

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
SEPTEMBER 8, 2003**

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:01 p.m. Councilmember Domingo Montalvo, Jr. led the opening devotion and then Mayor Bryce D. Kocian led the pledge of allegiance.

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

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 Jansky, Public Works Director Phillip Bush, EMS Director John Kowalik, Community Services Director Jo Knezek, Code Enforcement Officer Jimmy Nickolyn, City Attorney Paul Webb, and Fire Chief David Copeland.

Visitors present were: Benjamin Sharp Wharton Journal-Spectator, David Schroeder with WEDCo, I.O. Coleman, Jr., Carlos Cotton, Chester Houston, Albert Barnes, Lewis Fortenberry, Billie Jones, Johnnie Roberts, J.B. Scarlett, Charles Fisher, E. L. Brinkley, Linda Nichols, Harry Priesmeyer, Richard Arnold, William Locke, Ellis Hurd, Loretta Craft, Randy Clapp, Raymond Harrison, Suzette Wells, Kathe Warren, Bill Anderson, Carolyn Anderson, Bernice Jackson, Jean Adams, Gerald Adams, Sarah Butler, Mattie Peterson, Magnolia Heard, Johnnie Cook, June Cook, Carol Miller, Saim Eriskin, F. Bellingham, Leo Humphrey, Robert Phillips, Arlen Davis, Bob Nelson, Eunice Jackson, Omer Bogan, Michael Bogan, Henertt Lathon, L.W. Mc Intosh, Mildred Scarlett, Carmen Scarlett, and Ethel Davis.

The third item on the agenda was Public Comments. Mr. Johnnie Roberts addressed the City Council and stated the west side has problems with weedy lots. He stated that he understood the process was slow. He also requested that the Chamber of Commerce remain on the west side of town.

Mr. I. O. Coleman, Jr. addressed the City Council and stated that on the corner of W. Caney and Ford was a weedy lot that needed to be taken care of. He then asked about the budget process. He stated that he received a copy of the proposed budget from City Manager Andres Garza, Jr. He stated that he could not find whether the funds were added for additional police officers, or whether funding was included for operating the Civic Center. He stated that the City Council had approved the restroom renovation project, but there was not approval for office space at the civic center. He also stated that the employees cost of living increase was long overdue. Mr. Coleman stated that he has a map of the districts, which showed Councilmember Darnell in District 1 and

Councilmember Wiley in District 2. He asked if this was part of the recall process. He asked what constitutes a recall and who approves the criteria for the reason for the recall. He stated in the recall petition on Councilmember Darryl Darnell, the reasons for recall could fit any of the City Councilmembers at any time. He stated that Councilmember Darnell asks questions, and does not rubber stamp items. He stated that Councilmember Darnell had the entire city at heart.

Mr. J. B. Scarlett addressed the City Council and stated that he would like to know about the status of the grant for raising houses on the west side of town.

Mr. Charles Fisher addressed the City Council and asked what would a Councilmember have to do to be recalled. He stated that pornography was found on city computers, and he asked if something was done to the person involved. He stated that Councilmember Darryl Darnell could not have done anything that bad.

Mr. E. L. Brinkley addressed the City Council and asked what was going on about recalling Councilmember Darryl Darnell. He stated that the reasons were vague, and not specific enough and that any Councilmember could be charged. He stated that the Councilmembers could make the decision to accept to recall petitions, but how would it affect their morals. He stated that the recall would affect Councilmember Darnell's standing in the community. He stated that when dealing with this decision, the City Council needed to think about Romans 2:1-3. He stated that what goes around comes around.

Mr. Ellis Hurd addressed the City Council and stated that fairness was the most important thing a person can do.

Ms. Suzette Wells addressed the City Council and stated that Councilmember Darryl Darnell's recall was unclear. She stated that if the City Councilmembers accepted it, they might be next.

Ms. Kathe Warren addressed the City Council and stated that the recall petition was a big joke. She stated that Merrell Barfield, Jr. lied to the people at Red River Apartments and when asked to vote, the people would not vote for recalling Councilmember Darryl Darnell. She asked if the recall petition was being presented due to Councilmember Darnell asking questions. She stated that the recall should not be valid because it contained lies.

Mr. Chester Houston addressed the City Council and stated that he could understand the recall petition if Councilmember Darryl Darnell had put the City in jeopardy, but he had not. He stated that the City Council needed to be careful because things could start getting personal. He stated that the City Council could have differences, but they needed to compromise. He stated that the City Council needed to take a close look at the recall petition for consideration. No action was taken.

