston Area Council 2003 General Assembly. Mayor Garland S. Novosad seconded the motion. All voted in favor. Councilmember Don Mueller made a motion to appoint Darryl Darnell as the Alternate City of Wharton Representative to the Houston-Galveston Area Council 2003 General Assembly and approve Resolution No. 2002-52, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2002 - 52**

**A RESOLUTION DESIGNATING A CITY OF WHARTON REPRESENTATIVE  
AND ALTERNATE TO THE HOUSTON-GALVESTON AREA COUNCIL 2003  
GENERAL ASSEMBLY.**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** that Councilmember V. L. Wiley, Jr. be, and is hereby designated as its Representative to the General Assembly of the Houston-Galveston Area Council for the year 2003.

**FURTHER**, that the Official Alternate authorized to serve as the voting representative should the hereinabove named representative become ineligible, or should he/she resign, is Councilmember Darryl Darnell.

**THAT**, the Executive Director of the Houston-Galveston Area Council be notified of the designation of the hereinabove named representative and alternate.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of September 2002.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**GARLAND S. NOVOSAD**  
Mayor

**ATTEST:**

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**JOYCE VASUT**  
City Secretary

Councilmember Ken Freese seconded the motion. All voted in favor.

The eighth item discussed on the agenda was to review and consider an ordinance approving amendments to the City of Wharton Budget for October 1, 2001 to September 30, 2002 Fiscal Year. City Manager Andres Garza, Jr. informed the City Council that the Finance Committee met Friday, September 20, 2002 to discuss the budget amendments for the City of Wharton October 1, 2001 to September 30, 2002 Fiscal Year. City Manager Garza presented the Finance Committee memorandum recommending to approve the budget amendments to the Budget for the City of Wharton, Texas for fiscal year 2001-02. He then presented a copy of the proposed budget amendments and draft ordinance to the City Council. Finance Director Joyce Vasut stated that the General Fund Revenue was increased by \$24,613, City Secretary increased by \$5,500, Legal & Professional increased by \$32,200, Finance decreased by \$7,050, Municipal Courts decreased by \$2,522, JAIBG increased by \$6,552, Code Enforcement decrease by \$6,278, Animal Control decreased by \$4,303, Communications decreased by \$1,900, Streets & Drainage decreased by \$14,133, Facilities Maintenance increased by \$4,649, Grant Admin. decreased by \$1,284, Pool increased by \$3,071, Capital Outlay increased by \$83,385, and Transfer Out decreased by \$122,500; Dare Fund Revenues increased by \$6,333. She stated that the overall impact on the General Fund was zero, and the budget would remain balances. Finance Director Joyce Vasut stated that the Debt Service Funds increased by \$166,878; Water & Sewer Fund decreased by \$179,758; EMS Fund increased by \$51,000; Civic Center Fund decreased by \$14,489; and Airport Fund increased by \$20,060. Mayor Garland S. Novosad stated that the \$9,500 decrease in civic center rental needed to be noted due to the damage from the repairs made at the Civic Center. After some discussion, Councilmember Bryce D. Kocian made a motion to approve Ordinance No. 2002-17, which read as follows:

**CITY OF WHARTON, TEXAS  
ORDINANCE NO. 2002 - 17**

**AN ORDINANCE APPROVING AMENDMENTS TO THE  
BUDGET FOR THE CITY OF WHARTON, TEXAS FOR  
THE FISCAL YEAR 2001 - 2002**

**WHEREAS**, the City Council of the City of Wharton, Texas finds and determines it necessary to revise the 2001-2002 budget to better reflect actual revenues and expenditures in operations and activities during the fiscal year; and,

**WHEREAS**, the City Council finds and determines that these amendments to the budget are for municipal purposes.

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Wharton, Texas that the 2001-2002 Budget be amended as per Attachment "A."

And is adopted by the following favorable majority of votes of the members of the City Council of the City of Wharton, Texas in a duly assembled city council meeting by the following majority:

V. L. Wiley, Jr.	Voted	Yes	Donald Mueller	Voted	Yes
Councilmember District No. 1			Councilmember District No.4		
Ken Freese	Voted	Yes	Bryce D. Kocian	Voted	Yes
Councilmember District No. 3			Councilmember at Large Place No. 6		
Domingo Montalvo, Jr.	Voted	Yes	Darryl Darnell	Voted	Yes
Councilmember At Large Place No. 5			Councilmember District No. 2		

Garland S. Novosad Voted Yes  
Mayor

### **Separability**

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, or portion of this ordinance is invalid or unconstitutional, any such portion shall be deemed to be a distinct and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

### **Passage and Approval**

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas this 23<sup>rd</sup> day of September 2002.

### **CITY OF WHARTON, TEXAS**

By \_\_\_\_\_  
**GARLAND S. NOVOSAD**  
Mayor

### **ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary

**APPROVED AS TO FORM:**

**ADMISSION:**

**PAUL WEBB**  
City Attorney

**JOYCE VASUT**  
Director of Finance

Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The ninth item discussed on the agenda was to review and consider Fiscal Year 2002-2003 Annual Budget for the City of Wharton, Texas.

A. Wharton Regional Airport hangar rates.

City Manager Andres Garza, Jr. informed the City Council that during the regular City Council meeting held September 9, 2002, the City Council held the public hearing to receive public input regarding City of Wharton Budget for Fiscal year 2002 - 2003. He stated that the Airport Board requested the hangar rates be reduced. Councilmember Bryce D. Kocian stated that he would like the hangar rates to remain at the current rate in order to maintain the airport improvements.

Councilmember Ken Freese stated that the City Staff should receive information on rates from surrounding Airports and then determined what the rates should be at the Airport. Glenn Erdelt addressed the City Council regarding the rate decrease. He stated that the pilots needed landing lights, a runway and shelter from the sun, however they didn't need a non-directional beacon or 5,000 feet of runway. He stated that these were selling points for the City. He stated that the rate decrease to \$132.00 would keep the Airport Fund in the black and would be fair to everyone.

Councilmember Don Mueller asked how many people were on the waiting list. Glenn Erdelt stated that there was only one person on the waiting list. Councilmember Bryce D. Kocian asked if improvement would be needed at the Airport in the future. Glenn Erdelt stated that improvements would only be to benefit the needs to Wharton for future development. Mayor Garland S. Novosad questioned the amount of ad valorem taxes paid by the pilots.

Councilmember Ken Freese stated that there was \$3,800 worth of property value, which generates \$20.00 in taxes and Schlumberger paid \$4,000 to all entities, with \$1,000 to the City. After some discussion, Councilmember Bryce D. Kocian made a motion to maintain the hangar rates at the current rate per square footage per hangar. Councilmember Ken Freese seconded the motion. Councilmembers V. L. Wiley, Jr., Ken Freese, Don Mueller, Domingo Montalvo, Jr., Bryce D. Kocian voted for the motion. Councilmember Darryl Darnell and Mayor Garland S. Novosad voted against the motion. The motion carried. Councilmember Ken Freese requested the City Council set a meeting before the end of the year to discuss Airport hangar rates. Garland Mann addressed the City Council and stated that the City Council should look at the total picture including the new hangar build by Dalton Investments, which creates a 30% vacancy rate.

B. Ordinance: An ordinance adopting the Fiscal Year 2002-2003; Appropriating the several sums established therein; and directing the City Secretary to file copies as required by law.

City Manager Andres Garza, Jr. informed the City Council that during the regular City Council meeting held September 9, 2002, the City Council held the public hearing to receive public input regarding City of Wharton Budget for Fiscal year 2002 - 2003. Finance Director Joyce Vasut informed the City Council that the proposed budget included a 25% increase for health insurance, however if TML would be accepted then the increase would be 46%, a difference of 21%. Additionally in the General Fund, worker's compensation would decrease by \$12,000 and the transfer-out for Streets Improvements would be reduced by \$30,000 in order to maintain a balanced budget. The Solid Waste would reflect the 12% increase and the \$0.50 take-all program. After some discussion, Councilmember Don Mueller made a motion to approve Ordinance No. 2002-18, which read as follows:

**CITY OF WHARTON, TEXAS  
ORDINANCE NO. 2002-18**

**AN ORDINANCE ADOPTING THE FISCAL YEAR 2002-2003 ANNUAL BUDGET FOR THE CITY OF WHARTON, TEXAS; APPROPRIATING THE SUMS ESTABLISHED THEREIN; AND DIRECTING THE CITY SECRETARY TO FILE COPIES AS REQUIRED BY LAW.**

**WHEREAS**, the City's budget for the fiscal year ending September 30, 2003, which is attached hereto, was duly prepared and filed with the City Secretary more than thirty (30) days prior to September 30, 2002.

**WHEREAS**, a public hearing was duly called and held on said budget not less than fifteen (15) days after the date of such filing with the City Secretary and prior to the time the City Council of the City of Wharton levied taxes for such current fiscal year, public notice of such hearing having been duly given as required by law; and

**WHEREAS**, all parties desiring to participate and be heard at said public hearing having been heard until no more evidence was offered, and such hearing having been concluded, and the City Council of said City having made such changes in such budget as in its judgment the law warrants and the best interest of the taxpayers of the City of Wharton, Texas, demand, said budget with such changes being attached hereto, as aforesaid.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS:**

**Section 1.**     **THAT** the findings set out in the preamble of this ordinance are true and correct.

**Section 2.**     **THAT** the budget of the City of Wharton, Texas for the fiscal year ending September 30, 2003, be and the same is hereby, in all respects, finally approved and adopted including any changes approved by the City Council; and the same shall be and is hereby filed with the City Secretary of the City.

