

MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
SEPTEMBER 12, 2005

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:05 P.M. Councilmember V. L. Wiley, 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., David Samuelson, 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, City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Building Official Ronnie Bollom, Public Works Director Phil Bush, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, Carlos Cotton, David Schroeder, Lewis Fortenberry, Donald Carlson, Carter Miska, James Cockrell, Robert Ripple, Chester Houston, Louis Edwards, Mary Alice Mata, Gary Nunez, Walter Garrett, Raymond Harrison, Joseph Abraham, William Loocke, and Scott Chambers.

The third item on the agenda was the Public Comments. Ms. Mary Alice Mata addressed the City Council and stated that she resides on Mahan Street and she had requested a ditch in front of her residence to improve drainage; however, she stated that she did not ask for a 13 feet wide ditch. She stated that she spoke to Public Works Director Phil Bush regarding the matter and told him that she could not maintain the ditch due to the size. She stated that the City Staff should have consulted her prior to digging a ditch that was 13 feet wide. She stated that she would not have approved of the size of the ditch. She stated that she works in her yard and now she has a 13 feet wide ditch to work around. No action was taken.

The fourth item on the agenda was Wharton Moment. No action was taken.

The fifth item on the agenda was to review and consider the reading of the minutes from the regular meetings held August 8, 2005 and August 22, 2005 and the special meetings held August 1, 2005 and August 16, 2005. City Manager Andres Garza, Jr. presented a draft copy of the minutes from the regular meetings held August 8, 2005 and August 22, 2005 and the special meetings held August 1, 2005 and August 16, 2005. After some discussion, Councilmember Ray Linseisen made a motion to approve the minutes from the regular meetings held August 8 and

August 22, 2005 and the special meetings held August 1, and August 16, 2005 as presented. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was a public hearing: Proposed Budget for the City of Wharton, Texas, Fiscal Year October 1, 2005 to September 30, 2006. Mayor Bryce D. Kocian opened the public hearing for public input at 7:13 p.m.

No comments were given.

Mayor Bryce D. Kocian closed the public hearing at 7:14 p.m.

The seventh on the agenda was review and consider action on Proposed Budget for the City of Wharton, Texas, Fiscal Year October 1, 2005 to September 30, 2006. City Manager Andres Garza, Jr. stated that during the August 22, 2005 regular City Council meeting, under separate cover a copy of the proposed budget for the City of Wharton, Texas, Fiscal Year October 1, 2005 to September 30, 2006 was presented to the City Council. 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 26, 2005. After some discussion, no action was taken.

The eighth item on the agenda was review and consider solicitation of bids for the lease of City of Wharton property located at A20034, Abstract 34, Tract 69A, Acres 4.666. City Manager Andres Garza, Jr. stated that during the August 22, 2005 regular Wharton City Council meeting, Mr. Walter Garrett of the Caney Creek Conservation Foundation addressed the City Council regarding the City of Wharton property located at A20034, Abstract 34, Tract 69A, Acres 4.666 (located behind Wal-Mart). He then presented a copy of a map indicating the location of the property. He stated that Mr. Garrett requested the City Council to consider leasing the property for the Foundation's use; however, since the City of Wharton owns the property, the City was required to use the bidding process in order to lease the property. He then presented a copy of the Deed of Gift given by the Rust Family when they conveyed the property to the City. He stated that the property may only be used for drainage, park or open space. He stated that he had requested City Attorney Paul Webb's opinion on the leasing of the property. He stated if authorized by the City Council, the City Staff would prepare the invitation to bidders for the lease of the property. City Attorney Paul Webb stated that the City of Wharton would need to solicit bids and the City Council would have the right to accept or reject the bids received. He stated that the property would have use restrictions such as drainage, park or open space. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to authorize the City Staff to solicit bids for the lease of City of Wharton property located at A20034, Abstract 34, Tract 69A, Acres 4.666. Councilmember Don Mueller seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider the recommendation by the Planning Commission for City Council consideration of the following items:

A. Request by Mr. Joseph C. Abraham (Purchaser) for approval of the final re-plat of the patio home subdivision of Sycamore Grove, Block 4, Lot 1, 2, 3, and 4 (unrecorded subdivision). City Manager Andres Garza, Jr. presented a copy of the memorandum dated September 7, 2005 from Planning Commission Chairman A. J. Rath providing the Planning Commission's recommendation that the City Council consider approving the request. He also presented a copy of the Planning Commission's Communications from the meeting that was held on September 6,

2005. He stated four lots would be replatted into ten patio home lots. He stated that Mr. Abraham would construct five homes first and then, at a later time, the remaining five homes would be constructed. Councilmember Don Mueller asked if a cul-de-sac would be constructed. Mr. Garza stated that Mr. Abraham had planned on constructing a cul-de-sac. After some discussion, Councilmember Ken Freese made a motion to approve the request by Mr. Joseph C. Abraham (Purchaser) for approval of the final re-plat of the patio home subdivision of Sycamore Grove, Block 4, Lot 1, 2, 3, and 4 (unrecorded subdivision). Councilmember David Samuelson seconded the motion. All voted in favor.

B. Request by Habitat for Humanity/City of Wharton for approval of the preliminary/final replat of Little Mexico, Lot 1, 2, and 3 (unrecorded subdivision).

Andres Garza, Jr. presented a copy of the memorandum dated September 7, 2005 from Planning Commission Chairman A. J. Rath providing the Planning Commission's recommendation that the City Council consider approving the request. He also presented a copy of the Planning Commission's Communications from the meeting that was held on September 6, 2005. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Habitat for Humanity/City of Wharton for approval of the preliminary/final replat of Little Mexico, Lot 1, 2, and 3 (unrecorded subdivision). Councilmember V. L. Wiley, Jr. seconded the motion. Councilmember David Samuelson abstained. Councilmembers V. L. Wiley, Jr., Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. The motion carried.

The tenth item on the agenda was review and consider the request by Habitat for Humanity for the City of Wharton to donate property, being known as Habitat for Humanity Subdivision, Lot 1 and 2 for the construction of homes under the Habitat for Humanity Program. City Manager Andres Garza, Jr. stated that during the April 25, 2005 regular Wharton City Council meeting, the City Council transferred property known as Little Mexico Lot 3 to Habitat for Humanity (HH) for the construction of a home. He then presented a copy of the letter dated August 17, 2005 from HH President Dr. David Samuelson requesting the City Council to consider donating Habitat for Humanity Subdivision Lots 1 and 2 for the construction of homes under the HH program. He also presented a copy of a map indicating the location of the properties. Mr. Chester Houston addressed the City Council and stated that Lot 3 was previously received and Habitat for Humanity was further requesting Lots 1 and 2 in order to construct two homes. After some discussion, Ray Linseisen made a motion to approve the request by Habitat for Humanity for the City of Wharton to donate property, being known as Habitat for Humanity Subdivision, Lot 1 and 2 for the construction of homes under the Habitat for Humanity Program. Councilmember David Samuelson abstained. Councilmembers V. L. Wiley, Jr., Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. The motion carried. Mr. Chester Houston publicly thanked the City Council for Lots 1 and 2 for use by Habitat for Humanity.

