

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
June 27, 2011**

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

Councilmember's present were: Mayor Domingo Montalvo, Jr., Councilmembers Alfred Bryant, Jeff Gubbels, Terry David Lynch, Russell Machann, Don Mueller, and Karen Schulz.

Councilmember absent was: None

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, and City Attorney Paul Webb.

Visitors present were: John Mercurief II with Wharton Journal Spectator, Nora Chalue, Caleb Frankum, Jim Guilley of Coastal Securities, Tom Sage of Andrews Kurth, I.O. Coleman, Jr., and Ricky Sherfield, Jr.

The second item on the agenda was Roll Call and Excuses Absences. All members were present.

The third item on the agenda was Public Comments. No comments were given.

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

The fifth item on the agenda was to review and consider the City of Wharton Financial Report for the month of May 2011. Finance Director Joan Anandel presented the financial report for the month of May 2011. Mrs. Anandel stated that the total ad valorem taxes collected were \$14,412.15 and the sales tax for the month of May 2011 was \$114,740.06. She further stated that the TexPool balance for May was \$169,925.20 with an average monthly yield of 0.08%. She said Prosperity Bank balance for May 2011 was \$2,680,791.04 with an average monthly yield of 0.15%. Mrs. Anandel further stated that other investments included \$2,659.05 at TexasGulf Federal Credit Union in the debt fund, and \$255,473.91 at Capital One Marketing at a rate of 2%. After some discussion, Councilmember Terry David Lynch moved to approve the City of Wharton Financial Report for the month of May 2011. Councilmember Al Bryant seconded the motion. All voted in favor.

The sixth item on the agenda item was to review and consider a request by Mr. & Mrs. Connell Green, 302 Mahan Ave.; Pecan Acres, Block 1, Lot 12 for an over 50% front property line

setback variance for the construction of a carport twelve (12') feet from the front property line. Assistant to the City Manager Jackie Jansky presented a copy of the memorandum dated June 16, 2011 from Building Official Ronnie Bollom providing a copy of the application for an over 50% variance request submitted by Mr. & Mrs. Connell Green for a front yard setback variance to construct an 18'-0" x 18'-0" carport twelve feet from the front property line. Mrs. Jansky stated the requirement for the front property line setback is twenty-five feet; therefore, Mr. and Mrs. Green were requesting a thirteen feet setback variance. After some discussion, Councilmember Terry David Lynch moved to approve the request by Mr. & Mrs. Connell Green, 302 Mahan Ave.; Pecan Acres, Block 1, Lot 12 for an over 50% front property line setback variance for the construction of a carport twelve (12') feet from the front property line. Councilmember Al Bryant seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider an ordinance authorizing the issuance of City of Wharton, Texas Tax and Revenue Certificates of Obligation, Series 2011. City Manager Andres Garza, Jr. presented a copy of the ordinance authorizing the issuance of the City of Wharton, Texas Tax and Revenue Certificates of Obligation, Series 2011. Jim Guilley of Coastal Securities provided information to the City Council on the sale of the bonds. Tom Sage of Andrews Kurth, also explained to the City Council the legal aspects of the sale of the bonds. City Manager Garza stated an ordinance was required to make the sale of the bonds. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Ordinance No. 2011-11, which read as follows:

CITY OF WHARTON
ORDINANCE NO. 2011-11

ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF WHARTON,
TEXAS, TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES
2011

THE STATE OF TEXAS §
COUNTY OF WHARTON §
 §

WHEREAS, the City Council of the City of Wharton, Texas (the "City"), authorized the publication of a notice of intention to issue certificates of obligation to the effect that the City Council would meet on June 27, 2011, to adopt an ordinance and take such other action as may be deemed necessary to authorize the issuance of certificates of obligation (the "Certificates") payable from City ad valorem taxes and from a limited pledge of a subordinate lien on the net revenues of the City's waterworks and sanitary sewer system, for the purpose of evidencing the indebtedness of the City for all or any part of the costs associated with (i) the construction and rehabilitation of City streets and the water, sewer and drainage system (ii) flood reduction improvements (iii) sidewalk improvements and (iv) the relocation of FM 102 and/or the extension of FM 1301 to US 59, including the acquisition of related road right of ways; and

WHEREAS, such notice was published at the times and in the manner required by the Constitution and laws of the State of Texas and of the United States of America, respectively, particularly Subchapter C of Chapter 271, Texas Local Government Code; and

WHEREAS, no petition or other request has been filed with or presented to any official of the City requesting that any of the proceedings authorizing the Certificates be submitted to a referendum or other election; therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHARTON:

1. Recitals. It is hereby found and determined that the matters and facts set out in the preamble to this Ordinance are true and correct.