The fourth item on the agenda was the Wharton Moment. Councilmember Ken Freese publicly commended the Wharton Volunteer Fire Department for helping in the Muscular Dystrophy Funding Raising Event. He stated that volunteers Arthur Araguz and Martin Garcia were on television presenting the funds raised to the Muscular Dystrophy. He then stated that Wharton High School played their first game and was victorious. He stated that on Friday, Wharton would be playing El Campo and recommended the City Councilmembers to show support toward the

football team, cheerleaders, drill team, and band members and many other students that are involved. No action was taken.

The fifth item on the agenda was to review and consider Reading of the minutes from the regular meetings held August 11, 2003 and August 25, 2003 and the special meeting held August 18, 2003. After some discussion, Councilmember Ken Freese made a motion to approve the minutes from the regular meetings held August 11, 2003 and August 25, 2003 and the special meeting held August 18, 2003 as written. Councilmember Don Mueller seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider a Public Hearing: Proposed Budget for the City of Wharton, Texas, Fiscal Year October 1, 2003 to September 30, 2004.

Mayor Bryce D. Kocian called the public hearing open for public comments at 7:27 p.m. Mr. I.O. Coleman, Jr. asked about the budget process. Mayor Bryce D. Kocian stated that the City Manager and Finance Director presented the proposed budget which included some changes since the budget workshop in order to balance the budget. City Manager Andres Garza, Jr. stated that the budget was available at the City Secretary's office and the City Council would at this time hold the public hearing for public input. He stated after hearing the public input, the City Council could vote on the requested changes from the public. Mr. Garza then stated that the next step would be to adopt the budget at the next City Council meeting. Mr. Coleman stated that the budget lacked the funding for additional police officers. City Manager Garza stated that the funding was not available for any additional employees. He stated that when the City would start collecting sales tax from Wal-Mart then the City Council could decide on what positions to add during the 2003-2004 fiscal year. Mr. Coleman questioned the civic center expenses. Finance Director Joyce Vasut stated that the Civic Center Fund was addressed on page 93, with \$174,000 in expenses. Mr. Coleman requested that the Chamber of Commerce not be moved to the Civic Center. He stated that the Chamber of Commerce was on the west side of Wharton where it needed to remain. Mr. Coleman asked about the funds for streets. Finance Director Joyce Vasut stated that \$100,000 was budgeted for the street program.

Saim Eriskin addressed the City Council and stated that the compensation for the City Manager does not reflect a small town. He stated that when he worked for NASA as an Engineer, he never received \$98,000.00.

The Public Hearing was closed at 7:35 p.m.

The seventh item on the agenda was to review and consider action on proposed Budget for the City of Wharton, Texas, Fiscal Year October 1, 2003 to September 30, 2004. City Manager Andres Garza, Jr. stated that during the regular August 25, 2003 City Council meeting, he submitted the proposed budget under separate cover for the City of Wharton, Texas, Fiscal Year October 1, 2003 to September 30, 2004 for City Council review. He stated that this item would allow the City Council to direct the City Staff on any changes to the proposed budget prior to the formal adoption, which was scheduled for September 22, 2003. Councilmember Darryl Darnell stated that Councilmember Ray Linseisen requested the City Council receive the changes that had been made since the budget workshop to balance the budget, which he and Councilmember V. L. Wiley, Jr. had not received. Councilmember Ray Linseisen stated that he received the changes. Councilmember Darnell requested a copy of the changes. Finance Director Joyce Vasut stated that the changes were mailed on August 27, 2003. Councilmember Darnell asked about the

insurance funds for the City Civic Roofing Project. City Attorney Paul Webb stated the case had nothing to do with the budget. Councilmember Darnell asked about the office space at the Civic Center for the Chamber of Commerce. He stated that he was not advised of any additional office space, only additional restrooms. Finance Director Joyce Vasut stated that additional office space was always included in the restroom project. Councilmember Darnell asked about the Emergency Management line item of \$10,000. Finance Director Joyce Vasut stated that the Emergency Management Fund was located on page 23 for \$12,500 expenses. Councilmember Ken Freese requested the 2% cost of living and 1% merit increase be changed to a 3% across the board cost of living increase and merit bonuses could be discussed in 6-9 months if the funds were available. No action was taken.