**Section 3.**     **THAT** the General Fund is hereby established to account for resources associated with traditional government activities, which are not required legally or by sound financial management to be accounted for in another fund. The General Fund is hereby approved with \$3,388,034 estimated revenues and \$3,559,534 in appropriations and with transfers-in approved at \$450,000, and transfers-out approved at \$278,500. The amounts are specified for departmental purposes named in said budget and they are hereby appropriated to and for such purposes at the departmental level.

**Section 4.**     **THAT** the Hotel Motel Fund is created to account for the occupancy tax levied on hotel rooms within the City as adopted by city ordinance and consistently with Chapter 351 of the Texas Tax Code. The Hotel Motel

Fund is hereby approved with \$52,200 in estimated revenues and \$28,450 in appropriations and transfers-out approved at \$23,750 with beginning fund balance of approximately \$466.

**Section 5.** **THAT** the Narcotics Seizure Fund is created to account for the resources and uses of assets seized in illegal narcotics activities. The uses are limited to law enforcement activities. The Narcotics Seizure Fund is hereby approved with \$2,500 in estimated revenues, \$10,000 in appropriations, \$3,688 in transfers-out with beginning fund balance of \$23,481.

**Section 6.** **THAT** the D.A.R.E. Fund is hereby created to account for resources and uses associated with providing drug education to students. The D.A.R.E. Fund is hereby approved with \$93,700 in estimated revenues, \$120,282 in appropriations and transfer-in approved at \$7,500 and a beginning fund balance of approximately \$18,848.

**Section 7.** **THAT** the Debt Service Fund is hereby created to account for the accumulation of resources collected for Interest and Sinking requirements and for the disbursement of those resources for debt requirements. The Debt Service Fund is hereby approved with \$419,239 in estimated revenues and \$419,239 in appropriations, estimated beginning fund balance of \$404,936.

**Section 8.** **THAT** the Capital Improvement Fund is created to account for infrastructure improvements authorized by the City Council. The Capital Improvement is approved with \$101,500 in estimated revenues and \$100,000 in appropriations.

**Section 9.** **THAT** the Water and Sewer Fund is created to account for the resources and uses associated with the delivery of utility services to citizens of Wharton as an enterprise fund. The Water & Sewer Fund is hereby approved with \$1,997,381 estimated revenues. Water and sewer is approved with \$1,997,381 in appropriations, which includes a franchise fee of 5% of water and sewer sales or \$94,000, and transfers-out approved at \$450,000.

**Section 10.** **THAT** the Solid Waste Fund is created to account for the financial activities of the City's solid waste collection contract and delivery to citizens of Wharton as an enterprise fund. The Solid Waste Fund is approved with \$1,036,000 in estimated revenues and \$1,036,000 in appropriations.

**Section 11.** **THAT** the Emergency Medical Services Fund is created to account for the financial activities of the emergency medical services provided to the city and surrounding areas as an enterprise fund. The Emergency Medical Services Fund is approved with \$568,497 in estimated revenues and \$653,497 in appropriations and transfers-in approved at \$115,000 and transfers-out at \$30,000.

**Section 12.** **THAT** the Civic Center Fund is created to account for the financial

activities of the Civic Center as an enterprise fund. The Civic Center is approved with \$98,000 in estimated revenues and \$182,750 in appropriations and transfers-in approved at \$84,750.

**Section 13.** THAT the Airport Fund is created to account for the financial activities of the Wharton Regional Airport as an enterprise fund. The Airport Fund is approved with \$106,300 in estimated revenues and \$77,664 in appropriations.

**Section 14.** THAT the City Secretary shall file copies of this Ordinance and of such budget with the County Clerk of Wharton County, Texas.

**PASSED AND APPROVED** by a favorable majority of the members of the City Council of the City of Wharton, Texas, in council meeting, this 23 day of September duly assembled in accordance with Article VI of the Charter of the City of Wharton, Texas by the following vote:

Garland S. Novosad, Mayor	Voted	Yes
V. L. Wiley, Jr., Councilmember District 1	Voted	Yes
Darryl Darnell, Councilmember District 2	Voted	Yes
Ken Freese, Councilmember District 3	Voted	Yes
Donald Mueller, Councilmember District 4	Voted	Yes
Domingo Montalvo, Jr., Councilmember at Large Position 5	Voted	Yes
Bryce D. Kocian, Councilmember at Large Place 6	Voted	Yes

### **Separability**

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, phrase, or portion of this ordinance invalid or unconstitutional any such portion shall be deemed to be a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

### **CITY OF WHARTON**

By: \_\_\_\_\_  
Garland S. Novosad, Mayor

**ATTEST:**

**APPROVED FOR ADMINISTRATION:**

\_\_\_\_\_  
Joyce Vasut, City Secretary

\_\_\_\_\_  
Andres Garza, Jr., City Manager

**APPROVED AS TO FORM:**

**APPROVED FOR FUNDING:**

\_\_\_\_\_  
Paul Webb, City Attorney

\_\_\_\_\_  
Joyce Vasut, Finance Director

Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The tenth item discussed on the agenda was to review and consider an ordinance levying a Tax Rate for the City of Wharton, Texas for the Tax Year 2002; directing the Tax Assessor-Collector to assess, account for and distribute the taxes as herein levied; and providing repealing and severability clauses. City Manager Andres Garza, Jr. presented the draft ordinance levying a tax rate for the City of Wharton, Texas for the Tax Year 2002; directing the Tax Assessor-Collector to assess, account for and distribute the taxes as herein levied; and providing repealing and severability clauses. After some discussion, Councilmember Ken Freese made a motion to approve Ordinance No. 2002-19, which read as follows:

**CITY OF WHARTON, TEXAS  
ORDINANCE NO. 2002-19**

**AN ORDINANCE LEVYING A TAX RATE FOR THE CITY OF WHARTON, TEXAS, FOR THE TAX YEAR 2002; DIRECTING THE TAX ASSESSOR-COLLECTOR TO ASSESS, ACCOUNT FOR AND DISTRIBUTE THE TAXES AS HEREIN LEVIED; AND PROVIDING REPEALING AND SEVERABILITY CLAUSES.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS:**

**Section 1.** **THAT** there be and is hereby levied for the year 2002 on all real and personal property within and all real and personal property and mineral royalties owned within the city limits of the City of Wharton, Texas for the year 2001, except so much thereof as may be exempt by the constitution and of the State of Texas and of the United States, the following:

General Fund Operations	.44877/\$100 valuation
For Debt Service Requirements	.13674/\$100 valuation
Total Tax Rate	.58551/\$100 valuation

**Section 2.** **THAT** the Tax Assessor-Collector and/or Finance Director is hereby directed to assess, extend and enter upon the certified tax rolls of the City of Wharton, Texas, for the current taxable year, as provided by the Wharton County Appraisal District, the amounts and rates as herein levied, to keep correct amount of same, and when collected, to be distributed in accordance with this ordinance.

**Passage and Approval**

**PASSED AND APPROVED** by a favorable majority of the members of the City Council of the City of Wharton, Texas, in a council meeting, this 9th day of September, 2002,

duly assembled in accordance with Article VI of the Charter of the City of Wharton, Texas by the following vote:

Garland S. Novosad, Mayor	Voted	Yes
V. L. Wiley, Jr., Councilmember District 1	Voted	Yes
Darryl Darnell, Councilmember District 2	Voted	Yes
Ken Freese, Councilmember District 3	Voted	Yes
Donald Mueller, Councilmember District 4	Voted	Yes
Domingo Montalvo, Jr., Councilmember at Large Place 5	Voted	Yes
Bryce D. Kocian, Councilmember at Large Place 6	Voted	Yes

### **Separability**

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, phrase, or portion of this ordinance invalid or unconstitutional any such portion shall be deemed to be a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

### **CITY OF WHARTON**

By: \_\_\_\_\_  
Garland S. Novosad, Mayor

**ATTEST:**

\_\_\_\_\_  
Joyce Vasut, City Secretary

**APPROVED FOR ADMINISTRATION:**

\_\_\_\_\_  
Andres Garza, Jr., City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Paul Webb, City Attorney

**APPROVED FOR FUNDING:**

\_\_\_\_\_  
Joyce Vasut, Finance Director

Councilmember Darryl Darnell seconded the motion. All voted in favor.

The eleventh item discussed on the agenda was to review and consider a resolution authorizing the Mayor of the City of Wharton to execute a contract with the Wharton Chamber of Commerce and Agriculture for Visitor and Convention Bureau Services for October 1, 2002 to September 30, 2003 Fiscal Year. City Manager Andres Garza, Jr. presented a draft copy of the resolution authorizing the Mayor of the City of Wharton to execute a contract with the Wharton Chamber of Commerce and Agriculture for Visitor and Convention Bureau for October 1, 2002 to September 30, 2003 Fiscal Year, and a copy of the draft contract for fiscal year 2002 - 2003. He then presented a copy of the contract for previous fiscal year 2000 - 2001. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2002-53, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2002 - 53**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF WHARTON, WHARTON COUNTY, TEXAS TO EXECUTE AN AGREEMENT WITH THE CHAMBER OF COMMERCE AND AGRICULTURE FOR VISITOR AND CONVENTION BUREAU SERVICES FOR OCTOBER 1, 2002 TO SEPTEMBER 30, 2003 FISCAL YEAR.**

**WHEREAS,** the City of Wharton City Council hereby authorizes Garland S. Novosad, Mayor to execute an agreement with the Wharton Chamber of Commerce and Agriculture for visitor and convention bureau services; and,

**WHEREAS,** the City of Wharton and the Wharton Chamber of Commerce and Agriculture hereby agrees to be bound by the conditions as set forth in Attachment "A".