2. Definitions. Throughout this ordinance the following terms and expressions as used herein shall have the meanings set forth below:

“Act” means Subchapter C of Chapter 271, Texas Local Government Code.

“Business Day” means any day which is not a Saturday, Sunday, a day on which Registrar is authorized by law or executive order to close, or a legal holiday.

“Certificate” or “Certificates” means the City of Wharton, Texas, Tax and Revenue Certificates of Obligation, Series 2011 authorized in this Ordinance, unless the context clearly indicates otherwise.

“City” means the City of Wharton, Texas.

“Closing Date” means the date of the initial delivery of and payment for the Certificates.

“Code” means the Internal Revenue Code of 1986, as amended.

“Comptroller” means the Comptroller of Public Accounts of the State of Texas.

“DTC” means The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“Interest and Sinking Fund” means the interest and sinking fund for payment of the Certificates established by the City in Section 20 of this Ordinance.

“Interest Payment Date”, when used in connection with any Certificate, means June 1, 2012, and each December 1 and June 1 thereafter until maturity or earlier redemption.

“Initial Certificate” means the Initial Certificate authorized by Section 6(d).

“Ordinance” as used herein and in the Certificates means this ordinance authorizing the Certificates.

“Owner” means any person who shall be the registered owner of any outstanding Certificate.

“Record Date” means, for any Interest Payment Date, the close of business on the 15th calendar day of the month next preceding such Interest Payment Date.

“Register” means the books of registration kept by the Registrar in which are maintained the names and addresses of and the principal amounts registered to each Owner.

“Registrar” means Wells Fargo Bank, N.A., and its successors in that capacity.

“Underwriter” means the firm or syndicate that is the initial purchaser of a series of the Certificates, as specified in Section 24.

3. Authorization. The Certificates shall be issued pursuant to the Act in fully registered form, without coupons, in the total authorized principal amount of \$4,600,000 for the purpose of evidencing the indebtedness of the City for all or any part of the costs associated with (i) the construction and rehabilitation of City streets and the water, sewer and drainage system (ii) flood reduction improvements (iii) sidewalk improvements and (iv) the relocation of FM 102 and/or the extension of FM 1301 to US 59, including the acquisition of related road right of ways.

4. Designation, Date, and Interest Payment Dates. The Certificates shall be designated as the “CITY OF WHARTON, TEXAS, TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2011”, and shall be dated July 1, 2011. The Certificates shall bear interest at the rates set forth in Section 5 of this Ordinance from the later of July 1, 2011, or the most recent Interest Payment Date to which such interest has been paid or duly provided for, calculated on the basis of a 360-day year of twelve 30-day months, interest payable on each Interest Payment Date.

5. Initial Certificates; Numbers and Denominations. The Certificates shall be initially issued bearing the numbers, in the principal amounts, and bearing interest at the rates set forth in the following schedule, and may be transferred and exchanged as set out in this Ordinance. The Certificates shall mature on June 1 in each of the years and in the amounts set out in such schedule. The Initial Certificate shall be numbered I-1 and all other Certificates shall be numbered in sequence beginning with R-1. Certificates delivered on transfer of or in exchange for other Certificates shall be numbered in order of their authentication by the Registrar, shall be in the denomination of \$5,000 or integral multiples thereof, and shall mature on the same date and bear interest at the same rate as the Certificate or Certificates in lieu of which they are delivered.

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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2012	\$10,000	<u>2.00 %</u>
2013	10,000	<u>2.00 %</u>
2014	10,000	<u>2.00 %</u>
2015	50,000	<u>2.00 %</u>
2016	220,000	<u>3.00 %</u>
2017	210,000	<u>3.00 %</u>
2018	200,000	<u>3.00 %</u>
2019	225,000	<u>3.00 %</u>
2020	245,000	<u>3.25 %</u>
2021	225,000	<u>4.00 %</u>
2023	315,000	<u>4.00 %</u>
2024	330,000	<u>4.00 %</u>
2025	340,000	<u>4.00 %</u>
2026	355,000	<u>4.00 %</u>
2027	365,000	<u>4.00 %</u>
2028	380,000	<u>4.00 %</u>
2029	395,000	<u>4.00 %</u>
2030	410,000	<u>4.00 %</u>

6. Execution of Certificates; Seal. (a) The Certificates shall be signed on behalf of the City by the Mayor and countersigned by the City Secretary, by their manual, lithographed, or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Certificates shall have the same effect as if each of the Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the Certificates shall have the same effect as if the official seal of the City had been manually impressed upon each of the Certificates.