The eighth item on the agenda was to review and consider the request by Albert and Barbara Barnes for City of Wharton Utility Services at 406 Margaret Street – Utility Service Agreement. City Manager Andres Garza, Jr. stated that on Thursday, August 28, 2003, Public Works Director Phil Bush and himself met with Mr. and Mrs. Albert Barnes, who indicated that they were interested in obtaining City of Wharton Utility Services at their home located at 406 Margaret Street. He then presented a copy of their letter dated August 28, 2003 requesting these services at their expense. However, Mr. & Mrs. Barnes also indicated that if other Margaret Street residents elected to receive utility services they would like to recoup a portion of their initial expense through a cost sharing plan. The cost to provide Mr. and Mrs. Barnes with utilities was estimated at \$4,788.00, which included the outside the city limits tapping fee of \$400.00. Mr. Garza stated that City Attorney Paul Webb was reviewing the necessary agreement needed to provide the service. City Manager Andres Garza, Jr. stated that the tap fee outside the city limits was \$400.00, and the cost for water services would be double the normal fee. City Attorney Paul Webb stated that he reviewed the contract and included a five-year period provision, if any additional customers would seek service from the water line, the City of Wharton would charge a fee pursuant to the formula included in the agreement. He stated that additional applicants during the five year period shall pay a portion of the total cost of \$4,388.00, which these additional amounts collected shall be refunded to Mr. and Mrs. Albert Barnes and any other customer who had previously entered into an agreement for service. Councilmember Don Mueller asked if a 6" line would be installed. City Manager Andres Garza, Jr. stated that a 6" water line would be installed, he said the service line would be 3/4" water line. Mr. Albert Barnes addressed the City Council and stated that the water service was needed as soon as possible. He stated that he did not know of any neighbors that desired to receive service at this time. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the utility service agreement between Albert and Barbara Barnes and the City of Wharton for Utility Services at 406 Margaret Street. Councilmember Don Mueller seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider a request by Mr. Raymond Harrison, Sr. for an encroachment on the City's 10-foot utility easement located at Lot 8, Mayfair Circle Subdivision. City Manager Andres Garza, Jr. presented a copy of the letter dated August 26, 2003 from Mr. Randy Clapp of Dockett, Boulingy & Collins, L.L.P regarding a request by Mr. Raymond Harrison, Sr. for an encroachment on a City easement to be located at Lot 8, Mayfair Addition. He then presented a copy of the letter dated September 8, 2003 by City Attorney Paul Webb responding to Mr. Harrison's request. As stated in Mr. Webb's letter, a written agreement between the City and Mr. Harrison would be required so that the City can be assured that any construction over the easement would not be detrimental to its use for drainage and that the City would not be held liable for any damage that might occur due to the encroachment.

Councilmember Darryl Darnell asked if the Planning Commission recommended approval. City Manager Andres Garza, Jr. stated that the request did not go before the Planning Commission since the request was to construct on the property line. After some discussion, no action was taken.

The tenth item on the agenda was to review and consider a recommendation by the Southern Pacific Railroad Depot Restoration Project Consultant Selection Committee to negotiate a contract for architectural services. City Manager Andres Garza, Jr. stated that the Southern Pacific Railroad Depot Restoration Consultant Selection Committee had met on August 21, 2003 and August 26, 2003 and heard presentations from the seven firms who submitted proposals for architectural services for the Southern Pacific Railroad Depot Restoration project. He said that two firms had joined to make one presentation. The Committee had ranked each individual firm and met on Monday, September 8, 2003 at 12:00 Noon in order to make a recommendation to the City Council for the procurement of architectural services for the depot restoration project. The Committee submitted the following:

The Southern Pacific Railroad Depot Restoration Project Consultant Selection Committee met at 12:00 Noon, September 8, 2003 and reviewed the final ranking scores of the architectural firms who gave presentations for the Southern Pacific Railroad Depot Restoration Project. The ranking of the firms were as follows:

1. Stern & Bucek / Volz 473
2. Graham B. Luhn 421
3. Aguirre Corp. 384
4. Architexas 367
5. Transport Tex, Inc. 340
6. Elliot & Hamill 271
7. Moman Architects 241