The eleventh item on the agenda was to review and consider Wharton Regional Airport:

A. **Resolution:** A resolution of the Wharton City Council approving the Amendment No. 02 to the Texas Department of Transportation Aviation Division 2005 Routine Airport Maintenance Program Contract, Project No. AM 2005WHRTN, CSJ No.: M513WHRTN, to

include the Wharton Regional Airport Corporate Hangar Repair Project and authorizing the Mayor of the City of Wharton to execute all documents related to the contract.

Andres Garza, Jr. presented a copy of the draft resolution approving the Amendment No. 2 to the Texas Department of Transportation Aviation Division 2005 Routine Airport Maintenance Program Contract, Project No. AM 2005WHRTN, CSJ No.: M513WHRTN, to include the Wharton Regional Airport Corporate Hangar Repair Project. He then presented a copy of the amendment. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2005-48, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005 - 48**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE AMENDMENT NO. 02 TO THE TEXAS DEPARTMENT OF TRANSPORTATION AVIATION DIVISION 2005 ROUTINE AIRPORT MAINTENANCE PROGRAM CONTRACT, PROJECT NO. AM2005WHRTN, CSJ NO.: M513WHRTN, TO INCLUDE THE WHARTON REGIONAL AIRPORT CORPORATE HANGAR REPAIR PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO THE CONTRACT.

WHEREAS, The Wharton City Council wishes to make improvements to the Wharton Regional Airport corporate hangar; and

WHEREAS, The Wharton City Council wishes to include corporate hangar improvements under the 2005 Routine Airport Maintenance program; and

WHEREAS, The Texas Department of Transportation Aviation Division and the City of Wharton wishes to include the hangar improvements as Amendment No. 2 to the 2005 Routine Airport Maintenance Program; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor the City of Wharton to execute all documents related to the 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 hereby approves the Amendment No. 2 to the Texas Department of Transportation Aviation Division 2005 Routine Airport Maintenance Program Contract, Project No. AM 2005WHRTN, CSJ No.: M512WHRTN, to include the Wharton Regional Airport Corporate Hangar Repair Project.

Section. II. That the Texas Department of Transportation Aviation Division and the City of Wharton are hereby bound by the conditions as set forth in the agreement.

Section III. That the Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to the contract.

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

Passed, Approved, and Adopted this the 12th day of September 2005.

CITY OF WHARTON

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

Councilmember Ray Linseisen seconded the motion. All voted in favor.

B. **Resolution:** A resolution of the Wharton City Council approving the Texas Department of Transportation Aviation Division, 2006 Routine Airport Maintenance Program Contract, Project No. AM 2006WHRTN, CSJ No.: M613WHRTN with the City of Wharton for the Airport AWOS installation for the monthly NADIN connection fees and repairs and authorizing the Mayor of the City of Wharton to execute all documents related to the contract.

City Manager Andres Garza, Jr. presented a copy of the draft resolution approving the Texas Department of Transportation Aviation Division, 2006 Routine Airport Maintenance Program Contract, Project No. AM 2006WHRTN, CSJ No.: M613WHRTN with the City of Wharton for the Airport AWOS installation for the monthly NADIN connection fees and any repairs that would not be covered under the warranty or insurance. He then presented a copy of the contract. He stated that 50% of the cost would be allocated from the Airport Fund and 50% would be allocated to the RAMP program. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution No. 2005-49, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005 - 49**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE TEXAS DEPARTMENT OF TRANSPORTATION AVIATION DIVISION, 2006 ROUTINE AIRPORT MAINTENANCE PROGRAM CONTRACT, PROJECT NO. AM 200WHRTN; CSJ NO.: M613WHRTN WITH THE CITY OF WHARTON FOR THE AIRPORT AWOS INSTALLATION FOR THE MONTHLY NADIN CONNECTION FEES AND REPAIRS AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO THE CONTRACT.

WHEREAS, The Wharton City Council wishes to include the AWOS installation and monthly NADIN connection fees and repairs need that are not covered by warranty or insurance under the 2006 Routine Airport Maintenance Program; and

WHEREAS, The Texas Department of Transportation Aviation Division and the City of Wharton wishes to enter into an agreement under the 2006 Routine Airport Maintenance Program for AWOS installation and monthly NADIN connection fees and repairs need that are not covered by warranty or insurance; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor the City of Wharton to execute all documents related to the 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 hereby approves the a contract with the Texas Department of Transportation Aviation Division for the 2006 Routine Airport Maintenance Program for AWOS installation and monthly NADIN connection fees and repairs need that are not covered by warranty or insurance.

Section. II. That the Texas Department of Transportation Aviation Division and the City of Wharton are hereby bound by the conditions as set forth in the agreement.

Section III. That the Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to the contract.

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

Passed, Approved, and Adopted this the 12th day of September 2005.

CITY OF WHARTON

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

Councilmember David Samuelson seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider a resolution of the Wharton City Council adopting the National Incident Management System (NIMS) as the Standard for Incident Management for the City of Wharton, Texas. City Manager Andres Garza, Jr. presented a copy of a draft resolution adopting the National Incident Management System (NIMS) as the Standard for Incident Management for the City of Wharton. Emergency Management Coordinator Harry Priesmeyer addressed the City Council and stated that the system was

effective and efficient and recommended approval. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2005-50, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005 - 50**

A RESOLUTION OF THE WHARTON CITY COUNCIL ADOPTING THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) AS THE STANDARD FOR INCIDENT MANAGEMENT FOR THE CITY OF WHARTON, TEXAS.

WHEREAS, on February 28, 2003, the President issued Homeland Security Presidential Directive (HSPD) – 5 that directed the Department of Homeland Security, in cooperation with representatives of federal, state, and local government, to develop a National Incident Management System (NIMS) to provide a consistent approach to the effective management of situations involving natural disasters, man-made disasters or terrorism; and

WHEREAS, the final NIMS was released on March 1, 2004, and

WHEREAS, the NIMS contains a practice model for the accomplishment of the significant responsibilities associated with prevention, preparedness, response, recovery, and mitigation of all major and national hazards situations, and

WHEREAS, the HSPD-5 requires that state and local governments adopt the NIMS by fiscal year 2005 as a pre-condition to the receipt of federal grants, contract and activities related to the management and preparedness for certain disaster and hazard situation; and

WHEREAS, the City of Wharton desires to adopt the NIMS as required by HSPD-5.

