

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
April 11, 2011**

Mayor Domingo Montalvo, Jr. declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Mayor Domingo Montalvo, Jr. led the opening devotion and the pledge of allegiance.

Councilmember's present were: Mayor Domingo Montalvo, Jr., Councilmembers Terry David Lynch, Bryce D. Kocian and Jeff Gubbels.

Councilmember absent was: Don Mueller.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Anandel, City Secretary Paula Favors, Assistant to City Manager Jackie Jansky, Public Works Director Carter Miska, Building Inspector Ronald Bollom, Police Chief Tim Guin, EMS Director John Kowalik and City Attorney Paul Webb.

Visitors present were: John Mercurief II with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Lorna Kaiser, Elenor Windhorn, Paul Windhorn, Judy Tant, David Zaskoda, Don Middlebrook, Jay Shaw, Ray Linseisen, Annette Linseisen, David Mata, Al Bryant, Lonnie Gregory, Ryan Simper, Paul Frerich, Mark Woodridge, Russell Hill, Wayne Adam, Lewis Fortenberry, Calvin C. Mahlman, Jim Cockrell, Carl King, Mozelle Stephen, Bradley C. Loehr with BEFCO Engineering, Inc., Deloris Gilmore, Buch Brettilar, Maria Kocian, Chris King, Dorothy Holmes, Costella Hahn, Clifford King, Jr., Rosemary Rust, Paul Sherland, Lloyd Shoppa, Audry Haller, Celeta Moses, Doug Moses, Richard Arnold, Berry Joyce Sikora, Wayne Allen, Thelma Craft, Larry Sitka, Betty Shoppa, Shirley Hattor, Shannon Moses, Danny Moses, Jeanene Merka, Bobby Freeman, Marlee Freeman, Ron Sanders, I.O. Coleman, Jr., and David Samuelson.

The second item on the agenda was Roll Call and Excuses Absences. Councilmember Bryce D. Kocian moved to excuse Councilmember Don Muller. Councilmember Terry David Lynch seconded the motion.

City of Wharton
Regular City Council Meeting
April 11, 2011

The third item on the agenda was Public Comments. Mr. I.O. Coleman, Jr. addressed the City Council with his support of an ordinance approving the traffic control plan for the James Simmons, Jr. 2nd Annual Juneteenth Festival. Mr. Coleman added that he also supported a resolution approving the offer by Just Do It Now, Inc. to acquire tax resale property described as Lots 3 & 4, Block 9, Harrison Addition to the City of Wharton and a resolution approving the offer by Just Do It Now, Inc. to acquire tax resale property described as an undivided 80 % interest in and to Lots 5 & 6, Block 9, Harrison Additional to the City of Wharton, Texas, Wharton County, Texas. No action was taken.

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

The fifth item on the agenda item was to review and consider the reading of the minutes from the regular meeting held March 14, 2011 and March 28, 2011. After some discussion, Councilmember Jeffery Gubbels moved to approve the minutes from the regular meetings held March 14, 2011 and March 28, 2011. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The sixth item on the agenda was a public hearing regarding the City of Wharton Transportation and Overpass Projects.

Mayor Domingo Montalvo, Jr. opened the public hearing regarding the City of Wharton Transportation and Overpass Projects at 7:34 p.m.

Mr. Don Middlebrook addressed the City Council and stated that the Industrial Foundation was encouraging the City to move forward with the project to extend FM 1301 to Highway 59. Mr. Middlebrook added the City of Wharton needed a presence on Highway 59, which would do a lot for the face of Wharton.

Mr. Lloyd Shoppa addressed the City Council and stated that he believed it was a positive action for the City Council to hear citizen input on the project. Mr. Shoppa recommended that the City Council's first choice be to take FM 1301 to Highway 59 or bend Boling Highway to prevent buying Subway and the mobile home park. Mr. Shoppa added that another concern was that some landowners had not been contacted about the purchase of their land.

Ms. Jeanene Merka addressed the City Council and stated that she supported taking FM 1301 to Highway 59. Ms. Merka informed the City Council that she owned a small piece of property that would probably be part of the acquisition of land for the project and she would be willing to give that property to the City if the project was taken all the way to Highway 59.

Wharton County Commissioner Chris King addressed the City Council and stated that he had been aware, for a few years, of the FM 102 Bypass project. Commissioner King applauded the efforts of the City Council for conducting the project that he believe would benefit the City of Wharton. Commissioner King added that he believed the FM 102 bypass would not be good for the City of Wharton at this time and recommended the project be put on hold.

Mr. Wayne Adam addressed the City Council and stated that he was a former business owner and he agreed with the comments to take FM 1301 to Highway 59. Mr. Adam added that taking FM 1301 to FM 102 would be a mistake.

Ms. Billie H. Jones addressed the City Council and stated that the City does not have a place to welcome people to the City. Ms. Jones stated extending FM 1301 to Highway 59 would give the

City of Wharton
Regular City Council Meeting
April 11, 2011

City a new “Front Door.” Ms. Jones further stated downtown businesses were losing out and she urged the City Council to move forward with the project.

Dr. David Samuelson addressed the City Council and stated that he favored going from FM 1301 to FM 102. Dr. Samuelson further stated that adding the four corners to Highway 59 would mean constructing an additional overpass, which would cost more money. Dr. Samuelson stated that the City could not afford the project to be extended to Highway 59. Dr. Samuelson further stated that the big issue was safety. Dr. Samuelson added if there were a train wreck, emergency services would be cut off from the west side of town. Dr. Samuelson stated the City Council should consider extending to FM 102 first and then later look at extending to Highway 59.