The Committee voted to recommend the City Council authorize the Consultant Selection Committee to enter into contract negotiations with the highest ranked firm, which was Stern & Bucek Architects/Volz Associates. If negotiations fail with that firm, the Committee would cease all negotiations with that firm and would begin negotiations with the next highest ranked firm and so forth. Once a contract has been successfully negotiated, then the Committee would present the contract to the City Council for final approval contingent upon the City having the depot available for the project. City Manager Andres Garza, Jr. stated that the firm of Stern & Bucek / Volz received the highest ranking from the Committee. He said the Committee would negotiate a contract and bring back to City Council a contract for their approval. He stated that if a contract would not be negotiated with Stern & Bucek / Volz, then the City Staff would begin negotiations with Graham B. Luhn, and so forth. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to authorize the City Staff to begin negotiations with Stern & Bucek / Volz for the Southern Pacific Railroad Depot Restoration Project for architectural services. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider City of Wharton Chemical Bid:

A. Bid Tabulation.

B. **Resolution:** A resolution awarding bids for Ton Chloride Gas Cylinder, 150 lbs. Chlorine Gas Cylinder, Sodium Bisulfite Solution (Pound), Granular Calcium Hypochlorite, Sodium Hypochlorite Liquid Bleach 10%, Muratic Acid 55 gallons, and Fluoride; 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 the City of Wharton Chemical bids were received on September 3, 2003. He then presented a copy of the bid tabulation and a draft resolution awarding the bid. He also presented a copy of the memorandum dated September 3, 2003 from Public Works Director Phil Bush and Community Services Director Jo Knezek recommending the bids be awarded to Acetylene Oxygen Company for ton chlorine gas cylinder for the amount of \$435.00, 150 lbs. chlorine gas cylinder for the amount of \$54.25 per cylinder, and granular calcium hypochlorite 65% (100 pounds) for the amount of \$90.00; and, Mid-Co Water Treatment for sodium bisulfite hypochlorite (pound) for the amount of \$0.13 per pound, sodium hypochlorite liquid bleach 10% for the amount of \$1.29 per pound, muratic acid 55 gallon for the amount of \$2.10 per gallon, and fluoride for the amount of \$0.99 per gallon. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2003-81, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003-81**

**A RESOLUTION AWARDING A BID TO ACETYLENE OXYGEN COMPANY FOR TON CHLORINE GAS CYLINDER, 150 LBS. CHLORINE GAS CYLINDER AND GRANULAR CALCIUM HYPOCHLORITE AND MID-CO CHEMICAL CO. FOR SODIUM BISULFITE SOLUTION (POUND), SODIUM HYPOCHLORITE LIQUID BLEACH 10%, MURATIC ACID 55 GALLON AND FLUORIDE; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.**

**WHEREAS**, competitive, sealed bids were received on September 3, 2003, for chemicals for the City of Wharton for the fiscal year 2003-2004; and

**WHEREAS**, Acetylene Oxygen Company was deemed to be the best and lowest qualified bidder as per bid specifications for ton chlorine gas cylinder for the amount of \$435.00, 150 lbs. chlorine gas cylinder for the amount of \$54.25 per cylinder, and granular calcium hypochlorite 65% (100 pounds) for the amount of \$90.00.

**WHEREAS**, Mid-Co Water Treatment was deemed to be the best and lowest qualified bidder as per bid specifications for sodium bisulfite hypochlorite (pound) for the amount of \$0.13 per pound, sodium hypochlorite liquid bleach 10% for the amount of \$1.29 per pound, muratic acid 55 gallon for the amount of \$2.10 per gallon, and fluoride for the amount of \$0.99 per gallon.

**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 Acetylene Oxygen Company, and Mid-Co Water Treatment are hereby awarded the bid for chemicals for the City of Wharton in accordance with the bid specifications.

**Section II.** That the 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 8<sup>th</sup> day of September 2003.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**

City Secretary

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

The twelfth item on the agenda was to review and consider City of Wharton Road Materials Bid:  
A. Bid Tabulation.

B. **Resolution:** A resolution awarding bids for Limestone, Hot Mix Cold Laid, Pre-Coat, Hot Mix Asphalt; Portland Cement and Lime Slurry; 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 the City of Wharton Road Materials Bids were received September 3, 2003. He presented a copy of the bid tabulation and a draft resolution awarding the bid. He also presented a copy of the memorandum dated September 3, 2003 from Public Works Director Phil Bush recommending the bid be awarded to: Quality Hot Mix, Inc. Materials for limestone base material, hot mix cold laid asphalt concrete pavement, and pre-coated aggregate; Martin Marietta for hot mix asphalt concrete pavement; Alamo Concrete Products, Ltd. for portland cement concrete class A, class B, class C, and class S; and Chemical Lime for the lime slurry.