BE IT ORDERED, ADJUDGED AND DECREED BY THE CITY COUNCIL OF THE CITY OF WHARTON, WHARTON COUNTY, TEXAS, that the City of Wharton, Texas, does hereby adopt the National Incident Management System.

Passed, Approved, and Adopted this the 12th day of September 2005.

CITY OF WHARTON

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

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

The thirteenth item on the agenda was to review and consider the recommendation by the Finance Committee:

City Manager Andres Garza, Jr. told the City Council that as a result of the special meeting of the Finance Committee held September 1, 2005, the Committee Members were recommending the City Council approve the following items:

A. **Ordinance:** An ordinance amending the City of Wharton Code of Ordinances Chapter 74 Taxation, Article III. Hotel Occupancy Tax, Section 74-102. Levy of tax; rate; exceptions; Providing a severability clause; providing a penalty clause; and setting an effective date.

City Manager Andres Garza, Jr. presented a draft copy of an ordinance amending City of Wharton Code of Ordinances Chapter 74 Taxation, Article III. Hotel Occupancy Tax, Section 74-102. Levy of tax; rate; exceptions. Finance Director Joyce Vasut stated that the ordinance would reflect the current operations. After some discussion, Councilmember Ken Freese made a motion to approve Ordinance No. 2005-9, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2005-9**

**AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES
CHAPTER 74 TAXATION, ARTICLE III. HOTEL OCCUPANCY TAX, SECTION 74-
102. LEVY OF TAX; RATE; EXCEPTIONS; PROVIDING A SEVERABILITY CLAUSE;
PROVIDING A PENALTY CLAUSE; AND SETTING AN EFFECTIVE DATE.**

BE IT ORDAINED by the City Council of the City of Wharton, Texas, that Chapter 74 Taxation, Article III. Hotel Occupancy Tax, Section 74-102. Levy of tax; rate; exceptions; be amended to read as follows:

Sec. 74-102. Levy of tax; rate; exceptions.

- (a) There is hereby levied a tax upon the occupant of any room, ordinarily used for sleeping, furnished by any hotel in the city where such cost of occupancy is at the rate of \$2.00 or more per day, such tax to be equal to seven percent (7%) of the consideration paid by the occupant of such room, space or facility to such hotel, exclusive of other occupancy taxes imposed by any other governmental agency.
- (b) No tax shall be imposed under this article upon a permanent resident.
- (c) This article does not impose a tax on the United States, this state or an agency, institution, board or commission of this state, other than an institution of higher education.
- (d) This article does not impose a tax on an officer or employee of a governmental entity described by subsection (d) of this section when traveling on or otherwise engaged in the course of official duties for the governmental entity.
- (e) All revenue derived from the occupancy tax imposed in subsection (a) of this section shall be placed in a special revenue fund of the city and shall be used for the purposes authorized

by V.T.C.A., Tax Code § 351.101 et seq., as the city council may from time to time direct or provide.

SEVERABILITY CLAUSE

Unless expressly provided otherwise, if any provision of this Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Code that can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

PENALTY CLAUSE

If any person shall fail to collect the tax imposed in this article or shall fail to file a report as required in this article or shall fail to pay to the director of finance the tax as imposed in this article when such report for payment is due or shall file a false report, such person shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine as set out in section 1-5. In addition, such person who fails to remit the tax imposed by this article within the time required shall forfeit five percent of the amount due as a penalty, and after the first 30 days of delinquency shall forfeit an additional five percent of such tax; provided, however, that the penalty shall never be less than \$5.00. Delinquent taxes shall draw interest at the rate of six percent per annum, beginning 60 days from the date due, on the tax imposed by this article.

EFFECTIVE DATE

This ordinance shall become effective on the 23rd day of September 2005 at 12:01 a.m.

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 12th day of September 2005.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

Attest:

LISA STAVENA
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney
Councilmember Ray Linseisen seconded the motion. All voted in favor.

B. Resolution: A resolution of the Wharton City Council rescinding the City of Wharton Resolution No. 2003-25 and approving new rates for emergency medical services. City Manager Andres Garza, Jr. stated that on January 1, 2001, the City of Wharton went from a single per trip charge to rates that were based on the six levels of service as proposed by Medicare. He stated that the rates per trip currently ranged from \$300.00 to \$600.00 dependent on the service level provided to the patient. He said on March 24, 2003, the City of Wharton increased the mileage rate to \$8.50 per mile outside of the city limits of Wharton to get the greatest benefit from Medicare. He said that it had been over four years since the rates were adopted and the Finance Committee concurs with the City staff that the rates should be increased to maximize recovery from Medicare/Medicaid. He then presented a list of rates charged by other EMS departments. He also presented a draft resolution rescinding the City of Wharton Resolution No. 2003-25 and approving new rates for emergency medical services. Finance Director Joyce Vasut stated that the committee was also recommending to charge \$35.00 for requests of medical records from family members and also attorneys of law offices. She stated that Wharton EMS was below the mileage rate authorized by Medicare. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution No. 2005-51, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005 - 51**

A RESOLUTION OF THE WHARTON CITY COUNCIL RESCINDING THE CITY OF WHARTON RESOLUTION NO. 2003-25 AND APPROVING NEW RATES FOR EMERGENCY MEDICAL SERVICES RATES.

WHEREAS, the City Council of the City of Wharton established rates in accordance with Resolution No. 2003-25; and

WHEREAS, the City wishes to establish new charges and rates for emergency medical services; and

WHEREAS, the City Council of the City of Wharton wishes to authorize the Emergency Medical Services Director to enforce said charges and the applicable fees.

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

Section I. The City Council of the City of Wharton hereby adopts the charges and fees for emergency medical services as described below:

A. SERVICE LEVEL	RATE
Basic Life Support – Non-Emergency	\$ 400.00
Basic Life Support – Emergency	\$450.00
Advanced Life Support 1 – Non Emergency	\$ 475.00
Advanced Life Support 1 – Emergency	\$ 500.00
Advanced Life Support 2	\$ 600.00

Advanced Life Support – Special Care \$ 700.00

MILEAGE

10.50 per mile.

C. Additional supplies and equipment usage fees.

D. RECORDS REQUEST FEE

Personal Request	No Charge
Family Member Request	\$35.00
Attorney of Law Office Request	\$35.00

Section II. The City Council of the City of Wharton hereby authorizes the Emergency Medical Services Director and his duly authorized representative to enforce charges and the applicable fees.