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** as follows:

**Section I.** That the City Council of the City of Wharton hereby authorizes the Mayor Garland S. Novosad of the City of Wharton to execute an agreement with the Wharton Chamber of Commerce and Agriculture.

**Section II.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> of September 2002.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**GARLAND S. NOVOSAD**  
Mayor

**ATTEST:**



This program shall be under the direction of a Board of Directors of the Chamber and such committee or committees as it may appoint to carry out such programs.

The term of this agreement shall begin as of October 1, 2002 And shall remain in effect until September 30, 2003.

The following operating procedures are hereby adopted for the program:

1. Reports: A progress report of activities and financial operations will be made available to the City on or before the 20th day of the month following the end of each calendar quarter beginning in January, in the each quarter thereafter. Each report will include all income and disbursements for the preceding quarter and for the fiscal year to date. The quarterly report for the last quarter of the fiscal year shall include an annual report of all activities of the preceding calendar year.
2. Audit: An annual audit shall be submitted to the City Council during the first quarter of each year with the fiscal year to be the same as the City fiscal year.
3. Bank Account: A check for \$1,954.17 per month shall be issued by the City to the Chamber on or before the 20th day of the month after the end of the previous month and shall be deposited in a separate bank account. The Chamber shall have custody and responsibility for such bank account, and all records relating there to during the term of this agreement.
4. Records Retention: All original books of entry will be maintained in perpetuity. All canceled checks and other financial records will be maintained for a period of five (5) years after the close of a fiscal year.
5. Bonds: Chamber officers and staff designated by the Chamber to withdraw funds shall be bonded in the amount of \$25,000.00.
6. Expenses: All expenses incurred by the Chamber in the administration of this program for the purposes of the agreement, shall be paid from this account.

The Chamber shall use the funds provided to further the purposes stated herein. The program planning, preparation and execution shall be the sole responsibility of the Chamber and the City shall not be liable for the actions of the Chamber thereof or for any debt contracted by the Chamber. The obligations of the City shall be limited to the transmittal of funds actually transferred to the Chamber from the City.

**EXECUTED** in duplicate copies, this the 23<sup>rd</sup> day of September 2002.

**CITY OF WHARTON, TEXAS**

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**Garland S. Novosad**  
Mayor

**ATTEST:**

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**Joyce Vasut**  
City Secretary

**WHARTON CHAMBER OF COMMERCE  
AND AGRICULTURE**

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**Larry Jackson**  
Chairman of the Board

**ATTEST:**

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**Billie H. Jones**  
Executive Director

**ATTACHMENT "A"**

The Chamber request for funding for 2001- 2002.

We propose to use the funds in the following ways.

Office supplies including printing, equipment and In-house publication materials	\$1,200.00
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Postage (25% of Chamber)	700.00
Telephone and Fax (15%)	600.00
Dues, Conference, Subscriptions	750.00
Utilities (25%)	800.00
Receptionist Salary (50%)	5,000.00
Executive Director	3,200.00
Office Manager	2,200.00
Promotion Video	5,900.00
Bonding for Staff	100.00
Brochures to promote Riverfront Park, Wharton County Museum, sports events, convention facilities, Colorado River Trails	3,000.00
Total	\$23,450.00

Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The twelfth item discussed on the agenda was to review and consider Group Hospitalization, Long-Term Disability, Short Term Disability, Life, Accidental Death & Dismemberment, Dental, and Vision Insurance for the City of Wharton:

**A.** Bid Tabulation.

**B.** Resolution: A resolution awarding a bid for Voluntary Dental Insurance for City Employees; Authorizing the Mayor of the City of Wharton to execute all documents relating to said contracts. City Manager Andres Garza, Jr. presented a copy of the bid tabulation for the Group Health Bids that were received August 20, 2002. He stated that the City Council Finance Committee reviewed all bids received for the City's Employee Group Health Coverage during the special Finance Committee meeting held on Friday, September 20, 2002. He then presented a copy of the memorandum dated September 20, 2002 from the City of Wharton Finance Committee recommending rejection of all bids received on August 20, 2002 for health insurance, life insurance, long-term disability and AD&D coverage; to join the Intergovernmental Employee Benefits Pool and accept the proposal received from TML for group health insurance, life insurance, long-term disability and AD&D coverage; and accept the bid from Protective Dental for voluntary employee dental coverage. City Manager Andres Garza, Jr. then presented a draft copy of the resolution awarding the dental coverage bid to Fortis Benefits Insurance Coverage. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to reject the bids received for group hospitalization, long-term disability, short-term disability, life,

accidental death & dismemberment, and vision insurance and approve Resolution No. 2002-54, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2002-54**

**A RESOLUTION AWARDED A BID FOR VOLUNTARY DENTAL COVERAGE FOR CITY OF WHARTON EMPLOYEES; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACTS.**

**WHEREAS**, competitive, sealed bids were received on August 20, 2002, for group hospitalization, long-term disability, short-term disability, life, accidental death & dismemberment, dental and vision insurance for city employees; and

**WHEREAS**, Fortis Benefits Insurance Co. was deemed to be the best qualified bidder as per bid specifications for voluntary dental coverage; and

**WHEREAS**, this resolution is passed in accordance with this bid.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** as follows:

Section I. That Fortis Benefits Insurance Co. is hereby awarded the bid for voluntary dental coverage for City Employees for the City of Wharton in accordance with the bid specifications.

Section IV. That Garland S. Novosad, Mayor of the City of Wharton is hereby authorized to sign any documents relating to the aforementioned contract.

Section V. That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of September 2002.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**GARLAND S. NOVOSAD**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary

Councilmember V. L. Wiley, Jr. seconded the motion. Mayor Garland S. Novosad abstained. Councilmember V. L. Wiley, Jr., Darryl Darnell, Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Bryce D. Kocian voted for the motion. The motion carried.

The thirteenth item discussed on the agenda was to review and consider Proposal submitted by Texas Municipal League (TML) Intergovernmental Employee Benefits Pool for City Employee Benefits:

A. Resolution: A resolution authorizing execution of the TML Intergovernmental Employee Benefits Pool Interlocal Agreement; Adopting a Plan of Health Benefits for City Officers and Employees; Repealing all Resolutions in Conflict; Providing an Open Meetings Clause; and Providing an Effective Date. City Manager Andres Garza, Jr. presented a copy of the memorandum dated September 17, 2002 from Finance Director Joyce Vasut and himself regarding the Employee Health Insurance Coverage, which stated the following: TML has provided the City with a proposal for Group Benefits Program. The City of Wharton Insurance Committee met on Monday, September 16, 2002 and recommends the following:

- Reject the bids received on August 20, 2002 for health insurance, life insurance, long-term disability and AD&D coverage.
- Join the TML Intergovernmental Employee Benefits Pool and accept the proposal received from TML for group health insurance.
- Accept the bid from Protective Dental for voluntary employee dental coverage.

City Staff requested an opinion from the City Attorney's Office who agrees that the City may join TML without going through the bid process since TML is an intergovernmental risk pool.

The program proposed by TML includes benefits that are very similar to the current program and the proposed rates are as follows compared to the current rates:

	<u>Current</u>	<u>Proposed</u>
Employee	\$ 246.84	\$ 361.72
Spouse	295.39	504.98
Child(ren)	196.95	273.02
Family	492.34	850.42

The Finance Committee concurred with the Insurance Committee's recommendation. The plan submitted by TML is relatively equal to the renewal submitted by Aetna and the TML proposal is approximately \$115,000 less than the renewal from Aetna. Therefore, by selecting TML, the City staff would be able to balance the budget for the 2002-03 fiscal year.

City Manager Andres Garza, Jr. stated that the City Council Finance Committee reviewed all bids received for the City's Employee Group Health Coverage during the special Finance Committee meeting held Friday, September 20, 2002. City Manager Andres Garza, Jr. stated that the City Staff was recommending that the City Council consider entering into the Interlocal

Agreements for health insurance coverage for the City Employees, and then presented the resolutions and contracts for the insurance coverage with TML. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2002-55, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2002-55**

**A RESOLUTION AUTHORIZING EXECUTION OF THE TML INTERLOCAL EMPLOYEE BENEFITS POOL INTERLOCAL AGREEMENT; ADOPTING A PLAN OF HEALTH BENEFITS FOR CITY OFFICERS AND EMPLOYEES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING AN OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Wharton desires to provide health benefits coverage to its officers and employees; and

**WHEREAS**, TML Intergovernmental Employee Benefits Pool is a health risk pool established pursuant to Texas Local Government Code Chapter 172, Texas Government Code Chapter 791, and the Texas Trust Code to provide health benefits coverage for officers and employees of Texas political subdivisions under an Interlocal agreement; and

**WHEREAS**, the City of Wharton desires to provide health benefits coverage to its officers and employees through the TML Intergovernmental Employee Benefits Pool and to enter into an Interlocal agreement for that purpose; and

**WHEREAS**, the City of Wharton desires to select a plan of benefits for its officers and employees to be provided by the TML Intergovernmental Employee Benefits Pool; and

**WHEREAS**, executing the TML Intergovernmental Employee Benefits Pool Interlocal Agreement is in the best interest of the City of Wharton, its officers and employees, and the public generally;

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS THAT;**

**SECTION I.** The foregoing recitals are incorporated into this resolution as findings of fact.

**SECTION II:** The City of Wharton hereby elects to join the TML Intergovernmental Employee Benefits Pool by executing the Pool's Interlocal Agreement.