Mr. Jim Cockrell addressed the City Council and stated that the City Council needed to think about Hurricane Season and Wharton being an evacuation City. Mr. Cockrell added the fact that FM 102 flooded and proceeding with the extending FM 1301 to FM 102 would cause traffic issues.

Mr. David Mata addressed the City Council and stated that the City Council needed to consider the citizens before spending taxpayer’s money. Mr. Mata stated that the City’s infrastructure was falling apart.

Mayor Montalvo stated that he was forming a Transportation Committee. Mayor Montalvo stated that Mr. Lloyd Shoppa, Mr. Charles Davis, Mr. Stewart Morris, Mr. Fred Ziedman, and Mr. Jeffery Blair would serve on the committee.

Mayor Domingo Montalvo, Jr. closed the public hearing at 8:36 p.m.

The seventh item on the agenda was to review and consider the Planning Commission recommendation for City Council consideration to approve the request by Sarim, Inc. (Denny’s), represented by Mr. James Shaw, Brite Lite Signs Agent, for a variance to the City of Wharton Code of Ordinances, Chapter 66 Signs and Advertising, Table I Allowable Heights for Freestanding Signs to construct a freestanding sign at a height of 79’3”. Assistant to City Manager Jackie Jansky stated the Planning Commission met on Monday, April 4, 2011 and discussed the request by Sarim, Inc. (Denny’s), represented by Mr. James Shaw, Brite Lite Signs Agent, for a variance to the City of Wharton Code of Ordinances, Chapter 66 Signs and Advertising, Table I Allowable Heights for Freestanding Signs to construct a freestanding sign at a height of 79’3”. Mrs. Jansky advised the City Council that the Planning Commission voted to recommend the City Council consider approving the variance request. Mrs. Jansky presented a copy of the memorandum dated April 4, 2011 from Co-Chairman Mike Wootton providing the recommendation and a copy of the Planning Commission Communications that included a copy of the Application for Variance submitted by Mr. Shaw requesting the variance. Mrs. Jansky also presented a copy of the Code of Ordinances, Chapter 66 Signs and Advertising – Allowable Heights for Freestanding signs. She stated that the code allowed freestanding signs to be 50’ feet in height; therefore, the request was for a 29’3” variance to construct the sign at a height of 79’3”. After some discussion, Councilmember Bryce D. Kocian moved to approve the request by Sarim, Inc. (Denny’s) for a variance to the City of Wharton Code of Ordinances, Chapter 66 Signs and Advertising, Table I Allowable Heights for Freestanding Signs to construct a freestanding sign at a height of 79’3”. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider an ordinance approving the traffic control plan for the James Simmons, Jr. 2nd Annual Juneteenth Festival, authorizing the Police Department to redirect traffic and authorizing the Mayor of the City of Wharton to execute the

City of Wharton
Regular City Council Meeting
April 11, 2011

Texas Department of Transportation Agreement for the Temporary Closure of State Right of Way. City Manager Andres Garza, Jr., advised the City Council that during the regular March 14, 2011 Wharton City Council meeting, the Wharton City Council tabled the request by Mr. Paul Kearney, Juneteenth Celebration Committee Member, for City Council consideration to approve the closure of Burleson Street between Fulton and Polk Streets and Houston and Fulton Streets at the intersection with Elm Street between the hours of 6:00 p.m. – 10:00 p.m. for the James Simmons, Jr. 2nd Annual Juneteenth Festival pending the development of the proposed traffic plan recommended by the Texas Department of Transportation (TxDOT.) Police Chief Tim Guin advised the City Council that on March 30, 2011, the City Staff met with Mr. Richard Zahn of TxDOT and Mr. Greg Baines, representing the Juneteenth Festival Committee and discussed the proposed traffic plan required by TxDOT in order to close State Highway 60 (south bound toward Bay City) through the downtown area for the festival. Chief Guin presented a copy of the proposed traffic plan, which met TxDOT standards and a draft Temporary Closure of State Right of Way agreement required by the State. He said that the proposed traffic control plan would be similar to that as the one used for the Wharton Holiday Parade except that State Highway 60 north bound to Richmond Road would remain open to traffic at all times during the event.

City Manger Andres Garza, Jr., advised the City Council that the Juneteenth Festival Committee requested the City of Wharton implement the traffic control plan, which would require the City to fund the cost to implement the plan. Mr. Garza presented a copy of the memorandum dated April 6, 2011 from Public Works Director Carter Miska that indicated the cost to purchase the required signage would be \$788.00. Mr. Miska stated that it would be more cost effective to purchase the signs than it would be to rent the signs each time they were needed. City Manager Garza presented a copy of the quote to purchase the signs. City Manager Garza also presented a copy of the memorandum dated April 7, 2011 from Police Chief Tim Guin that indicated that 6 officers would be required to implement the plan, which would require approximately 36 hours of overtime. Chief Guin stated that the cost of overtime would be dependent upon which officers worked the event. He said that if off-duty officers were hired by the Juneteenth Festival Committee the cost would be \$1,080.00. After some discussion, Councilmember Terry David Lynch moved to approve the traffic control plan for the James Simmons, Jr. 2nd Annual Juneteenth Festival, authorizing the Police Department to redirect traffic and authorizing the Mayor of the City of Wharton to execute the Texas Department of Transportation Agreement for the Temporary Closure of State Right of Way and in accordance with the City of Wharton Ordinance No. 2011-07, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2011 - 07**

AN ORDINANCE APPROVING THE TRAFFIC CONTROL PLAN FOR THE JAMES SIMMONS, JR. 2ND ANNUAL JUNETEENTH FESTIVAL, AUTHORIZING THE POLICE DEPARTMENT TO REDIRECT TRAFFIC AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE TEXAS DEPARTMENT OF TRANSPORTATION AGREEMENT FOR THE TEMPORARY CLOSURE OF STATE RIGHT OF WAY.