Section III. That Resolution No. 2003-25 shall become null and void on September 30, 2005.

Section IV. That this resolution shall become effective on October 1, 2005.

Passed, Approved, and Adopted this 12th day of September 2005.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

Councilmember David Samuelson seconded the motion. All voted in favor.

C. **Resolution:** A resolution extending the depository banking services agreement between the City of Wharton and Prosperity Bank and authorizing the Mayor of the City of Wharton to execute all documents relating to said contract.

City Manager Andres Garza, Jr. stated that the original bank depository agreement with Prosperity Bank was for a three-year period ended September 30, 2004. He stated that the agreement allowed for two one-year extensions if mutually agreed upon by both the City and the bank. He said that last year, the City and the bank agreed to extend the agreement for an additional year or through September 30, 2005. He said that based on the interest rate quoted in the agreement and overall service provided by the bank, the Finance Committee was recommending that the City Council consider extending the agreement with Prosperity Bank for

the last one-year extension. He stated that Finance Director Joyce Vasut had contacted the bank regarding the final one-year extension to the current agreement and was advised that the bank's response was that they would extend the agreement for one more year as allowed by the contract. He then presented a draft resolution extending the depository banking services agreement between the City of Wharton and Prosperity Bank. Finance Director Joyce Vasut stated that this would be the final extension of the contract. She stated that the City of Wharton was satisfied with the services received from Prosperity Bank. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2005-52, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005 - 52**

A RESOLUTION EXTENDING THE DEPOSITORY BANKING SERVICES AGREEMENT BETWEEN THE CITY OF WHARTON AND PROSPERITY BANK AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.

WHEREAS, the original bank depository agreement with Prosperity Bank was for a three-year period ended September 30, 2004; and

WHEREAS, the agreement allows for two one-year extensions if mutually agreed upon by both the City and the bank; and

WHEREAS, last year, the City and the bank agreed to extend the agreement for an additional year or through September 30, 2005; and

WHEREAS, the City of Wharton and Prosperity Bank wishes to extend the agreement with Prosperity Bank for the last one-year extension through September 30, 2006; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor the City of Wharton to execute all documents related to extending the 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 hereby approves the extension of the contract with Prosperity Bank for the City of Wharton for Depository Banking Services for the last one-year extension through September 30, 2006 and authorizes the Mayor of the City of Wharton, Texas to execute all documents related to extending the contract.

Section II. That Prosperity Bank and the City of Wharton are hereby bound by the conditions as set forth in the agreement.

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

Passed, Approved, and Adopted this the 12th day of September 2005.

CITY OF WHARTON

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

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

D. Request by the City Staff to purchase meter reading equipment and software.

City Manager Andres Garza, Jr. stated that the City of Wharton purchased the current meter reading equipment and software in 1999. He stated that due to technological advances and outdated equipment, the City had recently encountered many problems with the current equipment. He said that the Finance Committee was recommending the City Council consider approving the City Staff to purchase new, more advanced equipment and software to read meters. He then presented a quotation for the new equipment and software. Finance Director Joyce Vasut stated with the current equipment, support service was not available and the system would need to be upgraded. After some discussion, Councilmember Don Mueller made a motion to authorize the City Staff to solicit bids for meter reading equipment and software. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider the request by Mr. Steve Salazar for a Temporary Permit for the consumption/possession of alcoholic beverages in City Parks. City Manager Andres Garza, Jr. presented a copy of the application for a temporary permit for the consumption / possession of alcoholic beverages in City Parks that was filed by Mr. Steve Salazar. He also presented a copy of the memorandum from Police Chief Tim Guin indicating that the application appeared to comply with the Ordinance No. 2002-22. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Mr. Steve Salazar for a Temporary Permit for the consumption/possession of alcoholic beverages in City Parks. Councilmember Don Mueller seconded the motion. All voted in favor.

The fifteenth item on the agenda was to review and consider the appointments to the 2005-2006 Youth Advisory Commission. City Manager Andres Garza, Jr. stated that the Youth Advisory Commission was ready to begin the 2005-2006 term. He stated that applications were distributed to the Wharton Junior High and Wharton High School for submission by the students who wish to participate during this term. He stated that Adult Advisors Steven May and Carla Jesseph had reviewed the applications and were recommending the following students be approved as voting members of the Commission:

Amy Aaronson
Jesse Cantu

Nicholas Castro
Shae Flynn
Brianna Garcia
Adam Garza
Darynee Glover
Sarah Gubbels
Sharneace Johnson
Sara Jordan
Shaina Lowe
Tate Lowe
Brittani May
Cortni May
Diem Nguyen
Jessica Norrell
Nimshi Perera
Teryn Perkins
Quiera Ragston
Kendall Thompson
Sarah Wasicek

He also stated that Mr. May and Ms. Jeffeph were recommending that Ms. Ann Watson be appointed as a third Adult Advisor for the Commission. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the members as presented. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The sixteenth item on the agenda was to review and consider the City of Wharton Bid Awards:

A. Santa Fe Trail Water Fountain Foundation Project:

1. Bid Tabulation.
2. **Resolution:** A resolution awarding a bid for the Santa Fe Trail Water Fountain Foundation Project and authorizing the Mayor of the City of Wharton to execute all documents related to said contract.

City Manager Andres Garza, Jr. stated that the bid opening for the Santa Fe Trail Water Fountain Foundation Project was held at 2:00 p.m. today, September 12, 2005 and only one bid was received from Modern Method Gunite in the amount of \$10,324.00. He then presented a draft resolution awarding the bid. After some discussion, Councilmember David Samuelson made a motion to approve Resolution No. 2005-53, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005-53**

A RESOLUTION AWARDING A BID TO MODERN METHOD GUNITE FOR THE CITY OF WHARTON SANTA FE TRAIL WATER FOUNTAIN FOUNDATION PROJECT; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.

WHEREAS, competitive, sealed bids were received on September 12, 2005, for the City of Wharton Santa Fe Trail Water Fountain Foundation Project; and

WHEREAS, Modern Method Gunitite was deemed to be the lowest and best qualified bidder as per bid specifications for the Santa Fe Trail Water Fountain Foundation Project in the amount of \$10,324.00; 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 Modern Method Gunitite is hereby awarded the bid for the City of Wharton Santa Fe Trail Fountain Foundation Project in accordance with the bid specifications in the amount of \$10,324.00.

Section II. That the Mayor of the City of Wharton is hereby authorized to sign any documents relating to the aforementioned contract.

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

Passed, Approved, and Adopted this 12th day of September 2005.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

Councilmember Ray Linseisen seconded the motion. All voted in favor.