(b) If any officer of the City whose manual or facsimile signature shall appear on the Certificates shall cease to be such officer before the authentication of such Certificates or before the delivery of such Certificates, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Certificate shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Registrar's Authentication Certificate substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Registrar. In lieu of the executed Registrar's Authentication Certificate described above, the Initial Certificate delivered at the Closing Date shall have attached hereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller, or by his duly authorized agent, which certificate shall be evidence that the Initial Certificate has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller.

(d) On the Closing Date, the Initial Certificate, being a single certificate representing the entire principal amount of the Certificates, payable in stated installments to the Underwriter or its designee, executed by manual or facsimile signature of the Mayor and City Secretary of the

City, approved by the Attorney General, and registered and manually signed by the Comptroller, shall be delivered to the Underwriter or its designee. Upon payment for the Initial Certificate, the Registrar shall cancel the Initial Certificate and deliver definitive Certificates to DTC.

7. Payment of Principal and Interest. The Registrar is hereby appointed as the paying agent for the Certificates. The principal of the Certificates shall be payable, without exchange or collection charges, in any coin or currency of the United States of America which, on the date of payment, is legal tender for the payment of debts due the United States of America, upon their presentation and surrender as they become due and payable at the principal payment office of the Registrar in Fort Worth, Texas. The interest on each Certificate shall be payable by check payable on the Interest Payment Date, mailed by the Registrar on or before each Interest Payment Date to the Owner of record as of the Record Date, to the address of such Owner as shown on the Register.

If the date for payment of the principal of or interest on any Certificate is not a Business Day, then the date for such payment shall be the next succeeding Business Day, with the same force and effect as if made on the original date payment was due.

8. Successor Registrars. The City covenants that at all times while any Certificates are outstanding it will provide a commercial bank or trust company organized under the laws of the United States or any state and duly qualified and legally authorized to serve as Registrar for the Certificates. The City reserves the right to change the Registrar on not less than 45 days written notice to the Registrar. Promptly upon the appointment of any successor Registrar, the previous Registrar shall deliver the Register or copies thereof to the new Registrar, and the new Registrar shall notify each Owner, by United States mail, first class postage prepaid, of such change and of the address of the new Registrar. Each Registrar hereunder, by acting in that capacity, shall be deemed to have agreed to the provisions of this Section.

9. Special Record Date. If interest on any Certificate is not paid on any Interest Payment Date and continues unpaid for thirty (30) days thereafter, the Registrar shall establish a new record date for the payment of such interest, to be known as a Special Record Date. The Registrar shall establish a Special Record Date when funds to make such interest payment are received from or on behalf of the City. Such Special Record Date shall be fifteen (15) days prior to the date fixed for payment of such past due interest, and notice of the date of payment and the Special Record Date shall be sent by United States mail, first class postage prepaid, not later than five (5) business days prior to the Special Record Date, to each affected Owner of record as of the close of business on the day prior to the mailing of such notice.

10. Ownership; Unclaimed Principal and Interest. The City, the Registrar and any other person may treat the person in whose name any Certificate is registered as the absolute Owner of such Certificate for the purpose of making payment of principal or interest on such Certificate, and for all other purposes, whether or not such Certificate is overdue, and neither the City nor the Registrar shall be bound by any notice or knowledge to the contrary. All payments made to the person deemed to be the Owner of any Certificate in accordance with this Section shall be valid and effectual and shall discharge the liability of the City and the Registrar upon such Certificate to the extent of the sums paid.

Amounts held by the Registrar which represent principal of and interest on the Certificates remaining unclaimed by the Owner after the expiration of three years from the date such amounts have become due and payable shall be reported and disposed of by the Registrar in accordance with the applicable provisions of Texas law including, to the extent applicable, Title 6 of the Texas Property Code, as amended.

11. Registration, Transfer, and Exchange. So long as any Certificates remain outstanding, the Registrar shall keep the Register at its principal payment office in Fort Worth, Texas, and, subject to such reasonable regulations as it may prescribe, the Registrar shall provide for the registration and transfer of Certificates in accordance with the terms of this Ordinance.