WHEREAS, the Juneteenth Committee wishes to hold the James Simmons, Jr. 2nd Annual Juneteenth Festival in the downtown area of the City of Wharton and has requested approval to close portions of State Hwy. 60; and

WHEREAS, said festival requires the City of Wharton to close State Highway 60, known as Burleson Street from its intersection of Polk Street to Fulton Street; and

WHEREAS, the closure of State Highway 60 will be for a time of less than four (4) hours; and

WHEREAS, the closure will require the detouring of all traffic traveling south on State Highway 60 according to the map (Attachment A) attached to this ordinance; and

WHEREAS, if there are any other ordinances that would be violated because of the re-routing of all traffic their suspension is hereby authorized; and

WHEREAS, the City Council wishes to authorize the Mayor of the City of Wharton to execute the Agreement for the Temporary Closure of State Right of Way as required by the Texas Department of Transportation.

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

Section I. The traffic control plan for the James Simmons, Jr. 2nd Annual Juneteenth Festival is hereby approved.

Section II. The detour route resulting from the closure of State Highway 60 is hereby approved as detailed in the attached map (Attachment A) which is hereby made part of this ordinance.

Section III. The closure of all streets as indicated in said map identified in Section II are hereby authorized.

Section IV. The traffic detour plan as identified in Section III above is hereby approved.

Section V. The Chief of Police and City Staff are hereby authorized to make the necessary expenditures needed to ensure the safety of the public.

Section VI. That the Mayor of the City of Wharton is hereby authorized to execute the Agreement for the Temporary Closure of State Right of Way as required by the Texas Department of Transportation.

Section VII. This ordinance shall become effective on the 19th day of June 2011 and remain in effect until such time that State Highway 60 is reopened to all traffic.

Passed, Approved and Adopted this 11th day of April 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST

PAULA FAVORS
City Secretary

Councilmember Jeffery Gubbels seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider:

A. Resolution: A resolution of the Wharton City Council accepting the Fiscal Year 2010 Assistance to Firefighters Grant from the Federal Emergency Management Agency (FEMA) and the Department of Homeland Security (DHS) for funding in the amount of \$108,000.00 for the City of Wharton EMS Department and authorizing the Mayor of the City of Wharton to execute all documents related to said grant. City Manager Andres Garza, Jr. presented a draft copy of the a memorandum dated March 30, 2011 to him from EMS Director John Kowalik providing a copy of the award package submitted to the City of Wharton from the Federal Emergency Management Agency (FEMA) and the Department of Homeland Security (DHS) for the Fiscal Year 2010 Assistance to Firefighters (ATF) Grant award for funding in the amount of \$108,000.00 for the purchase of equipment for use by the City of Wharton EMS Department. EMS Director John Kowalik recommended to the City Council acceptance of the grant, which would authorize the City Staff to submit the required documents requested in the grant award package. After some discussion, Councilmember Jeffery Gubbels moved to approve Resolution No. 2011-19, which read as follows:

CITY OF WHARTON
RESOLUTION NO. 2011 - 19

A RESOLUTION OF THE WHARTON CITY COUNCIL ACCEPTING THE FISCAL YEAR 2010 ASSISTANCE TO FIREFIGHTERS GRANT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) AND THE DEPARTMENT OF HOMELAND SECURITY (DHS) FOR FUNDING IN THE AMOUNT OF \$108,000.00 FOR THE WHARTON EMS DEPARTMENT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID GRANT.

WHEREAS, the City of Wharton received funding from the Federal Emergency Management Agency and the Department of Homeland Security under the fiscal year 2010 Assistance to Firefighters Grant Program in the amount of \$108,000.00; and

WHEREAS, the Wharton City Council wishes to accept the grant award from the Federal

City of Wharton
Regular City Council Meeting
April 11, 2011
Emergency Management Agency and the Department of Homeland Security; and

WHEREAS, the City Council wishes to authorize the Mayor to execute all documents related to the grant.

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

Section I. The Wharton City Council hereby accepts the grant award in the amount of \$108,000.00 from the Federal Emergency Management Agency and the Department of Homeland Security under the fiscal year 2010 Assistance to Firefighters Grant Program.

Section II. The Mayor of the City of Wharton is hereby authorized to execute all documents related to the grant.

Section III. This resolution shall become effective immediately upon its passage.

PASSED AND APPROVED this 11th day of April 2011.

CITY OF WHARTON

DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Terry David Lynch seconded the motion. All voted in favor.

B. Resolution: A resolution of the Wharton City Council approving the purchase of equipment for the EMS Department and to place remaining grant funds towards the lease purchase agreement with Houston Community Bank for the EKG Monitors. City Manager Andres Garza, Jr., presented a copy of the memorandum dated April 7, 2011 from EMS Director John Kowalik providing his request to purchase upgrades to equipment used by the EMS Department. Mr. Kowalik stated that, last year, the City applied for the ATF Grant for the Life Pack 15 with all upgrades included. He said the total cost for the monitor with all the upgrades was \$176,446.81 and since the ATF grant funding had not become available, the City moved forward and purchased the monitors, ambulance and supervisor vehicle through a lease/purchase agreement with Houston Community Bank (HBC). He stated that since that time, the City received the ATF funding in the amount of \$108,000 and \$15,000 from the Department of State Health Services (DSHS) for the purchase of the monitors. Mr. Kowalik requested that the City Council consider authorizing the equipment to be upgraded in accordance with the grant guidelines in the amount of approximately \$53,446 and to use the remaining funds to pay toward the balance

City of Wharton
Regular City Council Meeting
April 11, 2011

owed to HBC for the EKG monitors. After some discussion, Councilmember Jeffery Gubbels moved to approve Resolution No. 2011-20, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011 - 20**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE PURCHASE OF EQUIPMENT FOR THE EMS DEPARTMENT AND TO PLACE REMAINING GRANT FUNDS TOWARDS THE LEASE PURCHASE AGREEMENT WITH HOUSTON COMMUNITY BANK FOR THE EKG MONITORS.