B. Road Materials:

1. Bid Tabulation.
2. **Resolution:** A resolution awarding a bid to Quality Hot Mix for limestone, hot mix cold laid, pre-coat aggregate, hot mix asphalt, and rejecting bids for Portland Cement Concrete; Authorizing the Mayor of the City of Wharton to execute all documents relating to said contract.

City Manager Andres Garza, Jr. stated that bids were received Thursday, September 8, 2005 for the City of Wharton Road Materials for the following fiscal year. He said the bids were reviewed by Public Works Director Phil Bush. He then presented a copy of the bid tabulation and a draft resolution awarding a bid to Quality Hot Mix for limestone, hot mix cold laid, pre-coat aggregate, hot mix asphalt, and rejecting the bid for Portland Cement Concrete. Public Works Director Phil Bush stated that the City of Wharton could purchase the concrete on a as needed

basis; therefore rejection of the bid was recommended. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution No. 2005-54, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005-54**

A RESOLUTION AWARDDING A BID TO QUALITY HOT MIX FOR LIMESTONE, HOT MIX COLD LAID, PRE-COAT AGGREGATE, HOT MIX ASPHALT; AND REJECTING BIDS FOR PORTLAND CEMENT CONCRETE; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.

WHEREAS, competitive, sealed bids were received on September 8, 2005, for road materials for the fiscal year 2005-2006; 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 \$17.40 per ton, for hot mix cold laid asphalt concrete pavement for the amount of \$45.00 delivered per ton and \$41.00 picked up per ton, and pre-coated aggregate for the amount of \$33.50 delivered per ton and \$30.00 picked up per ton; hot mix asphalt concrete pavement for the amount of \$42.50 per ton; and

WHEREAS, the City of Wharton rejects the bid received for Portland Concrete Class A, Class B, Class C, Class S.

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 is hereby awarded the bids for Road Materials for the City of Wharton in accordance with the bid specifications.
- Section II.** That the City of Wharton hereby rejects the bids Portland Cement Concrete Class A, Class B, Class C, Class S.
- Section III.** That the Mayor of the City of Wharton is hereby authorized to sign any documents relating to the aforementioned contracts.
- Section IV.** That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 12^h of September 2005.

CITY OF WHARTON, TEXAS

By:

BRYCE D. KOCIAN

Mayor

ATTEST:

LISA STAVENA

City Secretary

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

C. Chemicals:

1. Bid Tabulation.
2. **Resolution:** A resolution awarding a bid to Acetylene Oxygen Company for Ton Chlorine Gas Cylinder, 150 Lbs. Chlorine Gas Cylinder and Granular Calcium Hypochlorite; Basic Chemical Solutions, L.L.C. for Sodium Bisulfite Solution (Pound), Napco Chemical Company, Inc. for Sodium Hypochlorite Liquid Bleach 10%; and Mid-Co Water Treatment, Inc. for Muratic Acid 55 Gallon and Fluoride; Authorizing the Mayor of the City of Wharton to execute all documents relating to said contract.

City Manager Andres Garza, Jr. stated that bids were received Thursday, September 8, 2005 for the City of Wharton Chemicals and were reviewed by Facilities Maintenance Director Bob Baker and Public Works Director Phil Bush. He then presented a copy of the bid tabulation and a draft resolution awarding the bids to Acetylene Oxygen Company for Ton Chlorine Gas Cylinder, 150 Lbs. Chlorine Gas Cylinder and Granular Calcium Hypochlorite; Basic Chemical Solutions, L.L.C. for Sodium Bisulfite Solution (Pound), Napco Chemical Company, Inc. for Sodium Hypochlorite Liquid Bleach 10%; and Mid-Co Water Treatment, Inc. for Muratic Acid 55 Gallon and Fluoride. Public Works Director Phil Bush stated that bids were received and recommendation of the lowest bid be awarded to each company. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2005-55, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005-55**

A RESOLUTION AWARDING A BID TO ACETYLENE OXYGEN COMPANY FOR TON CHLORINE GAS CYLINDER, 150 LBS. CHLORINE GAS CYLINDER AND GRANULAR CALCIUM HYPOCHLORITE; BASIC CHEMICAL SOLUTIONS, L.L.C. FOR SODIUM BISULFITE SOLUTION (POUND), NAPCO CHEMICAL COMPANY, INC. FOR SODIUM HYPOCHLORITE LIQUID BLEACH 10%; AND MID-CO WATER TREATMENT, INC. FOR 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 8, 2005, for chemicals for the City of Wharton for the fiscal year 2005-2006; 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 \$520.00, 150 lbs. chlorine gas cylinder for the amount of \$75.00 per cylinder, and granular calcium hypochlorite 65% (100 lbs.) for the amount of \$97.50; and

WHEREAS, Basic Chemical Solutions, L.L.C. was deemed to be the best and lowest qualified bidder as per bid specifications for sodium bisulfite solution (pound) for the amount of \$0.096 per pound; and

WHEREAS, NAPCO Chemical Company, Inc. was deemed to be the best and lowest qualified bidder as per bid specifications for sodium hypochlorite liquid bleach 10% for the amount of \$0.95 per gallon; and

WHEREAS, Mid-Co Water Treatment, Inc. was deemed to be the best and lowest qualified bidder as per bid specifications muratic acid 55 gallon for the amount of \$2.90 per gallon, and fluoride 5,000 gallons for the amount of \$1.49 per gallon; 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 Acetylene Oxygen Company, Basic Chemical Solutions, L.L.C., NAPCP Chemical Company, Inc. and Mid-Co Water Treatment, Inc. 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 12th day of September 2005.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

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

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

- A. Southern Pacific Railroad Depot Restoration Project – A & A Constructors, Inc. Pay Request No. 2.

City Manager Andres Garza, Jr. presented a copy of the Pay Request No. 2 for the Southern Pacific Railroad Depot Restoration Project submitted by A & A Constructors, Inc. After some discussion, Councilmember Ray Linseisen made a motion to approve the Pay Request No. 2 for the Southern Pacific Railroad Depot Restoration Project submitted by A & A Constructors, Inc. in the amount of \$36,290.00. Councilmember David Samuelson seconded the motion. All voted in favor.

B. Murphy Road Sanitary Sewer Replacement Project – RWL Construction, Inc. – Pay Request No. 1.

City Manager Andres Garza, Jr. presented Pay Request No. 1 for the Murphy Road Sanitary Sewer Replacement Project submitted by RWL Construction, Inc. Public Works Director Phil Bush stated that the sanitary sewer line on Murphy Road was completed and the remaining project would be completed next week. After some discussion, Councilmember David Samuelson made a motion to approve the Pay Request No. 1 for the Murphy Road Sanitary Sewer Replacement Project submitted by RWL Construction, Inc. in the amount of \$106,167.60. Councilmember Ken Freese seconded the motion. All voted in favor.