Each Certificate shall be transferable only upon the presentation and surrender thereof at the principal payment office of the Registrar in Fort Worth, Texas, duly endorsed for transfer, or accompanied by an assignment duly executed by the registered Owner or his authorized representative in form satisfactory to the Registrar. Upon due presentation of any Certificate in proper form for transfer, the Registrar shall authenticate and deliver in exchange therefor, within three Business Days after such presentation, a new Certificate or Certificates, registered in the name of the transferee or transferees, in authorized denominations and of the same maturity and aggregate principal amount and bearing interest at the same rate as the Certificate or Certificates so presented.

All Certificates shall be exchangeable upon presentation and surrender at the principal payment office of the Registrar in Fort Worth, Texas, for a Certificate or Certificates of like maturity and interest rate and in any authorized denomination, in an aggregate amount equal to the unpaid principal amount of the Certificate or Certificates presented for exchange. The Registrar shall be and is hereby authorized to authenticate and deliver exchange Certificates in accordance with the provisions of this Section. Each Certificate delivered in accordance with this Section shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such Certificate is delivered.

The City or the Registrar may require the Owner of any Certificate to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the transfer or exchange of such Certificate. Any fee or charge of the Registrar for such transfer or exchange shall be paid by the City.

12. Mutilated, Lost, or Stolen Certificates. Upon the presentation and surrender to the Registrar of a mutilated Certificate, the Registrar shall authenticate and deliver in exchange therefor a replacement Certificate of like maturity, interest rate, and principal amount, bearing a number not contemporaneously outstanding. If any Certificate is lost, apparently destroyed, or wrongfully taken, the City, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Certificate has been acquired by a bona fide purchaser, shall authorize and the Registrar shall authenticate and deliver a replacement Certificate of like maturity, interest rate and principal amount, bearing a number not contemporaneously outstanding.

The City or the Registrar may require the Owner of a mutilated Certificate to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection

therewith and any other expenses connected therewith, including the fees and expenses of the Registrar.

The City or the Registrar may require the Owner of a lost, apparently destroyed or wrongfully taken Certificate, before any replacement Certificate is issued, to:

- (1) furnish to the City and the Registrar satisfactory evidence of the ownership of and the circumstances of the loss, destruction or theft of such Certificate;
- (2) furnish such security or indemnity as may be required by the Registrar and the City to save them harmless;
- (3) pay all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Registrar and any tax or other governmental charge that may be imposed; and
- (4) meet any other reasonable requirements of the City and the Registrar.

If, after the delivery of such replacement Certificate, a bona fide purchaser of the original Certificate in lieu of which such replacement Certificate was issued presents for payment such original Certificate, the City and the Registrar shall be entitled to recover such replacement Certificate from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Registrar in connection therewith.

If any such mutilated, lost, apparently destroyed or wrongfully taken Certificate has become or is about to become due and payable, the City in its discretion may, instead of issuing a replacement Certificate, authorize the Registrar to pay such Certificate.

Each replacement Certificate delivered in accordance with this Section shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such replacement Certificate is delivered.

13. Cancellation of Certificates. All Certificates paid in accordance with this Ordinance, and all Certificates in lieu of which exchange Certificates or replacement Certificates are authenticated and delivered in accordance herewith, shall be canceled and destroyed upon the making of proper records regarding such payment. The Registrar shall furnish the City with appropriate certificates of destruction of such Certificates.

14. Book-Entry System. (a) The Initial Certificate shall be registered in the name of SAMCO Capital Markets, Inc. Except as provided in Section 15 hereof, all other Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the City and the Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such DTC Participant holds an interest in the Certificates, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City and the Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Certificates, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any amount with respect to principal of, premium, if any, or interest on the Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Register as the absolute Owner of such Certificate for the purpose of payment of principal of and interest on the Certificates, for the purpose of giving notices of redemption and other matters with respect to such Certificate, for the purpose of registering transfer with respect to such Certificate, and for all other purposes whatsoever. The Registrar shall pay all principal of, premium, if any, and interest on the Certificates only to or upon the order of the respective Owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payments of principal, premium, if any, and interest on the Certificates to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions of this Ordinance with respect to interest checks being mailed to the Owner of record as of the Record Date, the phrase "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

15. Successor Securities Depository; Transfer Outside Book-Entry Only System. In the event that the City in its sole discretion, determines that the beneficial owners of the Certificates shall be able to obtain certificated Certificates, or in the event DTC discontinues the services described herein, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants, as identified by DTC, of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository or (ii) notify DTC and DTC Participants, as identified by DTC, of the availability through DTC of Certificates and transfer one or more separate Certificates to DTC Participants having Certificates credited to their DTC accounts, as identified by DTC. In such event, the Certificates shall not longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

16. Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Certificates are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such

Certificates, and all notices with respect to such Certificates, shall be made and given, respectively, in the manner provided in the Blanket Letter of Representations.