After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2003-82, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003-82**

**A RESOLUTION AWARDING A BID TO QUALITY HOT MIX FOR LIMESTONE, HOT MIX COLD LAID, PRE-COAT, HOT MIX ASPHALT; ALAMO CONCRETE PRODUCTS, LTD FOR PORTLAND CEMENT; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.**

**WHEREAS**, competitive, sealed bids were received on September 3, 2003, for road materials for the fiscal year 2003-2004; and

**WHEREAS**, Quality Hot Mix was deemed to be the best and lowest qualified bidder as per bid specifications for limestone base material for the amount of \$13.70 per ton, for hot mix cold laid asphalt concrete pavement for the amount of \$35.75 delivered per ton and \$33.00 picked up per

ton, and pre-coated aggregate for the amount of \$27.15 delivered per ton and \$24.00 picked up per ton; and

**WHEREAS**, Martin Marietta Materials was deemed to be the best and lowest qualified bidder as per bid specifications for hot mix asphalt concrete pavement for the amount of \$30.98 per ton; and

**WHEREAS**, Alamo Concrete Products, Ltd. was deemed to be the best and lowest qualified bidder as per specifications for Portland Concrete Class A for the amount of \$52.00 per cubic yard, Class B for the amount of \$49.00 per cubic yard, Class C for the amount of \$55.00 per cubic yard, and Class S for the amount of \$56.00 per cubic yard.

**WHEREAS**, Chemical Lime was deemed to be the best and lowest qualified bidder as per specifications for lime slurry for the amount of \$106.00 per ton with a 8 ton minimum

**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 Quality Hot Mix, Martin Marietta Materials, Alamo Concrete Products, Ltd., and Chemical Lime, are hereby awarded the bids for Road Materials for the City of Wharton in accordance with the bid specifications.
- Section II.** That the 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 8<sup>th</sup> of September 2003.

**CITY OF WHARTON, TEXAS**

**By:**

\_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

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

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

The thirteenth item on the agenda was to review and consider a resolution of the Wharton City Council authorizing the submission of a contract amendment request for the Unmet Housing Needs Contract No. 722057 between the City of Wharton and the Office of Rural Community

Affairs (ORCA). City Manager Andres Garza, Jr. presented a copy of the memorandum dated September 3, 2003 from Community Services Director Jo Knezek regarding the Disaster Relief Contract No. 722057. He said that on June 23, 2003, the City Council approved to amend the contract to reduce the number of units for rehabilitation from fifty units to total reconstruction of nine units. ORCA was now requesting a formal resolution from the City Council to complete the contract amendment. He then presented a copy of the draft resolution requested by ORCA stating the requested contract amendments. Community Services Director Jo Knezek informed the City Council that the Office of Rural Community Affairs was requesting a formal resolution for the contract amendment. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2003-83, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 83**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE SUBMISSION OF A CONTRACT AMENDMENT REQUEST FOR THE UNMET HOUSING NEEDS CONTRACT NO. 722057 BETWEEN THE CITY OF WHARTON AND THE OFFICE OF RURAL COMMUNITY AFFAIRS (ORCA).**

**WHEREAS,** the Wharton City Council is in agreement with this request and authorizes the Mayor of the City of Wharton, Texas, to execute an agreement with the Office of Rural Community Affairs for a reduction in the number of units for rehabilitation/reconstruction to read from fifty units for rehabilitation to nine units for total reconstruction as per the performance statement of this contract.

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

**Section I:** That the Wharton City Council authorizes a contract amendment request to be submitted to the Office of Rural Community Affairs for the following proposed activities:

To reduce the number of units for rehabilitation / reconstruction from fifty rehabs to nine total reconstructs at a cost per unit not to exceed \$55,000.00.

**Section II:** That the Wharton City Council hereby directs and authorizes the Mayor of the City of Wharton, Texas, to execute all necessary documents as may be required to initiate and process this contract amendment request.