WHEREAS, the City of Wharton received funding from the Federal Emergency Management Agency and the Department of Homeland Security under the fiscal year 2010 Assistance to Firefighters Grant Program in the amount of \$108,000.00; and

WHEREAS, the Wharton City Council utilize said grant funds to purchase equipment to be used by the EMS Department in accordance with the grant requirements; and

WHEREAS, On August 23, 2010, the Wharton City Council approved Resolution No. 2010-59 approving the purchase of four (4) EKG monitors through a lease/purchase agreement with Houston Community Bank; and

WHEREAS, the Wharton City Council wishes to place the remaining grant funds toward the balance owed on the EKG monitors previously purchased by the City of Wharton through the lease/purchase agreement with Houston Community Bank; and

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

Section I. The Wharton City Council hereby the purchase of equipment to be used by the EMS Department in accordance with the 2010 Assistance to Firefighters Grant Program guidelines..

Section II. The Wharton City Council hereby approves that the City of Wharton shall place the remaining grant funds toward the balance owed on the EKG monitors previously purchased by the City of Wharton through the lease/purchase agreement with Houston Community Bank

Section III. This resolution shall become effective immediately upon its passage.

PASSED AND APPROVED this 11th day of April 2011.

CITY OF WHARTON

DOMINGO MONTALVO, JR.
Mayor

PAULA FAVORS
City Secretary

Councilmember Terry David Lynch seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider the City Council approval of the Ambulance Provider Permit request by Texas Critical Care Ambulance Service. City Manager Andres Garza, Jr., presented a copy of the application submitted by Aprea Group, LLC dba Texas Critical Care Ambulance for a City of Wharton ambulance provider permit. He also presented a copy of the memorandum dated April 1, 2011 from EMS Director John Kowalik recommending the City Council consider approving their request for an ambulance provider permit. City Manager Garza stated that City Attorney Paul Webb also reviewed the application, and he provided a copy of the letter dated April 5, 2011 from Mr. Webb that indicated the company was in compliance and in good standing with the Texas Department of Health and recommended the approval of the permit request. After some discussion, Councilmember Jeffery Gubbels moved to approve the Ambulance Provider Permit requested by Texas Critical Care Ambulance Service. The motion died for a lack of a second. No action was taken.

The eleventh item on the agenda was a resolution of the Wharton City Council approving a SmartNet GNSS Reference Network Host Agreement between the City of Wharton and LEICA Geosystems, Inc. and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr., advised the City Council that on February 23, 2011, he met with Mr. Tyler Collier of Leica-Geosystems, Inc. who requested the City of Wharton to consider the placement of a GNSS antenna on the Civic Center roof for use by the company for GIS mapping purposes. City Manager Garza also provided a copy of the proposed SmartNet GNSS Reference Network Host Agreement that had been reviewed by Attorney Clarence A. West, the City's Telecommunication Attorney and City Attorney Paul Webb. City Manager Garza also provided the City Council a copy of Mr. Webb's recommendation letter dated March 9, 2011, which indicated that he found the agreement to be in order. City Manager Garza further provided a copy of Facilities Maintenance Director Bob Baker's memorandum dated April 7, 2011 providing his recommendation that the placement of the proposed antenna to be on the north side of the EMS Department located at the Wharton Civic Center. City Manager Garza stated that as part of the agreement between the City and Leica Geosystems, Inc., Leica would provide the City of Wharton with a GPS unit at no cost to the City. He said the unit to be provided as per the contract was a Zeno 15, which was for mapping grade surveys only. Public Works Director Carter Miska stated that had he met with Mr. Collier who indicated that the company would upgrade the unit to be provided to the City to a Viva Uno 15, which was also, for mapping grade survey's; however, it could be upgraded for use on engineering grade surveys (centimeter accuracy), if needed. He said that the Zeno 15 could not be upgraded. Public Works Director Miska presented a copy of the memorandum dated April 6, 2011 from him regarding the unit to be provided to the City and a copy of the email dated April 6, 2011 from Mr. Collier stating the substitution of the units would be acceptable. City Manager Andres Garza, Jr. stated that the Finance Committee met on Monday, April 11, 2011 at 6:00 p.m. and was recommending the City Council consider approving the agreement with the proposed upgrade of the unit to be

City of Wharton
Regular City Council Meeting
April 11, 2011

provided to the City. After some discussion, Councilmember Terry David Lynch moved to approve the SmartNet GNSS Reference Network Host Agreement with the Zeno 15 upgraded to the Viva Uno 15 and the City of Wharton Resolution No. 2011-21, which reads as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011 - 21**

A RESOLUTION OF THE WHARTON CITY COUNCIL OF THE WHARTON CITY COUNCIL APPROVING A SMARTNET GNSS REFERENCE NETWORK HOST AGREEMENT BETWEEN THE CITY OF WHARTON AND LEICA GEOSYSTEMS, INC. AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, Leica GeoSystems, Inc. wishes to install a SmartNet GNSS Reference Network Host antennae on the north end of the Wharton EMS Facility; and

WHEREAS, the City of Wharton and Leica GeoSystems, Inc. wishes to enter into an agreement to authorize said antennae placement; and

WHEREAS, the City of Wharton and Leica GeoSystems, Inc. wishes to be bound by the conditions set forth in said agreement; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the agreement.