17. Optional and/or Mandatory Redemption. The Certificates are subject to optional and/or mandatory redemption as set forth in the Form of Certificate in this Ordinance.

Principal amounts may be redeemed only in integral multiples of \$5,000. If a Certificate subject to redemption is in a denomination larger than \$5,000, a portion of such Certificate may be redeemed, but only in integral multiples of \$5,000. Upon surrender of any Certificate for redemption in part, the Registrar, in accordance with Section 11 hereof, shall authenticate and deliver in exchange therefor a Certificate or Certificates of like maturity, Issuance Date, and interest rate in an aggregate principal amount equal to the unredeemed portion of the Certificate so surrendered.

Notice of any redemption identifying the Certificates to be redeemed in whole or in part shall be given by the Registrar at least thirty days prior to the date fixed for redemption by sending written notice by first class mail, postage prepaid, to the Owner of each Certificate to be redeemed in whole or in part at the address shown on the Register. Such notices shall state the redemption date, the redemption price, the place at which Certificates are to be surrendered for payment and, if less than all Certificates outstanding of a particular maturity are to be redeemed, the numbers of the Certificates or portions thereof of such maturity to be redeemed. Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice. By the date fixed for redemption, due provision shall be made with the Registrar for payment of the redemption price of the Certificates or portions thereof to be redeemed, plus accrued interest to the date fixed for redemption. When Certificates have been called for redemption in whole or in part and due provision has been made to redeem the same as herein provided, the Certificates or portions thereof so redeemed shall no longer be regarded as outstanding except for the purpose of receiving payment solely from the funds so provided for redemption, and the rights of the Owners to collect interest which would otherwise accrue after the redemption date on any Certificate or portion thereof called for redemption shall terminate on the date fixed for redemption.

18. Forms. The form of the Certificates, including the form of Registration Certificate of the Comptroller of Public Accounts, which shall be attached or affixed to the Initial Certificate, the form of the Registrar's Authentication Certificate, and the form of Assignment, shall be, respectively, substantially as follows, with such additions, deletions and variations as may be necessary or desirable and not prohibited by this Ordinance, including any legend regarding bond insurance if such insurance is obtained by the Underwriter:

(a) Form of Certificate.

UNITED STATES OF AMERICA
STATE OF TEXAS
COUNTY OF WHARTON

REGISTERED
NUMBER

REGISTERED
DENOMINATION

\$ _____

CITY OF WHARTON, TEXAS
TAX AND REVENUE
CERTIFICATE OF OBLIGATION
SERIES 2011

INTEREST RATE:

MATURITY DATE:

June 1, 20__

ISSUE DATE:

July 28, 2011

CUSIP:

REGISTERED OWNER:

PRINCIPAL AMOUNT:

DOLLARS

The City of Wharton, Texas (the "City") promises to pay to the registered owner identified above, or registered assigns, on the maturity date specified above, upon presentation and surrender of this Certificate to Wells Fargo Bank, N.A. (the "Registrar") at its principal payment office in Fort Worth, Texas, the principal amount identified above, payable in any coin or currency of the United States of America which on the date of payment of such principal is legal tender for the payment of debts due the United States of America, and to pay interest thereon at the rate shown above, calculated on the basis of a 360-day year of twelve 30-day months, from the later of July 1, 2011, or the most recent interest payment date to which interest has been paid or duly provided for. Interest on this Certificate is payable by check on December 1 and June 1, beginning on June 1, 2012, mailed to the registered owner of record as of the close of business on the last business day of the month next preceding each interest payment date.