**SECTION III:** The City of Wharton hereby adopts the following benefit plans to be provided to its officers and employees through the TML Intergovernmental Employee Benefits Pool: Group Hospitalization, Long-Term Disability, Short Term Disability, Life, Accidental Death & Dismemberment. The benefit plan herein adopted are attached hereto as Exhibit A and incorporated herein for all purposes.

**SECTION IV:** Mayor Garland S. Novosad is hereby authorized to execute the TML Intergovernmental Employee Benefits Pool Interlocal Agreement on behalf of the City of Wharton.

**SECTION V:** The City Secretary is hereby ordered to enter a copy of this resolution in the City of Wharton minutes.

**SECTION VI:** All existing City of Wharton resolutions in conflict with the provisions of this resolution are repealed to the extent of the conflict.

**SECTION VII:** It is hereby officially found and determined that the meeting at which this resolution was considered was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**SECTION VIII:** This resolution shall be effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of September 2002.

**CITY OF WHARTON**

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**GARLAND S. NOVOSAD**  
Mayor

**ATTEST:**

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**JOYCE VASUT**  
City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

B. Resolution: A resolution authorizing the execution of the TML Intergovernmental Employee Benefits Pool Continuation of Coverage Agreement; Repealing all Resolutions in Conflict; Providing an Open Meetings Clause; and Providing an Effective Date. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2002-56, which read as follows:

**CITY OF WHARTON**  
**RESOLUTION NO. 2002-56**

**A RESOLUTION AUTHORIZING EXECUTION OF THE TML INTERGOVERNMENTAL EMPLOYEE BENEFITS POOL CONTINUATION OF COVERAGE AGREEMENT; REPEALING ALL RESOLUTIONS IN CONFLICT; PROVIDING AN OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Wharton have the TML Intergovernmental Employee Benefits Pool administer continuation coverage for its officers and employees; and

**WHEREAS**, executing the TML Intergovernmental Employee Benefits Pool Continuation of Coverage Agreement is in the best interest of the City of Wharton, its officers and employees, and the public generally.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS THAT;**

**SECTION I.** The foregoing recital is incorporated into this resolution as findings of fact.

**SECTION II:** The City of Wharton hereby elects to have the TML Intergovernmental Employee Benefits Pool administer the City's continuation of coverage.

**SECTION III:** The City of Wharton hereby adopts the continuation of coverage agreement provided by the TML Intergovernmental Employee Benefits Pool.

**SECTION IV:** Mayor Garland S. Novosad is hereby authorized to execute the TML Intergovernmental Employee Benefits Pool continuation of coverage agreement on behalf of the City of Wharton.

**SECTION V:** The City Secretary is hereby ordered to enter a copy of this resolution in the City of Wharton minutes.

**SECTION VI:** All existing City of Wharton resolutions in conflict with the provisions of this resolution are repealed to the extent of the conflict.

**SECTION VII:** It is hereby officially found and determined that the meeting at which this resolution was considered was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**SECTION VIII:** This resolution shall be effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of September 2002.

**CITY OF WHARTON**

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**GARLAND S. NOVOSAD**  
Mayor

**ATTEST:**

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**JOYCE VASUT**  
City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The fourteenth item discussed on the agenda was to review and consider City of Wharton Property & Casualty and Worker's Compensation Bid:

**A. Bid Tabulation.**

**Resolution:** A resolution awarding a bid for Property & Casualty and Worker's Compensation Insurance for the City of Wharton; Authorizing the Mayor of the City of Wharton to execute documents relating to said contract. City Manager Andres Garza, Jr. informed the City Council that the bids were received September 5, 2002 for Property & Casualty and Worker's Compensation Insurance for the City of Wharton. He then presented a copy of the bid tabulation and draft resolution awarding the bid. Finance Director Joyce Vasut stated that the Finance Committee met on September 20, 2002 and recommended to accept the bid from the Texas Municipal League-Intergovernmental Risk Pool for Property & Casualty and Worker's Compensation Insurance Coverage as requested in the bid specifications. She stated that the bid specifications called for a \$1,000 Deductible, however Insurance Net submitted a \$5,000 Deductible for Law Enforcement Liability, Public Officials, Property - lightning, and Airport Liability. Councilmember Bryce D. Kocian questioned why Insurance Net did not provide a quote for the \$1,000 deductible. City Manager Andres Garza, Jr. stated that Insurance Net indicated they could not find coverage for the deductible amount requested. Councilmember Darryl Darnell stated that TML could provide the \$1,000 deductible since they are in a pool. Councilmember Ken Freese stated that the bid specifications should be broader in order for all agencies to solicit bids. City Attorney Paul Webb informed the City Council that Insurance Net would not provide pollution coverage, therefore if the City would have a spill it would not be covered. He stated that if the Wastewater Treatment Plant had a spill and went into someone's home, then the City would not be covered. Lynda Nichols informed the City Council that she could not submit a bid due to the deductible requirements. She requested that the proposal be divided into sections in order for other insurance agencies to submit a bid. City Manager Andres Garza, Jr. stated that the City Council would need to make a policy decision on what risks to take, however with the \$1,000 deductible the risk would be minimal. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2002-57, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2002-57**

**A RESOLUTION AWARDED A BID FOR PROPERTY & CASUALTY AND WORKER'S COMPENSATION INSURANCE FOR THE CITY OF WHARTON; AUTHORIZING GARLAND S. NOVOSAD, MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACTS.**

**WHEREAS,** the City Council of the City of Wharton recognizes that there is a need for the City to obtain Property & Casualty & Worker's Compensation Insurance coverage; and

**WHEREAS,** competitive, sealed bids were received on September 5, 2002, for property & casualty & worker's compensation insurance; and

**WHEREAS,** Texas Municipal League Intergovernmental Risk Pool (TML-IRP) was deemed to be the best and lowest qualified bidder as per bid specifications for property & casualty; and

**WHEREAS,** Texas Municipal League was deemed to be the best and lowest qualified bidder as per bid specifications for worker's compensation; and

**WHEREAS,** the City Council of the City of Wharton has determined that it is in the best interest of the City of Wharton to enter into such agreements.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** as follows:

Section I. That TML-IRP is hereby awarded the bid for Property & Casualty Insurance for the City of Wharton in accordance with the bid specifications.

Section II. That TML-IRP is hereby awarded the bid for Worker's Compensation Insurance for the City of Wharton in accordance with the bid specifications.

Section III. That Garland S. Novosad, Mayor of the City of Wharton is hereby authorized to sign any documents relating to the aforementioned contracts.

Section III. That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of September 2002.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**GARLAND S. NOVOSAD**  
Mayor

**ATTEST:**

**JOYCE VASUT**  
City Secretary

Councilmember Don Mueller seconded the motion. All voted in favor.

The fifteenth item discussed on the agenda was to review and consider Recommendation from the City Council Finance Committee:

A. Resolution: A resolution administratively approving an application for tax abatement filed by J-M Manufacturing, Inc. City Manager Andres Garza, Jr. presented a copy of the letter dated September 3, 2002 from Wharton Economic Development Corporation Executive Director David Schroeder regarding the tax abatement request by J-M Manufacturing, Inc, and a copy of the letter dated August 27, 2002 from Mr. Jeff Hsu of J-M Manufacturing submitting the application for tax abatement and tax abatement. He stated that the Finance Committee met Friday, September 20, 2002 to discuss the request, and recommended the City Council administratively approve the application from J-M Manufacturing for tax abatement. City Manager Andres Garza, Jr. then presented a copy of the layout drawing for proposed facility for the J-M Manufacturing, Inc. tax abatement request. Mayor Garland S. Novosad requested the City Council approve the tax abatement for the ten year period at 100%. After some discussion, Councilmember Bryce D. Kocian made a motion to approve Resolution No. 2002-58, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2002 - 58**

**A RESOLUTION ADMINISTRATIVELY APPROVING AN APPLICATION FOR  
TAX ABATEMENT FILED BY J-M MANUFACTURING, INC.**

**WHEREAS,** heretofore previously, the City Council of the City of Wharton did establish and adopt certain criteria and guidelines for review and administrative approval of applications for tax abatements; and

**WHEREAS,** the City Manager of the City of Wharton has reviewed the application heretofore previously filed and has approved the same by memorandum dated the 20<sup>th</sup> day of September 2002 a copy of which is attached hereto and marked Exhibit "A".

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** that:

**Section I.** The City Council of the City of Wharton receives and makes a part of the record the recommendation of the City Manager, dated the 20<sup>th</sup> day of September 2002, recommending administrative approval in accordance with the Guidelines and Criteria for Granting Tax Abatements as adopted by Resolution No. 2001-69 on the 10<sup>th</sup> day of December 2001 and directs that said recommendation be filed and maintained among the official papers of the City relating to the proposed tax abatement.

**Section II.** After review to the extent deemed necessary by the City Council of the City of Wharton, the City Council by this Resolution does administratively approve the application for tax abatement heretofore previously filed by J-M Manufacturing, Inc. on the 27<sup>th</sup> day of

August 2002, and directs, in accordance with the requirements of law, and the heretofore named Guidelines and Criteria for Granting Tax Abatements, that an appropriate agreement be prepared and submitted to the City Council of Wharton, Texas for final consideration.