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

Section I. The City Council hereby approves SmartNet GNSS Reference Network Host Agreement between the City of Wharton and Leica GeoSystems, Inc.

Section II. The City of Wharton and Leica GeoSystems, Inc. are hereby bound by the conditions set forth in the agreement.

Section III. The City of Wharton hereby authorizes the Mayor of the City of Wharton to execute the agreement.

Section IV. This resolution will become effective immediately upon its passage.

Passed, Approved and Adopted this 11th day of April 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

Attest:

Paula Favors
City Secretary

Councilmember Jeffery Gubbels seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider a request by Mr. Greg Baines, Executive Director of Just Do It Now, Inc. for the following:

A. **Resolution:** A resolution approving the offer by Just Do It Now, Inc. to acquire tax resale property described as Lots 3 & 4, Block 9, Harrison Addition to the City of Wharton, Wharton County, Texas.

City Manager Andres Garza, Jr. presented the City Council with a copy of an email dated April 5, 2011 from Mr. Greg Baines, Executive Director of Just Do It Now, Inc., which stated that Just Do It Now, Inc. was wishing to acquire properties from the taxing entities. City Manager Garza also presented resolutions that were prepared by Attorney Charles A. "Chip" Sutton, Partner of Linebarger, Goggan Blair & Sampson, LLP, the City's delinquent tax attorney firm. City Manager Garza stated that Mr. Sutton also prepared the bid analysis for the two (2) properties. Mr. Baines advised the City Council that the properties Just Do It Now, Inc. would like to acquire were next to their current property and they would like to maintain them to keep the area looking well kept. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Resolution 2011-22, which reads as follows:

**CITY OF WHARTON
RESOLUTION 2011-22**

A RESOLUTION APPROVING THE OFFER BY JUST DO IT NOW, INC. TO ACQUIRE TAX RESALE PROPERTY DESCRIBED AS LOTS 3 & 4, BLOCK 9, HARRISON ADDITION TO THE CITY OF WHARTON, WHARTON COUNTY, TEXAS.

WHEREAS, the City of Wharton (the "City"), Wharton County, Wharton Independent School District, Wharton County Emergency Services District #1, Wharton County Junior College District and the Coastal Bend Groundwater Conservation District foreclosed on the below described property ("the property") through a delinquent tax lawsuit and judgment:

LOTS 3 & 4 IN BLOCK 9 OF HARRISON ADDITION, A SUBDIVISION IN THE CITY OF WHARTON, WHARTON COUNTY, TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 22, PAGE 293 OF THE DEED RECORDS OF WHARTON COUNTY, TEXAS (ACCOUNTY NO. R016105)

WHEREAS, the City remains unpaid after exhausting all legal means to satisfy the collection of the delinquent taxes due and owing to the City, including conducting a public auction of the

City of Wharton
Regular City Council Meeting
April 11, 2011

property by the Wharton County Sheriff on the Wharton County Courthouse steps whereby the property was struck off to the taxing authorities and;

WHEREAS, Being no bids for the property at the tax sale on May 6, 2008 or at subsequent tax re-sales, the City, Wharton County, Wharton Independent School District, Wharton County Emergency Services District #1, Wharton County Junior College District and the Coastal Bend Groundwater Conservation District now holds title to the property in trust to secure the payment of taxes, penalties, interest and costs owed to all taxing authorities participating in the foreclosure judgment;

WHEREAS, , the City, Wharton County, Wharton Independent School District, Wharton County Emergency Services District #1, Wharton County Junior College District and the Coastal Bend Groundwater Conservation District has received an offer of \$25.00 to purchase the property from Just Do It Now, Inc.

NOW, THEREFORE, IT IS ORDERED by the City of Wharton:

1. That all of the above paragraphs are true, correct and as such they are hereby incorporated in full and made part of this Resolution;
2. That the City of Wharton accepts this offer and authorizes the Mayor of the City of Wharton to sign and execute the deed on behalf of the City of Wharton to transfer all of the City of Wharton's title and interest in the property to the entity submitting the offer to purchase the property.
3. That the conveyance of all the title and interest of the tax authorities in the property is contingent on the acceptance of the offer by the governing bodies of Wharton County, Wharton Independent School District, Wharton County Emergency Services District #1, Wharton County Junior College District and the Coastal Bend Groundwater Conservation District.

PASSED AND APPROVED this 11th day of April 2011.

CITY OF WHARTON

DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

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

B. **Resolution:** A resolution approving the offer by Just Do It Now, Inc. to acquire tax resale property described as an undivided 80% interest in and to Lots 5 & 6, Block 9, Harrison Addition to the City of Wharton, Texas, Wharton County, Texas.

After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Resolution No. 2011-23, which reads as follows:

**CITY OF WHARTON
RESOLUTION 2011-23**

A RESOLUTION APPROVING THE OFFER BY JUST DO IT NOW, INC. TO ACQUIRE TAX RESALE PROPERTY DESCRIBED AS AN UNDIVIDED 80% INTEREST IN AND TO LOTS 5 & 6, BLOCK 9, HARRISON ADDITION TO THE CITY OF WHARTON, WHARTON COUNTY, TEXAS.