The eighteenth item on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Section 551.072, 551.074 and 551.087 of the Government Code, Revised Civil Statutes of Texas. Final action, decision or vote, if any with regard to any matter considered in Executive Session shall be made in Open Meeting.

- A. Discussion:** Navasota Wharton Energy, LLC.
- B. Discussion:** Entertainment Center.
- C. Discussion:** Acquisition of right-of-way from the Hawes Property Estate for the Ahldag Addition Drainage Outfall Project.
- D. Discussion:** Acquisition of property from Edward Guajardo and Wife, Lydia Guajardo for the Ahldag Addition Drainage Outfall Project.
- E. Discussion:** Duties of the Finance Director.

Mayor Bryce D. Kocian adjourned into Executive Session at 7:56 p.m.
Mayor Bryce D. Kocian returned to Open Session at 9:24 p.m.

The nineteenth item on the agenda was Return to Open Session: Action on items discussed in Executive Session:

- A. Review and Consider:** Navasota Wharton Energy, LLC.
After some discussion, Councilmember Ken Freese made a motion to authorize the City Staff to continue to negotiate with Navasota Wharton Energy, LLC. Councilmember Ray Linseisen seconded the motion. All voted in favor.
- B. Review and Consider:** Entertainment Center.
After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to authorize the City Staff to work with Wharton Economic Development Corporation to pursue the Entertainment Center. Councilmember Don Mueller seconded the motion. Councilmembers V. L. Wiley, Jr., Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. Councilmember David Samuelson voted against the motion. The motion carried.
- C. Review and Consider:** Acquisition of right-of-way from the Hawes Property Estate for the Ahldag Addition Drainage Outfall Project.

Mayor Bryce D. Kocian stated that no would be taken under this item.

D. Review and Consider: Acquisition of property from Edward Guajardo and Wife, Lydia Guajardo for the Ahldag Addition Drainage Outfall Project.

Mayor Bryce D. Kocian stated that no would be taken under this item.

E. Review and Consider: Finance Director Employment Agreement.

After some discussion, Councilmember Ken Freese made a motion to authorize the City Manager to work with the Finance Director on the terms of the employment agreement and that it should be present to the City Council at the next regular City Council meeting.

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

The twentieth item on the agenda was to review and consider an ordinance declaring a public necessity for the acquisition of a public drainage easement across 5.69 acres of land, out of Tract 55 and 56C, William Kincheloe League, Abstract 38, Wharton, Wharton County, Texas, as conveyed to the Hawes Family Estate for a Public Purpose, namely the acquisition, improvement and maintenance of the Ahldag Addition Drainage Outfall Project; and authorizing the City Attorney and the Law Offices of Davidson & Troilo, a professional corporation to dismiss pending eminent domain proceedings; ratifying and affirming all prior acts and proceedings done or initiated by attorney and employees of the City to acquire such easement; authorizing all other lawfull actions necessary or incidental to such easement acquisition. City Manager Andres Garza, Jr. stated that on September 7, 2005, the City of Wharton received the fully executed necessary easement documents from the Hawes Family Estate for the Ahldag Addition Drainage Outfall Project. He said therefore, an ordinance ratifying and affirming all prior acts and proceedings done or initiated by the attorneys and City employees should be adopted. He then presented a copy of the draft ordinance. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Ordinance No. 2005-10, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2005-10**

AN ORDINANCE DECLARING A PUBLIC NECESSITY FOR THE ACQUISITION OF A PUBLIC DRAINAGE EASEMENT ACROSS 5.69 ACRES OF LAND, OUT OF TRACT 55 AND 56C, WILLIAM KINCHELOE LEAGUE, ABSTRACT 38, WHARTON, WHARTON COUNTY, TEXAS, AS CONVEYED TO THE HAWES FAMILY ESTATE, FOR A PUBLIC PURPOSE, NAMELY THE ACQUISITION, IMPROVEMENT AND MAINTENANCE OF THE AHLDAG ADDITION DRAINAGE OUTFALL PROJECT; AND AUTHORIZING THE CITY ATTORNEY AND THE LAW OFFICES OF DAVIDSON & TROILO, A PROFESSIONAL CORPORATION TO DISMISS PENDING EMINENT DOMAIN PROCEEDINGS; RATIFYING AND AFFIRMING ALL PRIOR ACTS AND PROCEEDINGS DONE OR INITIATED BY ATTORNEYS AND EMPLOYEES OF THE CITY TO ACQUIRE SUCH EASEMENT; AUTHORIZING ALL OTHER LAWFUL ACTIONS NECESSARY OR INCIDENTAL TO SUCH EASEMENT ACQUISITION.

BE IT ORDAINED BY THE WHARTON CITY COUNCIL:

SECTION 1. A public necessity is hereby declared for the City of Wharton to acquire a public drainage easement across certain privately owned real property of the Hawes Family Estate, (Joan G. Hawes, Independent Executrix of the Estate of Edwin Hawes III, Deceased, and Trustee of the Joan

G. Hawes Trust, Stephen Calhoun Hawes, Barbara Hawes Morris, Trustee of the Barbara L. Hawes Trust, and Lily Anne Hawes, Trustee of the Gail Ann Hawes Trust), for the purpose of drainage improvements for the City of Wharton's Ahldag Addition Drainage Outfall Project located in District 2 of the City of Wharton, Wharton County, Texas. Said easement parcel is described as follows:

A **METES AND BOUNDS** description of a certain 5.69 acre drainage easement situated in the William Kincheloe League, Abstract No. 38, Wharton County, Texas, being out of a called 284.30 acre tract of land conveyed to Edwin Hawes, Jr. by instrument recorded in Volume 157, Page 557, Wharton County Deed Records, said 5.69 acre drainage easement being more particularly described as follows with all bearings based on Texas State Plane Coordinates, south central zone (NAD83);

COMMENCING at a set 3/4-inch iron rod with cap (stamped "Cotton Surveying"), being in the south line of said called 284.30 acre tract, being in the north line of a called 100.19 acre tract conveyed to G.R. Hawes by Warranty Deed recorded in Volume 159, Page 386, Wharton County Deed Records, and being in the west line of Junior College Boulevard, based on a width of 100 feet, from which a found 3/4-inch iron rod bears South 41°42'30" West, 0.81 feet;