**Section III.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of September 2002.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**GARLAND S. NOVOSAD**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

B. Ordinance: An ordinance approving and authorizing the Mayor of the City of Wharton to sign and execute for and on behalf of the City of Wharton a Tax Abatement Agreement with J-M Manufacturing, Inc. in a form as attached hereto and marked Exhibit "1" and making certain findings in accordance with the requirements of law. After some discussion, Mayor Garland S. Novosad made a motion to approve Ordinance No. 2002-20, which read as follows:

**CITY OF WHARTON, TEXAS  
ORDINANCE NO. 2002 - 20**

**AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO SIGN AND EXECUTE FOR AND ON BEHALF OF THE CITY OF WHARTON A TAX ABATEMENT AGREEMENT WITH J-M MANUFACTURING, INC. IN A FORM AS ATTACHED HERETO AND MARKED EXHIBIT "1" AND MAKING CERTAIN FINDINGS OF FACT IN ACCORDANCE WITH THE REQUIREMENTS OF LAW.**

**WHEREAS,** heretofore previously, the City Council of the City of Wharton by Ordinance No. 2001-02 did create a reinvestment zone upon a certain tract and parcel of property as described in said ordinance on file; and

**WHEREAS,** an agreement has been reached by and between the City of Wharton and the applicant to enter into a tax abatement agreement; and

**WHEREAS,** said agreement provides for tax abatement in accordance with certain conditions, restrictions and limitations as therein set out; and

**WHEREAS,** the City Council of the City of Wharton finds and determines that the tax abatement agreement, as attached hereto and marked Exhibit “1” is in accordance with the requirements of law and, therefore, should be approved.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS:**

**Section I.** The Mayor, for and on behalf of the City of Wharton, is authorized to sign and execute a tax abatement agreement with J-M Manufacturing, Inc. for the purpose of providing tax abatement with certain conditions, limitations and restrictions as set out in said agreement and under the requirements of law as specifically set out in Chapter 312 of the Texas Tax Code.

**Passed, Approved and Adopted** this 23<sup>rd</sup> day of September 2002.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**GARLAND S. NOVOSAD**  
**Mayor**

**ATTEST:**

**BY:** \_\_\_\_\_  
**JOYCE VASUT**  
**City Secretary**

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The sixteenth item discussed on the agenda was to review and consider City Council consideration regarding the installation of a school crossing on Alabama Road. City Manager Andres Garza, Jr. informed the City Council that during the regular City Council meeting held September 9, 2002, the City Council deferred this item due to the City Staff waiting for information to be supplied by the Texas Department of Transportation Traffic Division. He then presented a copy of the memorandum date September 19, 2002 from Police Chief Tim Guin regarding his meeting with Mr. Paul Frerich, TxDOT Traffic Engineer and his recommendations regarding the proposed installation of a cross walk on Alabama Road, which stated the following:

Tim Guin met with Paul Frerich of the Texas Department of Highways and Transportation on September 18, 2002. Mr. Frerich and himself made an inspection of the area in question as well as the surrounding areas. Based on the on-site visit as well as the data from the twenty hours of observation Mr. Frerich made the following observations, with the safety of school children as the priority.

He stated that the best and safest solution for children crossing N. Alabama Road is for them not to cross it at all. Mr. Frerich observed that arrangement might be made with the School District to have buses pick-up students at a "bus stop" located to the east of N. Alabama Road. There are two streets, Weston and Shirley that do not appear to have vehicular traffic on them. It may be possible to make arrangements with the School District to pick up students in this area.

Another possible plan is to place a crosswalk on Alabama Road, with an adult crossing guard. Mr. Frerich explained that the State typically ask that the City or School District supply an adult "Crossing Guard" at all crossing of four or more lanes, before they are constructed. Based on his knowledge of Alabama Road, Mr. Frerich recommended that an adult "Crossing Guard" be used at any crosswalk in this location.

Police Chief Tim Guin stated that he spoke to Brad Cloud of the Wharton Independent School District about the plans. He advised that the Superintendent felt they would not be able to make any additional stops due to budgetary restraints. He also stated that they would not be interested in funding a Crossing Guard.

Councilmember Bryce D. Kocian stated that the City also needed to survey Rusk, S. East Avenue, Milam Street, to include a loop around the schools for placement of crosswalks throughout the city. Police Chief Tim Guin stated that the minimum City Council could provide for crosswalks would include markings, and caution signs. Councilmember Bryce D. Kocian stated that would be a false sense of security for the children. Police Chief Guin recommended lighting the crosswalk. After some discussion, Councilmember Darryl Darnell made a motion to designate Alabama from Avenue C to Hodges Lane a school crosswalk with minimum markings at this time. Councilmember V. L. Wiley, Jr. seconded the motion. Councilmembers V. L. Wiley, Jr., Darryl Darnell and Mayor Garland S. Novosad voted for the motion. Councilmembers Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Bryce D. Kocian voted against the motion. The motion died. Councilmember Bryce D. Kocian stated that he desired the City Council address all school crosswalks. Councilmember Don Mueller stated that Jackson County assigned the Parent Teacher Organization for crosswalk patrol in their city. Mayor Garland S. Novosad stated that he would meet with the Wharton Independent School District board regarding assistance. After some discussion, Councilmember Don Mueller made a motion to erect pedestrian crossing on Alabama intersecting Hodges and Avenue C with assistance from the School District for a Crossing Guard. Councilmember Darryl Darnell seconded the motion. Councilmember V. L. Wiley, Jr., Darryl Darnell, Don Mueller, Domingo Montalvo, Jr., Bryce D. Kocian, and Mayor Garland S. Novosad voted for the motion. Councilmember Ken Freese voted against the motion. The motion carried.

The seventeenth item discussed on the agenda was to review and consider City of Wharton Ambulance Chassis:

**A. Bid Tabulation.**

Resolution: A resolution awarding a bid for the City of Wharton Ambulance Chassis; Authorizing the Mayor of the City of Wharton to execute all documents relating to said purchase. City Manager Andres Garza, Jr. informed the City Council that the bids were received for the City of Wharton ambulance chassis Wednesday, September 18, 2002. He then presented a copy of the memorandum of recommendation dated September 18, 2002 from EMS John Kowalik and a copy of the letter dated September 17, 2002 from Mr. Ronnie Adams of Von-Wil Ford, Inc. regarding the unavailability of the 2002 model one ton ambulance chassis. EMS Director John

Kowalik requested the City Council reject all the bids received and readvertise for a 2003 model due to unavailability of the 2002 model. Councilmember Don Mueller asked if the Houston-Galveston Area Council was checked for the purchase of the chassis. EMS Director John Kowalik stated that he checked on the website and there was none available. After some discussion, Councilmember Don Mueller made a motion to reject all bids received for the Ambulance Chassis. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The eighteenth item discussed on the agenda was to review and consider request by Mr. Barry W. Mangum to address the City Council regarding the City of Wharton Code of Ordinances, Chapter 14 Animals and Fowl. City Manager Andres Garza, Jr. presented a copy of the letter the City Staff received September 19, 2002 from Mr. Mangum requesting to discuss the City of Wharton Code of Ordinances Chapter 14 Animals and Fowl. He stated that the City Council voted to amend the City of Wharton Chapter 14 Animals and Fowl Ordinance during the regular meeting held April 8, 2002. He said the Police Department issued letters to the citizens of Wharton who had animals located within the City limits informing them that the ordinance would be enforced beginning October 19, 2002. He stated that the ordinance became effective April 19, 2002 at 12:01 a.m., which allowed the animal owners six months to comply with the ordinance. City Manager Andres Garza, Jr. stated that Mr. Mangum was one of the animal owners who had livestock located within the City's limits. He then presented a copy of the City of Wharton Code of Ordinance Chapter 14, Animals and Fowl. Mr. Barry Mangum addressed the City Council regarding the ordinance requirements. He stated that his horses are next to Councilmember V. L. Wiley, Jr. rent house. He said that he was approached six months prior and he complied with the existing ordinance at the time. He asked the City Council why did the new ordinance come about, and why then require 8,000 square feet per animal. He stated that he did not believe that each animal needed 8,000 square feet. Mr. Mangum requested the City Council revise the ordinance, since a horse provides his family and children a hobby and keeps them away from drugs. Councilmember V. L. Wiley, Jr. stated that he had a problem with way the horses were kept. Barry Mangum stated that the horses have been there for years, and no complaints were received until Councilmember V. L. Wiley, Jr. moved in the neighborhood. City Attorney Paul Webb stated that the ordinance would not allow a grandfather clause, and violation of the ordinance would be addressed in Municipal Court, however until a fair and equitable arrangement has been made, no prosecution would be filed. Barry Mangum stated that everyone should be treated the same, with no exceptions for 4-H, and FFA. Johnny Roberts addressed the City Council regarding the Westend Community Action Group that meets monthly to discuss problems in the area. Mayor Garland S. Novosad stated that he has had the pleasure to work with the committee and requested that Mr. Barry Mangum work with the City Council and City Manager for a solution. Mr. Hayes addressed the City Council and stated that the new ordinance would not allow him to sell colts, which he has breed and is now unable to sell. City Manager Andres Garza, Jr. presented a letter received on September 23, 2002 from the Committee of West End Citizens to the City Council. After some discussion, no action was taken.