THIS CERTIFICATE is one of a duly authorized issue of certificates of obligation, aggregating \$4,600,000 (the "Certificates"), issued in accordance with the Constitution and laws of the State of Texas, particularly Subchapter C of Chapter 271, Texas Local Government Code, for the purpose of evidencing the indebtedness of the City for all or any part of the costs associated (i) the construction and rehabilitation of City streets and the water, sewer and drainage system (ii) flood reduction improvements (iii) sidewalk improvements and (iv) the relocation of FM 102 and/or the extension of FM 1301 to US 59, including the acquisition of related road right of ways and the cost of professional services incurred in connection therewith,

and pursuant to an ordinance duly adopted by the City Council of the City (the "Ordinance"), which Ordinance is of record in the official minutes of the City Council.

THE CITY RESERVES THE RIGHT to redeem Certificates maturing on and after June 1, 2020, prior to their scheduled maturities, in whole or from time to time in part, in integral multiples of \$5,000, on June 1, 2019, or any date thereafter at par plus accrued interest on the principal amounts called for redemption to the date fixed for redemption. Reference is made to the Ordinance for complete details concerning the manner of redeeming the Certificates.

[THE BONDS maturing in the years _____ and _____ (the "Term Bonds") are subject to mandatory redemption prior to maturity in the amounts and on the dates set out below, at a price equal to the principal amount to be redeemed plus accrued interest to the redemption date:

TERM BONDS MATURING IN THE YEAR _____

<u>Mandatory Redemption Dates</u>	<u>Principal Amount</u>
_____	\$ _____
_____ (maturity)	\$ _____

THE PARTICULAR TERM BONDS to be redeemed shall be selected by the Registrar by lot or other customary random selection method, on or before _____ of each year in which Term Bonds are to be mandatorily redeemed. The principal amount of Term Bonds to be mandatorily redeemed in each year shall be reduced by the principal amount of such Term Bonds that have been acquired by the District and delivered to the Registrar for cancellation or have been optionally redeemed and which have not been made the basis for a previous reduction.]

NOTICE OF ANY REDEMPTION shall be given at least thirty (30) days prior to the date fixed for redemption by first class mail, addressed to the registered owner of each Certificate to be redeemed in whole or in part at the address shown on the books of registration kept by the Registrar. When Certificates or portions thereof have been called for redemption, and due provision has been made to redeem the same, the principal amounts so redeemed shall be payable solely from the funds provided for redemption, and interest which would otherwise accrue on the amounts called for redemption shall terminate on the date fixed for redemption.

THIS CERTIFICATE is transferable only upon presentation and surrender at the principal payment office of the Registrar in Fort Worth, Texas, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his authorized representative, subject to the terms and conditions of the Ordinance.

THE CERTIFICATES are exchangeable at the principal payment office of the Registrar in Fort Worth, Texas, for Certificates in the principal amount of \$5,000 or any integral multiple thereof, subject to the terms and conditions of the Ordinance.

THIS CERTIFICATE shall not be valid or obligatory for any purpose or be entitled to any benefit under the Ordinance unless this Certificate is either (i) registered by the Comptroller

of Public Accounts of the State of Texas by registration certificate attached or affixed hereto or (ii) authenticated by the Registrar by due execution of the authentication certificate endorsed hereon.

THE REGISTERED OWNER of this Certificate, by acceptance hereof, acknowledges and agrees to be bound by all the terms and conditions of the Ordinance.

THE CITY has covenanted in the Ordinance that it will at all times provide a legally qualified registrar for the Certificates and will cause notice of any change of registrar to be mailed to each registered owner.

IT IS HEREBY certified, recited and covenanted that this Certificate has been duly and validly issued and delivered; that all acts, conditions and things required or proper to be performed, to exist and to be done precedent to or in the issuance and delivery of this Certificate have been performed, exist and have been done in accordance with law; and that annual ad valorem taxes, within the limits prescribed by law, sufficient to provide for the payment of the interest on and principal of this Certificate, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in the City.

IT IS FURTHER certified, recited and represented that the revenues, in an amount not to exceed \$10,000, to be derived from the operation of the City's waterworks and sanitary sewer system, after the payment of all operation and maintenance expenses thereof (the "Net Revenues"), are pledged to the payment of the principal of and interest on the Certificates; provided, however, that such pledge is and shall be junior and subordinate in all respects to the pledge of the Net Revenues to the payment of all outstanding obligations of the City and any obligation of the City, whether authorized heretofore or hereafter, which the City designates as having a pledge senior to the pledge of the Net Revenues to the payment of the Certificates. The City also reserves the right to issue, for any lawful purpose at any time, in one or more installments, bonds, certificates of obligation and other obligations of any kind payable in whole or in part from the Net Revenues, secured by a pledge of the Net Revenues that may be prior and superior in right to, on a parity with, or junior and subordinate to the pledge of the Net Revenues securing the Certificates.