THENCE, North 72°38'44" West, at 400.62 feet passing a found 1/2-inch iron rod, continuing in all a total distance of 460.01 feet to a set 3/4-inch iron rod with cap (stamped "Cotton Surveying") being the POINT OF BEGINNING of the herein described 5.69 acre drainage easement;

THENCE, North 16°56'05" East, parallel and 460.00 feet west of the west line of Junior College Boulevard, 600.00 feet to a set 3/4-inch iron rod with cap (stamped "Cotton Surveying");

THENCE, North 21°13'26" East, 100.28 feet to a set 3/4-inch iron rod with cap (stamped "Cotton Surveying");

THENCE, North 16°56'05" East, parallel and 452.50 feet west of the west line of Junior College Boulevard, at 1034.03 feet passing a set 3/4-inch iron rod with cap (stamped "Cotton Surveying) for reference, at 1100.59 feet passing the south top of bank of Baughman Slough, continuing in all a total distance of 1184.03 feet to a point for corner being in the north top of bank of said slough;

THENCE, North 52°36'52" West, 144.08 feet to a point for corner being in the north top of bank of said slough;

THENCE, South 16°56'05" West, at 86.99 feet passing the south top of bank of said slough, at 150.00 feet passing a set 3/4-inch iron rod with cap (stamped "Cotton Surveying) for reference, continuing in all a total distance of 1234.37 feet to a set 3/4-inch iron rod with cap (stamped "Cotton Surveying");

THENCE, South 12°38'44" West, 100.28 feet to a set 3/4-inch iron rod with cap (stamped "Cotton Surveying");

THENCE, South 16°56'05" West, 599.12 feet to a set 3/4-inch iron rod with cap (stamped "Cotton Surveying"), being in the south line of said called 284.30 acre tract and in the north line of said called 100.19 acre tract from which a found 1/2-inch iron rod bears North 72°38'44" West, 120.50 feet;

THENCE, South 72°38'44" East, at 29.44 feet passing a found 1/2-inch iron rod, at 79.53 feet passing a found 1/2-inch iron rod, continuing in all a total distance of 120.00 feet to the POINT OF BEGINNING, CONTAINING 5.69 acres in Wharton County, Texas as shown on drawing number 5703 in the offices of Cotton Surveying, Houston, Texas.

SECTION 2. Pursuant to Ordinance No. 2005-05 of May 9, 2005, the City Manager, through the City Attorney and designated special counsel under the direction of the City Attorney, were authorized and directed to institute all necessary proceedings to condemn fee simple ownership of the above described property. The City Attorney retained the services of the law firm of Davidson & Troilo, P.C. as special counsel. After filing eminent domain legal proceedings in Wharton County District Court, City Officials and the Hawes Estate representatives were able to negotiate the City purchase of a drainage easement, rather than the City pursuing a fee simple property acquisition. Once the easement is recorded in the Wharton County Property Records, the pending eminent domain litigation will be dismissed without prejudice to refile same by the City

SECTION 3. By the consideration and passage of this Ordinance, the City Council: reaffirms its prior appropriation of money to fund this easement acquisition; authorizes the Mayor to execute the "Drainage Easement Grant and Use Agreement" attached hereto and incorporated by this reference, and associated "Drainage Easement Compensation Agreement"; authorizes the City Manager to fund the easement purchase price to the sellers; and authorizes the City Attorney and his special counsel to take all other required remaining actions to conclude this transaction, file the easement in the County Property Records, and dismiss the pending litigation.

SECTION 4. The prior actions and efforts of City Officials and their consultants to negotiate the purchase of the necessary easement right-of-way are hereby ratified and affirmed.

SECTION 5. It is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this Ordinance, was given to all as required by the Texas Code Annotated, as amended, Title 5, Chapter 551, Government Code.

SECTION 6. If any part, section, paragraph, sentence, phrase, or word of this Ordinance is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this Ordinance shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid, or ineffective.

SECTION 7. This Ordinance shall be effective immediately upon the date of its passage.

PASSED AND APPROVED this the 12th day of September 2005.

CITY OF WHARTON

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney
Councilmember David Samuelson seconded the motion. All voted in favor.

The twenty-first item on the agenda was to review and consider an ordinance declaring a public necessity for the acquisition of fee simple title to Lots 3A, 4A, 4, 5, 6, 7, 8, & 9, Block 40, Hawes Fifth Addition, City of Wharton, Wharton County, Texas, as conveyed to Edward Guajardo and Wife, Lydia Guajardo, for a public purpose, namely the acquisition, improvement, and maintenance of the Ahldag Addition Drainage Outfall Project; and Authorizing the City Attorney and the Law Offices of Davidson & Troilo, A professional corporation to dismiss pending eminent domain proceedings if any; ratifying and affirming all prior acts and proceedings done or initiated by attorney's and employees of the City to acquire such property; authorizing all other lawful actions necessary or incidental to such property acquisition. City Manager Andres Garza, Jr. stated that on September 7, 2005, the City of Wharton purchased the property from Mr. and Mrs. Edward Guajardo for the Ahldag Addition Drainage Outfall Project. He said therefore, an ordinance ratifying and affirming all prior acts and proceedings done or initiated by the attorneys and City employees should be adopted. He then presented a copy of the draft ordinance. After some discussion, Councilmember Don Mueller made a motion to approve Ordinance No. 2005-11, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2005-11**

AN ORDINANCE DECLARING A PUBLIC NECESSITY FOR THE ACQUISITION OF FEE SIMPLE TITLE TO LOTS 3A, 4A, 4, 5, 6, 7, 8, & 9, BLOCK 40, HAWES FIFTH ADDITION, CITY OF WHARTON, WHARTON COUNTY, TEXAS, AS CONVEYED TO EDWARD GUAJARDO AND WIFE, LYDIA GUAJARDO, FOR A PUBLIC PURPOSE, NAMELY THE ACQUISITION, IMPROVEMENT AND MAINTENANCE OF THE AHLDAG ADDITION DRAINAGE OUTFALL PROJECT; AND AUTHORIZING THE CITY ATTORNEY AND THE LAW OFFICES OF DAVIDSON & TROILO, A

PROFESSIONAL CORPORATION TO DISMISS PENDING EMINENT DOMAIN PROCEEDINGS IF ANY; RATIFYING AND AFFIRMING ALL PRIOR ACTS AND PROCEEDINGS DONE OR INITIATED BY ATTORNEYS AND EMPLOYEES OF THE CITY TO ACQUIRE SUCH PROPERTY; AUTHORIZING ALL OTHER LAWFUL ACTIONS NECESSARY OR INCIDENTAL TO SUCH PROPERTY ACQUISITION.