WHEREAS, the City of Wharton (the “City”), Wharton County, Wharton Independent School District, Wharton County Emergency Services District #1, Wharton County Junior College District and the Coastal Bend Groundwater Conservation District foreclosed on the below described property (“the property”) through a delinquent tax lawsuit and judgment:

AN UNDIVIDED 80% INTEREST IN AND TO LOTS 5 & 6 IN BLOCK 9 OF HARRISON ADDITION, A SUBDIVISION IN THE CITY OF WHARTON, WHARTON COUNTY, TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 13, PAGE 178 OF THE DEED RECORDS OF WHARTON COUNTY, TEXAS (ACCOUNTY NO. R016106)

WHEREAS, the City remains unpaid after exhausting all legal means to satisfy the collection of the delinquent taxes due and owing to the City, including conducting a public auction of the property by the Wharton County Sheriff on the Wharton County Courthouse steps whereby the property was struck off to the taxing authorities and;

WHEREAS, Being no bids for the property at the tax sale on February 3, 2009 or at subsequent tax re-sales, the City, Wharton County, Wharton Independent School District, Wharton County Emergency Services District #1, Wharton County Junior College District and the Coastal Bend Groundwater Conservation District now holds title to the property in trust to secure the payment of taxes, penalties, interest and costs owed to all taxing authorities participating in the foreclosure judgment;

WHEREAS, , the City, Wharton County, Wharton Independent School District, Wharton County Emergency Services District #1, Wharton County Junior College District and the Coastal Bend Groundwater Conservation District has received an offer of \$25.00 to purchase the property from Just Do It Now, Inc.

NOW, THEREFORE, IT IS ORDERED by the City of Wharton:

4. That all of the above paragraphs are true, correct and as such they are hereby incorporated in full and made part of this Resolution;
5. That the City of Wharton accepts this offer and authorizes the Mayor of the City of Wharton to sign and execute the deed on behalf of the City of Wharton to transfer all of the City of Wharton's title and interest in the property to the entity submitting the offer to purchase the property.
6. That the conveyance of all the title and interest of the tax authorities in the property is contingent on the acceptance of the offer by the governing bodies of Wharton County, Wharton Independent School District, Wharton County Emergency Services District #1, Wharton County Junior College District and the Coastal Bend Groundwater Conservation District.

PASSED AND APPROVED this 11th day of April 2011.

CITY OF WHARTON

DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

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

The thirteenth item on the agenda was to review and consider City of Wharton Ogden Sanitary Sewer Line Replacement Project:

- A. Bid Tabulation.
- B. **Resolution:** A resolution of the Wharton City Council awarding the bid for the City of Wharton Ogden Sanitary Sewer Line Replacement Project and authorizing the Mayor of the City of Wharton to execute the agreement.

City Manager Andres Garza, Jr. presented the City Council with the results of the bid opening for the City of Wharton Ogden Sanitary Sewer Line Replacement Project held on Wednesday, April 6, 2011 at 2:00 p.m. City Manager Garza also presented the City Council with a copy of the bid tabulation. Mr. Garza informed the City Council that the City received two (2) bids ranging from \$66,490.00 from Supak Construction, Inc. and \$69,094.00 from AR TurnKey Construction, Inc. Mr. Bradley C. Loehr, P.E. reviewed the bids and recommended the City Council consider awarding the contract for the project to Supak Construction, Inc. in the amount of \$66,490.00. City Manager Garza stated that he concurred with his recommendation. After some discussion, Councilmember Bryce D. Kocian made a motion to award the contract for the City of Wharton Ogden Sanitary Sewer Line Replacement project to Supak Construction, Inc. in the amount of \$66,490.00, and in accordance with the City of Wharton Resolution No. 2011- 24, which reads as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-24**

A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING THE BID TO SUPAK CONSTRUCTION, INC. FOR THE CITY OF WHARTON OGDEN SANITARY SEWER LINE REPLACEMENT PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, competitive, sealed bids were received April 6, 2011 for the City of Wharton Ogden Sanitary Sewer Line Replacement Project; and

WHEREAS, Supak Construction, Inc. was deemed to be the lowest and best qualified bidder as per bid specifications; and

WHEREAS, the City of Wharton City Council wishes to award the bid the Supak Construction, Inc. in the amount of \$66,490.00 for the City of Wharton Ogden Sanitary Sewer Line Replacement Project ; and

WHEREAS, Supak Construction, Inc. and the City of Wharton wishes to enter into an agreement for the City of Wharton Ogden Sanitary Sewer Line Replacement Project; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute 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 awards the bid for the City of Wharton Ogden Sanitary Sewer Line Replacement Project to Supak Construction, Inc. in the amount of \$66,490.00 as per bid specifications.

Section II. That the City Council hereby approves to award the agreement for the City of Wharton Ogden Sanitary Sewer Line Replacement Project to Supak Construction, Inc.

Section III. That the City of Wharton and Supak Construction, Inc. are hereby bound by the conditions as set forth in the agreement.

Section IV. That the City Council hereby authorizes the Mayor of the City of Wharton to execute the agreement.

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

Passed, Approved, and Adopted this 11th day of April 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Jeffery Gubbels seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider the City of Wharton Emergency Generator Quick Connect Project:

- A. Alabama Road Water Plant:
1. Quotes.
 2. **Resolution:** A resolution of the Wharton City Council awarding the contract to Barbee Electric for the City of Wharton Emergency Generator Quick Connect Project – Alabama Road Water Plant and authorizing the City Manager to execute the agreement.