IN WITNESS WHEREOF, this Certificate has been signed with the manual or facsimile signature of the Mayor and countersigned with the manual or facsimile signature of the City Secretary, and the official seal of the City has been duly impressed, or placed in facsimile, on this Certificate.

(AUTHENTICATION
CERTIFICATE)

(SEAL)

CITY OF WHARTON, TEXAS

Mayor

City Secretary

(b) Form of Registration Certificate.

City of Wharton
Regular City Council Meeting
June 27, 2011

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. _____

I hereby certify that this Certificate has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Certificate has been registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS MY SIGNATURE AND SEAL this _____.

(SEAL)

Comptroller of Public Accounts
of the State of Texas

(c) Form of Registrar's Authentication Certificate.

AUTHENTICATION CERTIFICATE

It is hereby certified that this Certificate has been delivered pursuant to the Ordinance described in the text of this Certificate.

Wells Fargo Bank, N.A.
As Paying Agent/Registrar

By _____
Authorized Signature
Date of Authentication _____

(d) Form of Assignment.

ASSIGNMENT

For value received, the undersigned hereby sells, assigns, and transfers unto

(Please print or type name, address, and zip code of Transferee)

(Please insert Social Security or Taxpayer Identification Number of Transferee)
the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints

attorney to transfer said Certificate on the books kept for registration thereof, with full power of
substitution in the premises.

DATED: _____

Signature Guaranteed: _____

shown

particular,
NOTICE: Signature must be guaranteed
change
by a member firm of the New York Stock
Exchange or a commercial bank or trust
company.

Registered Owner

NOTICE: The signature above must
to the name of the registered owner as
on the face of this Certificate in every
without any alteration, enlargement or
whatsoever.

(e) The Initial Certificate shall be in the form set forth in paragraphs (a), (b) and (d) of this Section, except for the following alterations:

(i) immediately under the name of the Certificate, the headings “INTEREST RATE” and “MATURITY DATE” shall both be completed with the words “As Shown Below” and the word “CUSIP” deleted;

(ii) in the first paragraph of the Certificate, the words “on the maturity date specified above” and “at the rate shown above” shall be deleted and the following shall be inserted at the end of the first sentence “..., with such principal to be paid in installments on June 1 in each of the years and in the principal amounts identified in the following schedule and with such installments bearing interest at the per annum rates set forth in the following schedule:

[Information to be inserted from schedule in Section 5]

(iii) the Initial Certificate shall be numbered I-1.

19. CUSIP Numbers; Bond Insurance. CUSIP Numbers may be printed on the Certificates, but errors or omissions in the printing of such numbers shall have no effect on the validity of the Certificates. If bond insurance is obtained by the Underwriter, the Certificates may bear an appropriate legend as provided by the insurer.

20. Interest and Sinking Fund; Tax Levy. There is hereby established a separate fund of the City to be known as the City of Wharton, Texas, Tax and Revenue Certificates of Obligation, Series 2011 Interest and Sinking Fund (the “Interest and Sinking Fund”), which shall be kept separate and apart from all other funds of the City. The proceeds from all taxes levied, assessed and collected for and on account of the Certificates authorized by this Ordinance shall be deposited, as collected, in the Interest and Sinking Fund. While the Certificates or any part of the principal thereof or interest thereon remain outstanding and unpaid, there is hereby levied and there shall be annually assessed and collected in due time, form and manner, and at the same time as other City taxes are assessed, levied and collected, in each year, an annual ad valorem tax, within the limits prescribed by law, upon all taxable property in the City, sufficient to pay the current interest on the Certificates as the same becomes due and to provide and maintain a sinking fund of not less than two percent of the principal amount of the Certificates or the amount required to pay each installment of principal of the Certificates as the same matures, whichever is greater, full allowance being made for delinquencies and costs of collection, and said taxes are hereby irrevocably pledged to the payment of the interest on and principal of the Certificates.

To pay the debt service coming due on the Certificates prior to receipt of the taxes levied to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.