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

**Passed, Approved, and Adopted** this 8<sup>th</sup> day of September 2003.

**CITY OF WHARTON, TEXAS**

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

**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

## **JOYCE VASUT**

City Secretary

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

The fourteenth item on the agenda was to review and consider City of Wharton 2003 Street Light Project. City Manager Andres Garza, Jr. stated that on July 14, 2003, the City Council approved Phase I of the 2003 Street Light Project which included the installation of 77 street lights. He stated that on July 15, 2003, he had advised Mr. Clarence Amos of the City Council's decision and requested a date when the installation of the 77 street lights would begin. He stated that Mr. Amos contacted him today, and stated that the work would begin on October 1, 2003 for Phase I of the project. He said the City Council also directed the City Staff to pursue a cost estimate on the installation of Phase II – 34 additional street lights. He then presented a copy of the letter he received September 2, 2003 providing the cost of the installation of fifteen wood poles and lighting. Mr. Clarence Amos of Center Point had indicated that of the 34 additional streetlights requested there were only 15 that could be erected using wood poles. The remaining 19 street lights would require galvanized poles or underground wiring because of the required tree trimming to provide overhead service. He stated that the cost of galvanized poles were approximately \$13.50 per month and therefore much more expensive. He said the cost to install the 15 wood poles and lighting was \$9,700.00 or approximately \$648.00 per pole. He said City Council approval to install the 15 wood poles was required. He also presented a copy of a map indicating the location of the proposed street lights. City Manger Garza stated that Mr. Ellis Hurd requested street lights be placed on Mattie, Branch, and Spanish Camp Road which were included in the 34 additional street lights request. City Attorney Paul Webb stated that CenterPoint Energy recommends placement of street lights every 200', therefore the City of Wharton would need to sign a release if going against CenterPoint Energy's recommendation. Councilmember Ray Linseisen asked if approval was made, would the street lights project be paid from this years fiscal budget. City Manager Garza stated if the City Council approved, the check for the amount of \$9,700.00 for Phase I would be submitted to CenterPoint Energy for fiscal year 2002-2003 budget. After some discussion, Councilmember Don Mueller made a motion to approve the City of Wharton 2003 Street Light Project Phase II from the fiscal year 2002-2003 budget in the amount of \$9,700.00. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The fifteenth item on the agenda was to review and consider a resolution designating a City of Wharton representative and alternate to the Houston-Galveston Area Council 2004 General Assembly. City Manager Andres Garza, Jr. presented a of a letter from HGAC dated August 29, 2003 requesting the City of Wharton appoint a representative and an official alternate to Houston-Galveston Area Council (HGAC) 2004 General Assembly. He stated that on September 23, 2002, the City Council designated Councilmember V. L. Wiley, Jr. as the City of Wharton representative for the 2003 HGAC General Assembly and Councilmember Darryl Darnell as the alternate. He then presented a copy of the Resolution No. 2002-52, and a draft copy of the resolution designating the City of Wharton representative and alternate to the HGAC 2004 General Assembly. Councilmember Darryl Darnell recommended Councilmember V. L. Wiley, Jr. serve as the representative and Councilmember Ray Linseisen serve as the alternate to

the Houston-Galveston Area Council 2004 General Assembly. After some discussion, Councilmember Darryl Darnell made a motion to approve Resolution No. 2003-84, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 84**

**A RESOLUTION DESIGNATING A CITY OF WHARTON REPRESENTATIVE AND ALTERNATE TO THE HOUSTON-GALVESTON AREA COUNCIL 2004 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 Ray Linseisen.

**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 8<sup>th</sup> day of September 2003.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**

City Secretary

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

The sixteenth item on the agenda was to review and consider the City of Wharton Milam Pump Station 6-Inch Force Main Project.

A. Bid Tabulation.

B. **Resolution:** A resolution approving an agreement for the City of Wharton Milam Pump Station 6-Inch Force Main Project and Authorizing the Mayor of the City of Wharton to execute the agreement and all related documents. City Manager Andres Garza, Jr. informed the City Council that bids were received by the City of Wharton on September 4, 2003 at 2:00 p.m. for the Milam Pump Station 6-Inch Force Main Project. He then presented a copy of the letter dated September 4, 2003 from Mr. Larry Wepler, P.E. of Jones & Carter, Inc. recommending that the bid be awarded to RWL Construction, Inc. in the amount of \$153,265.00. He also presented a

copy of the bid tabulation. Mr. Carlos Cotton of Jones & Carter addressed the City Council and recommended the City Council approve the agreement with RWL Construction. Councilmember Don Mueller asked if the company previously had a contract with the City of Wharton. Mr. Cotton stated no, however he had worked with the company and was recommending approval. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution No. 2003-85, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 85**

**A RESOLUTION APPROVING AN AGREEMENT FOR THE CITY OF WHARTON MILAM PUMP STATION 6-INCH FORCE MAIN PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT AND ALL RELATED DOCUMENTS.**

**WHEREAS**, competitive, sealed bids were received September 3, 2003 for the City of Wharton Milam Pump Station 6-Inch Force Main Project; and

**WHEREAS**, the City of Wharton City Council wishes to award the bid to RWL Construction, Inc., the lowest, best qualified bidder, in the amount of \$153,265.00; and

**WHEREAS**, RWL Construction, Inc. wishes to accept a contract for the City of Wharton Milam Pump Station 6-Inch Force Main Project for the total construction cost of \$153,265.00; and

**WHEREAS**, the City of Wharton and RWL Construction, Inc. wish to be bound by the conditions as set forth in the contract for the project.