City Manager Andres Garza, Jr. presented the City Council a copy of the memorandum dated April 7, 2011 from Building Official Ronnie Bollom regarding the Emergency Generator Quick Connect Project concerning the Alabama Road Water Plant and the Wharton Fire Department. City Manger Garza advised that Mr. Bollom stated in his memo that while making connections to the emergency generator components at the Alabama Road Water Plant (Item A above), the contractor Electrical Automation Controls (EAC), had discovered there were some deteriorated electrical conductors. Mr. Bollom advised that the insulation on the conductors had become brittle causing unsafe conditions that were beyond repair and required replacement. Mr. Bollom added that the removal of the existing conductors was not feasible due to their condition; therefore, it was recommended that new conduit and conductors be installed. Mr. Garza stated that since this work was not covered under the under the agreement with EAC, Mr. Bollom received quotes for the work. City Manager Garza presented a copy of the tabulation of the quotes received from Barbee Electric and EAC. Mr. Bollom recommended to the City Council that they consider awarding the work to Barbee Electric, in the amount of, \$9,393.68. After some discussion, Councilmember Terry David Lynch moved to award the contract to Barbee Electric for the City of Wharton Emergency Generator Quick Connect Project – Alabama Road Water Plant, in the amount of, \$9,393.68, and in accordance with the City of Wharton Resolution No. 2011- 25, which reads as follows:

CITY OF WHARTON

RESOLUTION NO. 2011 - 25

A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING A CONTRACT TO BARBEE ELECTRIC FOR THE CITY OF WHARTON EMERGENCY GENERATOR QUICK CONNECT PROJECT – ALABAMA ROAD WATER PLANT AND AUTHORIZING THE CITY MANAGER OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Wharton Alabama Road Water Plant electrical conductors and conductor insulation is in need of replacement; and

WHEREAS, the City of Wharton received quotes for the project in accordance with the City of Wharton Purchasing Policy; and

WHEREAS, the Wharton City Council wishes to award a contract to Barbee Electric, Inc. in the amount of \$9,393.68 to conduct the required work at the Alabama Road Water Plant; and

WHEREAS, the City of Wharton and Barbee Electric, Inc. wishes to be bound by the conditions set forth in said agreement; and

WHEREAS, the Wharton City Council wishes to authorize the City Manager of the City of Wharton to execute the agreement.

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

Section I. The City Council hereby approves to award a contract to Barbee Electric, Inc. in the amount of \$9,393.68 for the Emergency Generator Quick Connect Project – Alabama Road Water Plant.

Section II. The City of Wharton and Barbee Electric, Inc. are hereby bound by the conditions set forth in the agreement.

Section III. The City of Wharton hereby authorizes the City Manager of the City of Wharton to execute the agreement.

Section IV. This resolution will become effective immediately upon its passage.

Passed, Approved and Adopted this 11th day of April 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

Attest:

Paula Favors
City Secretary

Councilmember Jeffery Gubbels seconded the motion. All voted in favor.

B. Wharton Fire Department:

1. Quotes.
2. **Resolution:** A resolution of the Wharton City Council awarding the contract to Barbee Electric for the City of Wharton Emergency Generator Quick Connect Project – Wharton Fire Department and authorizing the City Manager of the City of Wharton to execute the agreement.

City Manager Andres Garza, Jr. informed the City Council that Mr. Bollom further stated in his memorandum that since the Wharton Fire Station Expansion project had begun and the new building had been repositioned on the lot from the original design, it had been suggested that both the existing and new buildings be connected to a single electrical service. City Manager Garza stated that currently the proposed location of the attachment for the emergency power transfer switch and quick connects were to be located at the exterior of the back wall of the existing building, which was approximately 100 feet from the point of electrical service and the new building. Mr. Bollom further stated that the new service would allow the City to incorporate a single emergency power generator transfer switch with quick connects, rather than two separate systems, for both buildings using one meter at the initial entry point of electrical service. Mr. Bollom stated that the City could eliminate the need for an additional generator or cable(s) laid across the driveway to connect emergency power to the new building. City Manager Garza stated that Mr. Bollom requested quotes for the construction of the single source service and was recommending that the revised project be awarded to Barbee Electric to install the new service with a 600 amp manual transfer switch with quick connects in the amount of \$22,975.00. Mr. Garza further added Mr. Bollom was also recommending that the contract with EAC be revised to remove the installation of a 400 amp manual transfer switch and quick connects from the Wharton Fire Department scope of work in the original contract. City Manager Garza stated that a change order to the contract was being prepared and would be presented to the City Council at a future meeting. After some discussion, Councilmember Terry David Lynch moved to award a contract to Barbee Electric for the City of Wharton Emergency Generator Quick Connect Project – Wharton Fire Department in the amount of \$22,975.00, and in accordance with the City of Wharton Resolution No. 2011-26, which reads as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011 - 26**

A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING A CONTRACT TO BARBEE ELECTRIC FOR THE CITY OF WHARTON EMERGENCY GENERATOR QUICK CONNECT PROJECT – WHARTON FIRE DEPARTMENT AND AUTHORIZING THE CITY MANAGER OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Wharton wishes to amend its Emergency Generator Quick Connect Project by installing new service with a 600 amp manual transfer with quick connects for both the existing and proposed new building; and

WHEREAS, the City of Wharton received quotes for the project in accordance with the City of Wharton Purchasing Policy; and

WHEREAS, the Wharton City Council wishes to award a contract to Barbee Electric, Inc. in the amount of \$22,975.00 to conduct the required work at the Wharton Fire Department; and

WHEREAS, the City of Wharton and Barbee Electric, Inc. wishes to be bound by the conditions set forth in said agreement; and

WHEREAS, the Wharton City Council wishes to authorize the City Manager of the City of Wharton to execute the agreement.

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

Section I. The City Council hereby approves to award a contract to Barbee Electric, Inc. in the amount of \$22,975.00 to install new service with a 600 amp manual transfer with quick connects for both the existing and proposed new building for the Emergency Generator Quick Connect Project – Wharton Fire Department.