The nineteenth item discussed on the agenda was to review and consider City of Wharton Wastewater Treatment Plant No. 2 Improvement Project, Texas Capital Fund Project No. 716522 and Economic Development Corporation Project No. 08-01-03600:

**A. Bid Tabulation.**

B. Resolution: A resolution awarding a contract for the construction phase of the City of Wharton Wastewater Treatment Plant No. 2 Improvement Project, Texas Capital Fund Project No. 716522 and Economic Development Corporation Project No. 08-01-03600; Authorizing the Mayor of the City of Wharton to execute all documents relating to said contract. City Manager Andres Garza, Jr. informed the City Council that bids were received for the City of Wharton Wastewater Treatment Plant No. 2 Improvement Project Tuesday, September 17, 2002. He then presented a copy of the bid tabulation and a draft resolution awarding the bid, and a letter of recommendation by Mr. Carlos Cotton, P.E. of Jones & Carter, Inc. Mr. Carlos Cotton addressed the City Council and recommended JTR Constructors, Inc. for the project in the amount of \$1,117,499. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2002-60, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2002 - 60**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING THE BID TO JTR CONSTRUCTORS, INC. FOR THE CITY OF WHARTON WASTEWATER TREATMENT PLANT NO. 2 IMPROVEMENT PROJECT, TEXAS CAPITAL FUND PROJECT NO. 716522 AND ECONOMIC DEVELOPMENT ADMINISTRATION PROJECT NO. 08-01-03600; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.**

**WHEREAS**, competitive, sealed bids were received September 17, 2002 for the City of Wharton Wastewater Treatment Plant No. 2 Improvement Project, Texas Capital Fund Project No. 716522 and Economic Development Administration Project No. 08-01-03600; and

**WHEREAS**, the City of Wharton City Council wishes to award the bid to JTR Constructors, Inc., the lowest, best qualified bidder, in the amount of \$1,117,499.00 for City of Wharton Wastewater Treatment Plant No. 2 Improvement Project, Texas Capital Fund Project No. 716522 and Economic Development Administration Project No. 08-01-03600; and

**WHEREAS**, JTR Constructors, Inc. wishes to accept a contract the City of Wharton Wastewater Treatment Plant No. 2 Improvement Project, Texas Capital Fund Project No. 716522 and Economic Development Administration Project No. 08-01-03600 for the total construction cost of \$1,117,499.00; and

**WHEREAS**, the City of Wharton and JTR Constructors, Inc. wish to be bound by the conditions as set forth in Attached "A".

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** as follows:

**Section I.** That the City Council of the City of Wharton hereby authorizes the Mayor of the City of Wharton to execute a contract with JTR Constructors, Inc. for the City of Wharton Wastewater Treatment Plant No. 2 Improvement Project, Texas Capital Fund Project No. 716522 and Economic Development Administration Project No. 08-01-03600.

**Section II.** That the City of Wharton and JTR Constructors, Inc. are hereby bound by the conditions as set forth in Attached "A".

**Section III.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of September 2002.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**GARLAND S. NOVOSAD**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The twentieth item discussed on the agenda was to review and consider Wharton Regional Airport Land Lease:

- A. Bid Tabulation.
- B. **Resolution:** A resolution awarding a bid for the Wharton Regional Airport Land Lease; Authorizing the Mayor of the City of Wharton to execute a lease agreement for the lease of approximately one acre at the Wharton Regional Airport. City Manager Andres Garza, Jr. informed the City Council that bids were received for the City of Wharton Wharton Regional Airport Land Lease on Monday, September 16, 2002 from Dupre Transports in the amount of \$800 per month, plus the cost of \$8,500 to install loading facility. City Attorney Paul Webb stated that it was a general lease agreement and would allow use of heavy equipment and a variance from the aviation requirement. After some discussion, Councilmember Darryl Darnell made a motion to approve Resolution No. 2002-59, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2002 - 59**

**A RESOLUTION AWARDED A BID FOR THE WHARTON REGIONAL AIRPORT LAND LEASE; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON, TEXAS TO EXECUTE A LEASE AGREEMENT WITH THE DUPRE TRANSPORTS LLC FOR THE LEASE OF APPROXIMATELY ONE ACRE AT THE WHARTON REGIONAL AIRPORT.**

**WHEREAS,** competitive sealed bids were received on Monday, September 16, 2002 for the Wharton Regional Airport Land Lease; and

**WHEREAS,** Dupre Transports LLC was deemed to be the best and lowest qualified bidder as per bid specifications; and

**WHEREAS,** the City of Wharton City Council hereby authorizes Garland S. Novosad, Mayor to execute a lease agreement with Dupre Transports LLC; and,

**WHEREAS,** the City of Wharton and the Dupre Transports LLC hereby agrees to be bound by the conditions as set forth in Attachment "A".

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** as follows:

**Section I.** That the City Council of the City of Wharton hereby authorizes the Mayor Garland S. Novosad of the City of Wharton to execute a lease agreement with Dupre Transports LLC.

**Section II.** That this resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> of September 2002.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**GARLAND S. NOVOSAD**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary

**STATE OF TEXAS**

**COUNTY OF WHARTON**

**WHARTON MUNICIPAL AIRPORT**  
**LEASE AGREEMENT**

The City of Wharton, a municipal corporation acting by and through the City of Wharton Airport Board, hereinafter referred to as Lessor, and Dupre Transport, LLC, a Texas Corporation, hereinafter referred to as Lessee, whether one or more, enter into this lease agreement on the following terms and conditions:

**Description**

In consideration of the mutual agreements herein set forth, and other good and valuable consideration, Lessor leases to Lessee and Lessee leases from Lessor, the following situated at the Wharton Regional Airport, in the City of Wharton, Wharton County, Texas, as follows:

1. Approximately One Acre of Land as indicated in the Attached A.

### **Terms of Lease**

2.1 The term of this lease shall be for a two-year period beginning on the 1<sup>st</sup> day of October 2002 and terminating on the 30<sup>th</sup> day of September 2004.

2.2. Either party will have the ability to terminate this lease upon thirty (30) days written notice.

### **Rent**

3.1 Lessee shall pay to Lessor, at City Hall, 120 E. Caney Street, Wharton, Texas 77488, or wherever Lessor designates in writing, without any prior demand therefor and without any deduction or setoff whatsoever, rental as follows:

The amount of \$800.00 payable per month. Each installment is due on the 1<sup>st</sup> of each month of the lease term, except that Lessee shall pay the rent for the first and last months at the time Lessee executes this lease.

### **Uses and Purposes**

4.1 The Lessee shall use the described property for transport operations and container storage at the Wharton Regional Airport for the duration of the lease agreement.

Lessee will provide the maintenance for the area leased at the Wharton Regional Airport as indicated in the Attached A.

Lessee will not construct or install office buildings on the area leased.

Lessee shall seek permission to make any improvements to area for their needs, such request must be in writing and all improvements made shall become the property of the City upon termination of the lease agreement.

### **Fees**

Lessor shall assist Lessee in the construction of a permanent loading facility and Lessee shall pay Lessor as indicated below:

1).	Materials on Pad – Limestone for 100' x 150' pad	\$5,500.00
2).	Labor for 100' x 150' pad	\$1,500.00
3).	Labor for concrete strip	<u>\$1,500.00</u>
	Total	\$8,500.00

Any changes in the size or cost shall be mutually agreed upon in writing and should the loading facility exceed the total listed above, the Lessee shall pay any and all additional costs incurred to Lessor.

### **Conditions**

5. This lease is subject to the terms and conditions of all agreements between the City of Wharton and the Federal Aviation Agency, Texas Aeronautics Commission, the fixed base operator, and the lessee of the main hangar, as well as other laws, ordinances, rules and regulations applicable to the maintenance and operation of Wharton Municipal Airport, and all such laws, rules, and regulations as they now exist or that may be enacted by the City of Wharton or the City of Wharton Airport Board or any other lawful authority having jurisdiction over the conduct of operations at the airport.

### **Taxes**

6. Lessee shall be liable for and must pay all taxes levied against personal property and trade fixtures placed by Lessee in the Leased Premises.

### **Surrender**

7. Lessee shall throughout the lease term maintain the property and keep it free from waste or nuisance and shall deliver up the property in clean and sanitary condition at the termination of this lease in good repair and condition, reasonable wear and tear and damage by fire, tornado, or other casualty excepted.

### **Force Majeure**

8. Neither Lessor nor Lessee shall be required to perform any term, condition or covenant in this lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material, or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonable within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable wholly or in part, to prevent or overcome.

### **Damage or Destruction to Leased Premises**

9. Lessee shall repair, at Lessee's sole expense, under the direction and supervision of Lessor, any damage to or destruction of the leased premises resulting from the breach of any of Lessee's obligations hereunder or from the negligence of Lessee, Lessee's agents or employees, or any person or persons who may be on the leased premises with the consent or express or implied invitation of Lessee. In any of the above events, the amount of rental payable hereunder by Lessee to Lessor shall not be suspended or reduced.

### **Lessee's Examination of Premises**

10.1 Lessee acknowledges that Lessee has thoroughly examined the leased premises and has made an adequate inspection thereof and accepts the leased premises in the condition in which the same now exist and in which they may hereafter exist during the term of this lease. Therefore, Lessee agrees that Lessor shall not be liable to Lessee, or any of Lessee's agents, employees, servants, or invitees, for any injury to persons or damage to property due to the condition of or the design or any defect in the property that may exist or subsequently occur.

10.2 Lessee, with respect to Lessee and Lessee's agents, employees, servants, and invitees, expressly assumed all risk and liability of damage to persons and property, either proximate or remote, by reason of the present or future condition of the leased premises.

### **Lessor's Access to Premises**

11. Lessor shall have access to the property at all times and shall name a local agent. "Local agent" shall be defined as one who shall provide access on two hour's notice during normal business hours during normal working days. The name and address of Lessee's local agent or as follows:

<u>NAME</u>	<u>ADDRESS</u>
Duncan Cameron	Dupre Transport, LLC P. O. Box 1344 Port Lavaca, Texas 77979 (361) 553-2257

### **Maintenance of Lessee's Property**

12. Lessee shall at all times maintain the leased property in a reasonable and prudent manner. All property under the contract of lease shall be kept free of trash and debris, mowed, and maintained by the Lessee.