**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 all contract documents with RWL Construction, Inc. for the City of Wharton Milam Pump Station 6-Inch Force Main Project.

**Section II.** That the City of Wharton and RWL Construction Inc. are hereby bound by the conditions as set forth in the contract for the project.

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

**Passed, Approved, and Adopted** this 8<sup>th</sup> day of September 2003.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

**JOYCE VASUT**

City Secretary

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

The seventeenth item on the agenda was to review and consider City of Wharton Construction Projects:

A. Wastewater Treatment Plant No. 2 Improvements Project:

1. Pay Request No. 9 – JTR Constructors, Inc.
2. Change Order No. 3 – JTR Constructors, Inc.

City Manager Andres Garza, Jr. presented a copy of the Pay Request No. 9 provided by Jones & Carter, Inc. for JTR Constructors, Inc. Mr. Carlos Cotton informed the City Council that the original project was now complete. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Wastewater Treatment Plant No. 2 Improvements Project Pay Request No. 9 - JTR Constructors, Inc. in the amount of \$84,755.06. Councilmember Ray Linseisen seconded the motion. All voted in favor.

Mr. Carlos Cotton then presented copies of Change Order No. 3 to the City Council. He stated that Change Order No. 3 consisted of an additional light fixture, installation of a drain at the headworks, splash guards on the fine screens, a galvanized pipe step-over and an autodialer in the amount of \$22,520.00. He also requested the contract be extended for an additional ninety days in order to complete Change Order No. 3. He stated that additional funds were available from the grant, therefore, he was recommending City Council approve Change Order No. 3. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Wastewater Treatment Plant No. 2 Improvements Project Change Order No. 3 - JTR Constructors, Inc. in the amount of \$22,520.00. Councilmember Ray Linseisen seconded the motion. All voted in favor.

B. Wal-Mart Super Center Water & Sanitary Sewer Utility Extension Third and Final Pay Request – Uticon, Inc.

City Manager Andres Garza, Jr. presented a copy of the Third and Final Pay Request provided by Jones & Carter, Inc. for Uticon for the Wal-Mart Super Center Water & Sanitary Sewer Utility Extension Project. Mr. Carlos Cotton stated that the project was completed and recommended approval of the payment. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Wal-Mart Super Center Water & Sanitary Sewer Utility Extension Third and Final Pay Request – Uticon, Inc. in the amount of \$26,819.46. Councilmember Don Mueller seconded the motion. All voted in favor.

C. Caney Creek Outfall Ditch Pay Request No. 1 – Uticon, Inc.

City Manager Andres Garza, Jr. presented a copy of the Pay Request No. 1 for the Caney Creek Outfall Ditch provided by Jones & Carter, Inc. for Uticon, Inc. Mr. Carlos Cotton stated that the box culverts were installed across FM 102, and the project was currently 60% complete. He stated that he would be submitting a Change Order of approximately \$94,000 for removal of the dirt from the drainage ditch. He stated that the Wal-Mart Contractor had removed from the ditch all the dirt that was need for the site; however, there were approximately 16,000 cubic yards left to be removed. Councilmember Don Mueller asked where the dirt would be placed. Mr. Cotton stated that the dirt would be spread on the Rust's property. After some discussion, Councilmember Ken Freese made a motion to approve Caney Creek Outfall Ditch Pay Request

No. 1 – Uticon, Inc. in the amount of \$151,856.95. Councilmember Don Mueller seconded the motion. All voted in favor.