Section II. The City of Wharton and Barbee Electric, Inc. are hereby bound by the conditions set forth in the agreement.

Section III. The City of Wharton hereby authorizes the City Manager of the City of Wharton to execute the agreement.

Section IV. This resolution will become effective immediately upon its passage.

Passed, Approved and Adopted this 11th day of April 2011.

CITY OF WHARTON, TEXAS

**By: _____
DOMINGO MONTALVO, JR.**

Mayor

Attest:

Paula Favors
City Secretary

Councilmember Jeffery Gubbels seconded the motion. All voted favor.

The fifteenth item on the agenda was a resolution of the Wharton City Council approving the agreement between the Wharton Swim Team and the City of Wharton for use of the Wharton Municipal Pool and authorizing the City Manager to execute the agreement. City Secretary Paula Favors presented an agreement that was executed by Ms. Melissa Stolle, Representative of the Wharton Swim Team for the 2011 Season. Mrs. Favors advised the City Council that the Wharton Swim Team was requesting to utilize the Wharton Municipal Swimming Pool for practices from April 26, 2011 through June 3, 2011 from 4:40 p.m. to 6:30 p.m. on Tuesdays, Wednesday's, Thursdays and Fridays and from June 7, 2011 through July 29, 2011 from 7:30 a.m. to 11:00 a.m. After some discussion, Councilmember Terry David Lynch moved to approve the agreement between the Wharton Swim Team and the City of Wharton for the use of the Wharton Municipal Pool and authorizing the City Manager to execute the agreement and approving City of Wharton Resolution No. 2011-27, which reads as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011 - 27**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE AGREEMENT BETWEEN THE CITY OF WHARTON FOR USE OF THE WHARTON MUNICIPAL POOL AND AUTHORIZING THE CITY MANAGER OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, The Wharton Swim Team wishes to utilize the Wharton Municipal Pool for practices; and

WHEREAS, the City of Wharton and the Wharton Swim Team wishes to enter into an agreement for use of the Wharton Municipal Pool; and

WHEREAS, the City of Wharton and Wharton Swim Team wishes to be bound by the conditions set forth in said agreement; and

WHEREAS, the Wharton City Council wishes to authorize the City Manager of the City of Wharton to execute the agreement.

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

Section I. The City Council hereby approves an agreement between the City of Wharton and the Wharton Swim Team for use of the Wharton Municipal Pool

Section II. The City of Wharton and the Wharton Swim Team are hereby bound by the conditions set forth in the agreement.

Section III. The City of Wharton hereby authorizes the City Manager of the City of Wharton to execute the agreement.

Section IV. This resolution will become effective immediately upon its passage.

Passed, Approved and Adopted this 11th day of April 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

Attest:

Paula Favors
City Secretary

Councilmember Jeffery Gubbels seconded the motion. All voted in favor.

The sixteenth item on the agenda was to review and consider the appointment to the City of Wharton City Council District No. 1 Vacant Position. City Manager Andres Garza, Jr. presented the City Council with a memorandum dated March 28, 2011 from Mayor Pro-Tem Donald Mueller requesting the City Council consider appointing any un-opposed candidates for the vacant positions on the City Council. After some discussion, Councilmember Jeffery Gubbels moved to approve the appointment of Mr. Alfred Earl Bryant to the City of Wharton City Council District No. 1. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider the City of Wharton City Council Boards, Commissions, and Committees:

- A. Wharton Regional Airport Board:
 - 1. Recommendation by the Wharton Regional Airport Board for City Council to consider appointing Mr. Jimmy J. Zissa as an Airport Board Member.
- B. Beautification Commission.
- C. Building Standards Commission.
- D. Electrical Board.
- E. Holiday Light Decorating Chairman.
- F. Mayor's Committee on People with Disabilities.

City of Wharton
Regular City Council Meeting
April 11, 2011

G. City Council Committees:

1. Housing Committee.
2. Public Health Committee.
3. Telecommunications Committee.
4. Wharton Economic Development Corporation Board of Directors Selection Committee.

City Manager Andres Garza, Jr., advised the City Council that the Wharton Regional Airport Board met on April 5, 2011 and was recommending the City Council consider appointing Mr. Jimmy J. Zissa as a member of the Airport Board. City Manager Garza advised the City Council that vacant positions existed on the afore mentioned Boards, Commissions and Committees. He added that the City Staff was also recommending the City Council authorize the City Secretary's office to solicit applications for positions on the Wharton Economic Development Board of Directors. He said that three (3) of its members terms would expire the 1st Tuesday in June and that one (1) of those positions was a position held by a member of the Wharton City Council. After some discussion, Councilmember Bryce D. Kocian moved to approve appointing Mr. Jimmy J. Zissa as a member of the Airport Board and authorizing the City Secretary's Office to advertise for applicants to the Wharton Economic Development Corporation. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The eighteenth item on the agenda was to review and consider the City Council, Committee, Commissions, and Board Reports. City Manager Andres Garza, Jr. presented the reports from the Planning Commission meeting that was held April 4, 2011, the Wharton Regional Airport Board meeting that was held April 6, 2011, and the Wharton Economic Development Corporation Public Hearing that was held April 6, 2011. No action was taken.

The nineteenth item on the agenda was adjournment. After some discussion, Councilmember Bryce D. Kocian made a motion to adjourn. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The meeting adjourned at 9:12 p.m.

CITY OF WHARTON, TEXAS

By: _____
Domingo Montalvo, Jr
Mayor

ATTEST:

Paula Favors
City Secretary