### **Indemnity**

13.1 Lessee agrees that Lessee will indemnify and hold Lessor harmless of, from, and against all suits, claims, and actions of any kind by reason of any breach, violation, or non-performance of any of the terms or conditions on the part of Lessee, specifically including, but not limited to, reasonable attorney's fees that Lessor may incur, as a result of any act of Lessee or Lessee's invitees which should cause any such suit, claim, or action of any kind by reason of violation or non-performance of the terms or conditions of this lease.

13.2 Additionally, Lessee agrees to indemnify and hold Lessor harmless of, from, and against all claims, actions, damages, liabilities, and expenses asserted against Lessor, specifically including, but not limited to, reasonable attorney's fees that Lessor incurs, on account of injuries to persons or damage to property when and to the extent that any such damage or injury may be caused, either proximately or remotely, wholly or in part, by any act or omission, whether negligent or not, of Lessee or any of Lessee's agents, servants, employees, contractors, patrons, or invitees or any other person entering upon the leased premises under or with the express or implied invitation of Lessee, or if any such injury or damage may in any way arise from or out of

the occupancy or use of Lessee or Lessee's agents, employed, and invitees of the leased premises.

13.3 The Lessee hereby agrees to maintain liability/chemical liability insurance, covering \$100,000.00 bodily injury, \$300,000.00 per occurrence, and \$100,000.00 property damage. Also, Lessee shall maintain airport premises liability in the amount of \$1,000,000.00 naming the City of Wharton and Dupre Transport, LLC as additional insured.

### **Environmental Matters**

#### 14.1 Environmental Terms.

- a) "Environmental Impact Claim" means any claim, suit, judgment, penalty, fine, loss, administrative proceeding, request for information, citation, notice or request or inquiry by any governmental agency, or expense (including but not limited to any costs of investigation, study, cleanup, removal, response, remediation, transportation, disposal, restoration, monitoring, consultant's fees, contractor's fees, and attorney's fees) which arises out of, is related to, alleges, or is based on the presence, transportation, handling, treatment, storage, or actual or threatened Release, dispersal, disposal, escape, or migration of any Hazardous Materials, Process Water, or Solid Waste, or any other chemical, material, irritant, regulated substance, or toxic substance (including but not limited to gasoline, diesel fuel, petroleum hydrocarbons, and any by-product or derivative thereof), whether solid, liquid, or gaseous in nature, in, on, or into the environment, including but not limited to surface and subsurface soils, air, waters, groundwater, as well as in, on, or into any object or matter.
- b) "Environmental Laws" shall mean all present and future laws relating to pollution or the environment, public health, welfare or safety, including, without limitation, all statutes, regulations, ordinances, permits, Conformity Plans, Conformity Determinations, Best Management Practices, Memoranda or Agreement, codes, orders, and any other governmental requirements, including but not limited to those related to discharge of Process Water or other pollutants into the waters of the United States, and/or waters of the State of Texas, and any other environmental duties or requirements arising out of common law.
- c) "Hazardous Materials" means (i) any Hazardous substance, "Pollutant or contaminant," "regulated substance," "petroleum substance," and "waste" as those terms are defined now or in the future in the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Clean Water Act, the Texas Water Code, and the Texas Health & Safety Code, amendments thereto, and regulations promulgated pursuant thereto, including but not limited to (i) asbestos or asbestos-containing materials; (ii) "PCB items" or "PCB-Contaminated Electrical Equipment," used oil filters, batteries or tires, and underground storage tanks and associated equipment; and (iii) "hazardous waste" as now or in the future defined by the Resource Conservation and Recovery Act ("RCRA"), Texas Solid Waste Disposal Act, or the Texas Health & Safety Code.

- d) "Process Water" means water which contains pollutants from any point source subject to permit requirements or subject to the Texas Pollutant Discharge Elimination System, the National Pollutant Discharge Elimination System, the Clean Water Act, or the Texas Water Code, amendments thereto, and regulations promulgated pursuant thereto.
- e) "Release" means any depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment or threat of release such that a release may enter the environment; and
- f) "Solid Waste" shall have the same meaning as in the Resource Conservation and Recovery Act, the Texas Health and Safety Code, and the Texas Solid Waste Disposal Act, and shall include sewage.

#### 14.2 LESSEE Authorizations

- a) LESSEE has obtained and throughout the lease term shall obtain and maintain all licenses, permits, exemptions, registrations and other authorizations and provide any notices required under Environmental Laws for conducting its operations at the Leased Premises.
- b) LESSEE shall comply and shall cause all its employees, agents, contractors, sublessees or other third-parties under LESSEE's control to comply, and shall include in all subleases a provision requiring the sublessee to comply and all employees, contractors, sublessees or other third parties under sublessee's control to comply with all Environmental Laws.
- c) LESSEE shall comply and shall cause its employees, agents, contractors, sublessees or other third parties under LESSEE's control to comply with all LESSOR policies, rules, regulations, permits, and Deicing Plans.
- d) LESSEE shall not cause, contribute to, or permit any Release of any Hazardous Materials, Solid Waste, or Process Water by LESSEE or its employees, agents, contractors, sublessees or other third parties under LESSEE'S control into the environment, or from the Leased Premises, or cause, contribute to, or permit any violation of any Environmental Law.
- e) LESSEE shall not and shall require its employees, agents, contractors, sublessees, or other third parties under LESSEE's control not to handle, use, store, discharge, or otherwise manage any Hazardous Materials, Process Water, or Solid Waste on or at the Leased Premises except in a lawful and prudent manner and so as to prevent the Release of any Hazardous Materials, Process Water, or Solid Waste. Without limiting the foregoing, LESSEE shall not conduct or allow any employee, agent, contractor, sub-lessee or other third party under LESSEE's control to conduct any operations or activities involving the use or application of ethylene glycol, propylene glycol, and/or any other substance

used to de-ice or anti-ice aircraft at any location at the Airport except with the prior written consent of the LESSOR, and on such terms as the LESSOR may prescribe, in the LESSOR's sole discretion.

- f) In the event that LESSEE receives any notice, letter, citation, order, warning, complaint, inquiry, claim or demand (i) concerning any alleged Release of Hazardous Materials, Solid Waste, or Process Water at, on, or from the Leased Premises, or into the environment, or (ii) alleging that LESSEE or any employee, agent, contractor, sublessor, or any other third party has violated or is about to violate any Environmental Law, or (iii) asserting that LESSEE is liable for the cost of remediation or investigation of a Release of Hazardous Materials, Solid Waste and/or Process Water on, at, or from the Leased Premises, LESSEE shall immediately, but not later than five (5) days after LESSEE's receipt, provide written notice to the LESSOR of the same, including a copy of any related documents.
- g) LESSEE shall dispose of and cause its employees, agents, contractors, sublessors, or any other third party under LESSEE's control to dispose of any Solid Waste or Hazardous Materials generated or located at the Leased Premises in compliance with Environmental Laws, and, if not sooner required by Environmental Laws or this Agreement, at the termination of this Agreement shall remove and dispose of all Solid Wastes and Hazardous Materials of at its sole expense in a lawful and timely manner.

#### 14.3 Inspections

From time to time, and in LESSOR's sole discretion, LESSOR may conduct an inspection, assessment, and/or regulatory compliance audit of the Leased Premises and/or LESSEE's operations, including operations of LESSEE's employees, agents, contractors, sublessors, or any other third party under LESSEE's control. The LESSOR may perform testing as needed, including test borings of the ground and chemical analyses of air, soil, water, Process Water, and waste discharges. LESSEE will cooperate and will cause its employees, agents, contractors, sublessors, or any other third party under LESSEE's control to fully cooperate in such inspections, assessment, or audit. LESSEE remains solely responsible for its environmental compliance, notwithstanding any LESSOR inspection, audit, or assessment.

#### 14.4 Contamination of Property

If the Leased Premises or adjacent property are contaminated or otherwise damaged or injured by any Solid Waste or Hazardous Materials released by LESSEE or employee, agent, or contractor, sublessor, or any other third party by LESSEE's control, LESSEE agrees to promptly undertake remediation of such contamination or damage to background levels, and to restore the Leased Premises or affected adjacent property to its condition prior to such contamination or damage in all material respects, or to such condition that not deed recordation will be required; provided that, if LESSEE does not promptly and fully remediate and restore the Leased Premises or affected adjacent

property, LESSOR may, but is not required to, perform the remediation and restoration, and LESSEE shall reimburse LESSOR for all costs associated with such contamination, remediation, and restoration, including but not limited to consultants' fees, contractor's fees, penalties, attorneys' fees, and costs of investigation, within twenty (20) days after LESSOR delivers notice to LESSEE of such costs.

#### 14.5 Term of Environmental Provisions

The provisions of this Article, including the representations, warranties, covenants and indemnities of LESSEE, shall expressly survive termination of this Agreement.

#### **Default by Lessee**

15. If Lessee shall allow the rent to be in arrears more than **ten (10) days** after written notice of such delinquency, or shall remain in default under any other condition of this lease for a period of **ten (10) days** after written notice from Lessor, or if any other person other than Lessee secures possession of the premises, or any part thereof, by reason of receivership, bankruptcy proceedings, or other operation of law in any manner or, in the alternative, Lessor may reenter and take possession of the leased premises and remove all persons and property therefrom, without being deemed guilty of any manner of trespass, and relet the premises or any part thereof, for all or any part thereof, for all of any part of the remainder of the lease term, to a party satisfactory to Lessor, and at such monthly rental as Lessor may with reasonable diligence be able to secure.