BE IT ORDAINED BY THE WHARTON CITY COUNCIL:

SECTION 1. A public necessity is hereby declared for the City of Wharton to acquire by fee simple title real property of Edward Guajardo and Wife, Lydia Guajardo, for the purpose of drainage improvements for the City of Wharton's Ahldag Addition Drainage Outfall Project located in District 2 of the City of Wharton, Wharton County, Texas. Said parcel is described as follows:

Property (including any improvements)

TRACT NO. 1: a 90' x 150.95' x 90' x 151.13' tract (called Lots 4 & 5, Block 50, Hawes Fifth Addition – an unplatted subdivision) in the William Kincheloe League, Abstract No. 38 and in the City of Wharton, Wharton County, Texas, and being that same real property specifically described as "First Tract" in Deed dated January 14, 1972 from Pete Cruz, et ux to Edward Guajardo, et ux, recorded in Volume 421, Page 390 of the Deed Records of Wharton County, Texas.

TRACT NO. 2: a 90' x 151.13' x 90' x 151.51' tract (called Lots 6 & 7, Block 40, Hawes Fifth Addition – an unplatted subdivision) in the William Kincheloe League, Abstract 38 and in the City of Wharton, Wharton County, Texas, and being that same real property specifically described as "Second Tract" in deed dated January 14, 1972 from Pete Cruz, et ux to Edward Guajardo, et ux, recorded in Volume 421, Page 390 of the Deed Records of Wharton County, Texas.

TRACT NO. 3: a 60' x 150.57' x 60' x 150.76' tract (called Lots 3A & 4A, Block 40, Hawes Fifth Addition – an unplatted subdivision) in the William Kincheloe League, Abstract No. 38 and in the City of Wharton, Wharton County, Texas, and being that same real property specifically described as "First Tract" in Deed dated July 12, 1972 from Emily P. Hawes to Edward Guajardo, et ux, recorded in Volume 427, Page 385 of the Deed Records of Wharton, County, Texas.

TRACT NO. 4: A 100' x 151.89' x 100' x 151.51' tract (called Lots 8 & 9, Block 40, Hawes Fifth Addition – an unplatted subdivision) in the William Kincheloe League, Abstract No. 38 and in the City of Wharton, Wharton County, Texas, and being that same real property specifically described as "Second Tract" in Deed dated July 12, 1972 from Emily P. Hawes to Edward Guajardo, et ux, recorded in Volume 427, Page 385 of the Deed Records of Wharton County, Texas.

SECTION 2. Pursuant to Ordinance No. 2005-06 of July 11, 2005, the City Manager, through the City Attorney and designated special counsel under the direction of the City Attorney, were

authorized and directed to institute all necessary proceedings to condemn fee simple ownership property. The City Manager and Edward Guajardo and Wife, Lydia Guajardo were able to negotiate the City's purchase of the above described property by fee simple title.

SECTION 3. By the consideration and passage of this Ordinance, the City Council: reaffirms its prior appropriation of money to fund this acquisition; authorizes the City Manager to execute all documents necessary for this acquisition; authorizes the City Manager to fund the purchase price to the sellers; and authorizes the City Attorney and his special counsel to take all other required remaining actions to conclude this transaction and file the documents in the County Property Records.

SECTION 4. The prior actions and efforts of City Officials and their consultants to purchase the above described property are hereby ratified and affirmed.

SECTION 5. It is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this Ordinance, was given to all as required by the Texas Code Annotated, as amended, Title 5, Chapter 551, Government Code.

SECTION 6. If any part, section, paragraph, sentence, phrase, or word of this Ordinance is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this Ordinance shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid, or ineffective.

SECTION 7. This Ordinance shall be effective immediately upon the date of its passage.

PASSED AND APPROVED this the 12th day of September 2005.

CITY OF WHARTON

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

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

The twenty-second item on the agenda was to review and consider a resolution approving an interlocal agreement between the City of Wharton and Wharton County for in-kind excavation assistance for the Ahldag Addition Drainage Outfall Project and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. stated that the City Staff was ready to move forward with the construction phase of the Ahldag Addition Drainage Outfall Project. He said that Commissioner Chris King had notified the City that Wharton County would be willing to provide in-kind services for the excavation of the drainage outfall. He then presented a copy of a draft resolution approving an interlocal agreement for the in-kind assistance and a copy of the proposed agreement. He stated that he had forwarded a draft agreement to Commissioner King for his review and comment. He stated that if Commissioner King would request any changes, he would present them at the meeting. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2005-56, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005 - 56**

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF WHARTON AND WHARTON COUNTY FOR IN-KIND EXCAVATION ASSISTANCE FOR THE AHLDAG ADDITION DRAINAGE OUTFALL PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, The Wharton City Council wishes to approve an interlocal agreement between the City of Wharton and Wharton County for in-kind excavation assistance for the Ahldag Addition Drainage Outfall Project; and

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute said agreement on the City behalf; and

WHEREAS, The City of Wharton and Wharton County wishes to be bound by the conditions of the agreement.

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 approves the interlocal agreement between the City of Wharton and Wharton County for in-kind excavation assistance for the Ahldag Addition Drainage Outfall Project and authorizes the Mayor of the City of Wharton to execute the agreement on behalf of the City.

Section II. That the City of Wharton and Wharton County are hereby bound by the conditions set forth in the contract.

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

Passed, Approved, and Adopted this the 12th day of September 2005.

CITY OF WHARTON

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA
City Secretary
Councilmember David Samuelson seconded the motion. All voted in favor.

The twenty-third item on the agenda was to review and consider the 2005 TML Annual Conference and Exhibition to be held October 26-28, 2005 in Grapevine, Texas. City Manager Andres Garza, Jr. presented the registration information for the 2005 TML Annual Conference and Exhibition to be held October 26 –28, 2005 in Grapevine, Texas. He stated that Councilmembers Domingo Montalvo, Jr. and Ray Linseisen had expressed interest in attending the conference. Councilmember Domingo Montalvo, Jr. requested only the registration fees be paid by the City of Wharton for himself. After some discussion, no action was taken.

The twenty-fourth item on the agenda was to review and consider the City Council Boards, Commissions, and Committee Meetings:

- A. Building Standards Commission meeting held August 18, 2005.
- B. Wharton Economic Development Corporation meeting held August 23, 2005.
- C. Parks Planning Committee meeting held August 25, 2005.
- D. Public Works Committee meeting held August 30, 2005.
- E. Finance Committee meeting held September 1, 2005.
- F. Planning Commission meeting held September 6, 2005.

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

The twenty-fifth 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 adjourned at 9:31 p.m.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

City of Wharton
Regular City Council Meeting
September 12, 2005

ATTEST:

LISA STAVENA
City Secretary