D. Alabama Road and Nelson Lane Flap Gate Projects – Pay Request No. 2 – Uticon, Inc. City Manager Andres Garza, Jr. presented a copy of the Pay Request No. 2 for the Alabama Road and Nelson Lane Flap Gate Projects provided by Jones & Carter, Inc. for Uticon, Inc. Mr. Cotton stated that the project was currently 80% complete. After some discussion, Councilmember Don Mueller made a motion to approve Alabama Road and Nelson Lane Flap Gate Projects – Pay Request No. 2 – Uticon, Inc. in the amount of \$42,593.57. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

E. Elevated Water Storage Tank Rehabilitation Project – Pay Request No. 5 – N.G. Painting, Inc. City Manager Andres Garza, Jr. presented a copy of the Pay Request No. 5 for the Elevated Water Storage Tank Rehabilitation Project for N.G. Painting, Inc. City Attorney Paul Webb informed the City Council that two claims were still pending; however the remaining could cover those claims. Therefore he recommended approval to Pay Request No. 5. After some discussion, Councilmember Ray Linseisen made a motion to approve Elevated Water Storage Tank Rehabilitation Project – Pay Request No. 5 – N.G. Painting, Inc. in the amount of \$31,375.00. Councilmember Ken Freese seconded the motion. All voted in favor.

The eighteenth item on the agenda was to review and consider the Acceptance of Recall Petition No. 2003-01. City Manager Andres Garza, Jr. presented a copy to the City Council of the Recall Petition No. 2003-01, which was received by the City Secretary September 5, 2003. City Attorney Paul Webb informed the City Council that the City Charter states that a Recall Petition shall be presented to the individual being recalled and the City Council, which the City Council could accept or reject the petition. If rejected, then the petitioners could take petition to the District Judge to order an election. Councilmember Darryl Darnell stated that he received copies of recall petition in the Council packet. He stated that he spoke to Secretary of State and was advised that the Recall Petition was not valid. He stated that the petition needed the printed name, signature, date of birth, voter registration number and date signed. He stated that the petition did not comply with the Election Code. City Attorney Paul Webb asked City Secretary Joyce Vasut if Councilmember Darnell accepted the Recall Petition. Mrs. Vasut stated that she contacted Councilmember Darnell on Friday and he advised her that he would pick up the petition before the City Council meeting today. She stated that before the City Council meeting, Councilmember Darnell stated that he would pick up the Recall Petition after the meeting. City Attorney Paul Webb asked Mrs. Vasut to present the Recall Petition to Councilmember Darnell. Mrs. Vasut presented the Recall Petition to Councilmember Darnell. Councilmember Darnell stated that he would not accept the Recall Petition. City Attorney Paul Webb stated that he just did. Councilmember V. L. Wiley, Jr. asked City Attorney Paul Webb if the Recall Petition was legal. City Attorney Paul Webb stated that he prepared the petition blanks, and the petition was legal. Councilmember Darnell stated that the City of Wharton must follow the Election Code unless the City Charter was more restrictive. Councilmember Darnell made a motion to deny the Recall Petition since it was illegal. The motion died for lack of a second. Councilmember Ken Freese requested Councilmember Darnell to put his concerns in writing and submit them to City Attorney Paul Webb for his review. Councilmember Darnell asked Mrs. Vasut why he did not receive corrected copies of pages of the petition.

Mrs. Vasut stated that all the petition recall papers were corrected removing John Dettling's name and replacing with Merrell Barfield's name on August 27, 2003. She stated that she presented him with original copies of the petition except for two pages that originally had John Dettling's name and were changed to Merrell Barfield, Jr. He asked if signatures were on the other petitioners papers prior to the name being changed. She stated that a few signatures were on the petitioners papers prior to the name being changed. Councilmember V. L. Wiley, Jr. made a motion that no action be taken on the Recall Petition. Councilmember Darnell seconded the motion. Councilmember V. L. Wiley, Jr. and Darnell voted for the motion. Councilmember Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted against the motion. The motion died. Councilmember Domingo Montalvo, Jr. stated that the City Council was only accepting the names as presented. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to accept the signatures as presented on the Recall Petition. Councilmember Don Mueller seconded the motion. Councilmember Don Mueller and Domingo Montalvo, Jr. voted for the motion. Councilmember V. L. Wiley, Jr., Darryl Darnell, and Ray Linseisen voted against the motion. The motion died.

No action was taken for acceptance of the Recall Petition.

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

- A. Beautification Commission meeting held August 13, 2003.
- B. Southern Pacific Rail Road Depot Restoration Consultant Selection Committee meeting held August 26, 2003.

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

The twentieth 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 8:26 P.M.

**CITY OF WHARTON, TEXAS**

**By:**

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**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

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**JOYCE VASUT**  
City Secretary