#### **Acceleration of Rent**

16. If Lessee fails to pay the full amount of rent, ad valorem taxes, and special assessments, as herein above provided when due or if Lessee fails to cure any other default in compliance with the terms hereof within **ten (10) days** after written notice of Lessee of such specific default by Lessee in the terms hereof, or if the Lessee becomes insolvent or makes any assignment for the benefit of creditors or commits any act of bankruptcy or files any voluntary petition under the provisions of the Bankruptcy act, then, in any of such events, the rent for the balance of the leased term (the initial term or the extended term, as the case may be) shall, at Lessor's option and without the necessity of additional notice, accelerate and immediately become due and payable; and Lessor shall thereupon have the option either to terminate this lease or, without terminating this lease, to terminate Lessee's right to possession of the leased premises. In either event, Lessor may, without additional notice and without court proceedings, reenter and repossess the leased premises and may remove all personal property therefrom, using such force as may be necessary, and Lessee waives any claim arising by reason of such reentry, repossession or removal or by reason of issuance of any distress warrant or writ of sequestration and agrees to hold Lessor harmless from any such claim.

#### **Inspection by Lessor**

17. Lessor and Lessor's agents shall have the right to enter upon the leased premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining or

making repairs or alterations to the property. Such entries shall be done after giving two hours notice to Lessee's agent prior to entry.

### **Assignment and Subletting**

18. Lessee shall not have the right to assign this lease nor any interest therein nor to sublet the leased premises without Lessor's prior written consent.

### **Notices and Addresses**

19.1 All notices provided to be given under this agreement shall be given by United States mail, postage prepaid, addressed to the proper party, at the following addresses:

<u>Lessor</u>	<u>Lessee</u>
City of Wharton	Dupre Transport, LLC
120 E. Caney	P. O. Box 1344
Wharton, Texas 77488	Port Lavaca, Texas 77979

19.2 Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of three days after mailing.

19.3 Either party may change addresses in accordance with the terms of this section of the agreement.

### **Parties Bound**

20. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, or assigns.

### **Compliance**

21. Lessee warrants that the described lease space to be constructed will be done so in compliance with the Architectural Barriers Act, Article 9102, V.T.C.S., and the American Disabilities Act (ADA). Lessee further warrants that the lease space will be in conformity with our National and State fire and building codes. Should it be determined that compliance has not been met, Lessee agrees to make every effort to make the necessary corrections at Lessee's expense.

### **Time of Essence**

22. Time is of the essence of this agreement.

### **Prior Agreements Superseded**

23. This agreement constitutes the sole and only agreement of the parties hereto with respect to the subject matter hereof and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

### **Amendment**

24. No amendment, modification, or alteration of the terms hereof shall be binding unless they are in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

### **Rights and Remedies Cumulative**

25. The rights and remedies provided by this lease agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

### **Waiver of Default**

26. No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this lease shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

### **Attorney's Fees**

27. If either Lessor or Lessee breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees so incurred by the other party.

### **Texas Law to Apply**

28. This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Wharton County, Texas.

### **Legal Construction**

29. If any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **Date**

30. **EXECUTED** in duplicate originals as of the \_\_\_\_\_ day of \_\_\_\_\_ 2002.

Lessor:

Lessee:

**CITY OF WHARTON**

**DUPRE TRANSPORT, LLP**

By: \_\_\_\_\_  
Mayor Garland S. Novosad

By: \_\_\_\_\_

CITY OF WHARTON, TEXAS

We the below personally and unconditionally guarantee payment of the above sum, and waive notice of default by Lessee.

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

ATTEST:

By: \_\_\_\_\_  
City Secretary

Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The twenty-first item discussed on the agenda was to review and consider Wharton Regional Airport Final Plans and Specifications for the Airport Layout Plan prepared by O'Malley Engineers, L.L.P. City Manager Andres Garza, Jr. informed the City Council that during the Wharton Regional Airport Board special meeting held September 10, 2002, the Airport Board voted to approve the Final Plans and Specifications for the Airport Layout Plan prepared by O'Malley Engineers, L.L.P. He stated that City Council approval of the plans and specifications was required for the plans to be submitted to the State. After some discussion, Councilmember Darryl Darnell made a motion to approve the Wharton Regional Airport Final Plans and Specifications for the Airport Layout Plan prepared by O'Malley Engineers, L.L.P. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The twenty-second item discussed on the agenda was to review and consider Appointments to the City of Wharton Youth Advisory Committee. City Manager presented the list of recommended applicants to serve as voting members on the Wharton Youth Advisory Committee submitted by former Councilmember Jimmy Schulz. After some discussion, Councilmember Bryce D. Kocian made a motion to appoint the following:

**Senior:**

- 1. Chase Gwinner
- 2. Chad Schulz
- 3. Courtney White
- 4. David Aaronson
- 5. Ross Poland
- 6. Sadie Kearney

**Junior:**

- 1. Andres Garza, III
- 2. Jami Lobpries
- 3. Kayla Bollom

**10<sup>th</sup> Grade:**

**9<sup>th</sup> Grade:**

1. Nick Parker
2. Stephen Nelson

1. Lauren Ullmann
2. Victoria Castro
3. Morgan Brittani May

**St. Thomas:**

1. Christie Viktorin
2. Derek O'Roark

**Adults:**

1. Mr. Steven May
2. Mr. Jimmy Schulz

Councilmember Darryl Darnell seconded the motion. All voted in favor.

The twenty-third item discussed on the agenda was to review and consider Amendments to the City of Wharton Code of Ordinances, Chapter 54 Parks & Recreation and Chapter 10 Alcoholic Beverages:

1. Section 54-3 Use of Certain Softball Fields.
2. Section 54-7. Alcoholic Beverages.
3. Section 10-4. Public Consumption of Alcoholic Beverages.
4. Section 10-5. Sale, Possession or Consumption in Parks.

City Attorney Paul Webb presented amendments to Section 10-4. Public Consumption of Alcoholic Beverages and Section 10-5. Sales, Possession or Consumption in Parks for the City Council review. He also requested the City Council table Section 54-3 Use of Certain Softball Fields and Section 54-7. Alcoholic Beverages. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve Section 10-4. Public Consumption of Alcoholic Beverages and Section 10-5. Sales, Possession or Consumption in Parks as presented by City Attorney Paul Webb. Councilmember Darryl Darnell seconded the motion. All voted in favor.

The twenty-fourth item discussed on the agenda was to review and consider Schedule a Date, Time, and Place for a Public Forum regarding recent flooding event. City Manager Andres Garza, Jr. presented a copy of the email dated Wednesday, September 18, 2002 from Mayor Garland S. Novosad requesting to place this item on the agenda for consideration by the City Council. Mayor Garland S. Novosad requested that the Public Forum be scheduled for Saturday, September 28, 2002 at City Hall at 1:00 p.m. Councilmember Domingo Montalvo, Jr. stated that he had a conflict with that date. Councilmember Don Mueller requested the meeting be scheduled for a Monday meeting. Councilmember Bryce D. Kocian and Don Mueller stated that they had prior engagements. Councilmember Darryl Darnell stated that a majority of his district was flooded and the 28<sup>th</sup> would better serve his district. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to schedule the Public Forum on Saturday, September 28, 2002 at City Hall at 1:00 p.m., which would be recorded, video, and notice placed in Wharton Journal Spectator. Councilmember Darryl Darnell seconded the motion. All voted in favor.

The twenty-fifth item discussed on the agenda was to review and consider Consideration of funding grants for Emergency Management. City Manager Andres Garza, Jr. presented a copy of the email dated Wednesday, September 18, 2002 from Mayor Garland S. Novosad requesting to place this item on the agenda for consideration by the City Council. Mayor Garland S. Novosad stated that the Lower Colorado River Authority (LCRA) has available grants for emergency management, and would request Mr. Coleman assist in obtaining funding. Councilmember

Domingo Montalvo, Jr. stated that NOAA Radios were distributed to the college and they were in the process of developing community wide assistance. After some discussion, no action was taken.

The twenty-sixth item on the agenda was to review and consider Request for Travel Reimbursement by City Manager Andres Garza, Jr. After some discussion, Councilmember Bryce D. Kocian made a motion to approve the request for travel reimbursement by Councilmember Andres Garza, Jr. in the amount of \$596.12 for the period June 4, 2002 through September 18, 2002. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The twenty-seventh item on the agenda was to review and consider the Boards, City Council Committee, and Commission Reports:

- A. Wharton Regional Airport Board meeting held September 10, 2002.
  - B. Planning Commission meeting held September 16, 2002.
  - C. Wharton Economic Development Corporation meeting held September 17, 2002.
- City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

The twenty-eighth item on the agenda was the City Manager's Reports:

- A. Police Department
- B. City Secretary/Personnel
- C. Municipal Court
- D. E.M.S. Department
- E. Fire Department Incidents/Inspections
- F. Code Enforcement Department
- G. Water & Sewer Department
- H. Public Works Department
- I. Engineer/ Planning Department
- J. Facilities Maintenance Department
- K. Community Services Department
- L. Wharton Municipal Pool
- M. Wharton Regional Airport
- N. Legal Department
- O. Weedy Lots/Sign Ordinance

City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

The twenty-ninth item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made a motion to adjourn. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The meeting was adjourned at 10:15 P.M.

**By:**

---

**GARLAND S. NOVOSAD**  
Mayor

**ATTEST:**

---

**JOYCE VASUT**  
City Secretary