21. Pledge of Revenues. The revenues, in an amount not to exceed \$10,000, to be derived from the operation of the City's waterworks and sanitary sewer system, after the payment of all operation and maintenance expenses thereof (the "Net Revenues"), are hereby pledged to the payment of the principal of and interest on the Certificates as the same come due; provided, however, that such pledge is and shall be junior and subordinate in all respects to the pledge of the Net Revenues to the payment of all outstanding obligations of the City and any obligation of the City, whether authorized heretofore or hereafter, which the City designates as having a pledge senior to the pledge of the Net Revenues to the payment of the Certificates. The City reserves the right to issue, for any lawful purpose at any time, in one or more installments, bonds, certificates of obligation and other obligations of any kind payable in whole or in part from the Net Revenues, secured by a pledge of the Net Revenues that may be prior and superior in right to, on a parity with, or junior and subordinate to the pledge of Net Revenues securing the Certificates.

22. Application of Chapter 1208, Government Code. Chapter 1208, Government Code, applies to the issuance of the Certificates and the pledge of the taxes and revenues granted by the City under Sections 20 and 21 of this Ordinance, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Certificates are outstanding an unpaid such that the pledge of the taxes and revenues granted by the City under Sections 20 and 21 of this Ordinance is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the registered owners of the Certificates the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

23. Further Proceedings. After the Initial Certificate has been executed, it shall be the duty of the Mayor and other appropriate officials and agents of the City to deliver the Initial Certificate and all pertinent records and proceedings to the Attorney General of the State of Texas, for examination and approval. After the Initial Certificate has been approved by the Attorney General, it shall be delivered to the Comptroller for registration. Upon registration of the Initial Certificate, the Comptroller (or the Comptroller's bond clerk or an assistant bond clerk lawfully designated in writing to act for the Comptroller) shall manually sign the Comptroller's Registration Certificate prescribed herein and the seal of said Comptroller shall be impressed, or placed in facsimile, thereon.

24. Sale. The sale and delivery of the Certificates to SAMCO Capital Markets, Inc. (the "Underwriter") at a price of par, plus a cash premium of \$ 69,000.00 , plus accrued interest thereon to date of delivery, is hereby authorized, approved, ratified and confirmed, subject to the approving opinion as to the legality of the Certificates of the Attorney General of the State of Texas, and of Andrews Kurth LLP, Houston, Texas, bond counsel. It is hereby found and declared that the Certificates were sold at public sale and that the bid of the Underwriter was the best bid received by the City.

25. Federal Income Tax Exclusion. The City intends that the interest on the Certificates on the Certificates shall be excludable from gross income of the owners thereof for federal income tax purposes pursuant to Sections 103 and 141 through 150 of the Internal

Revenue Code of 1986, as amended, (the “Code”) and all applicable temporary, proposed and final regulations (the “Regulations”) and procedures promulgated thereunder and applicable to the Certificates. For this purpose, the City covenants that it will monitor and control the receipt, investment, expenditure and use of all gross proceeds of the Certificates (including all property, the acquisition, construction or improvement of which is to be financed directly or indirectly with the proceeds of the Certificates) and take or omit to take such other and further actions as may be required by Sections 103 and 141 through 150 of the Code and the Regulations to cause the interest on the Certificates to be and remain excludable from the gross income, as defined in Section 61 of the Code, of the owners of the Certificates for federal income tax purposes. Without limiting the generality of the foregoing, the City shall comply with each of the following covenants:

- (a) The City will use all of the proceeds of the Certificates to (i) provide funds for the purposes described in Section 2.1 of this Ordinance, which will be owned and operated by the City and (ii) to pay the costs of issuing the Certificates. The City will not use any portion of the proceeds of the Certificates to pay the principal of or interest or redemption premium on, any other obligation of the City or a related person.
- (b) The City will not directly or indirectly take any action, or omit to take any action, which action or omission would cause the Certificates to constitute “private activity bonds” within the meaning of Section 141(a) of the Code.
- (c) Principal of and interest on the Certificates will be paid solely from ad valorem taxes collected by the City, investment earnings on such collections, and as available, proceeds of the Certificates.
- (d) Based upon all facts and estimates now known or reasonably expected to be in existence on the date the Certificates are delivered, the City reasonably expects that the proceeds of the Certificates will not be used in a manner that would cause the Certificates or any portion thereof to be an “arbitrage bond” within the meaning of Section 148 of the Code.
- (e) At all times while the Certificates are outstanding, the City will identify and properly account for all amounts constituting gross proceeds of the Certificates in accordance with the Regulations. The City will monitor the yield on the investments of the proceeds of the Certificates and, to the extent required by the Code and the Regulations, will restrict the yield on such investments to a yield which is not materially higher than the yield on the Certificates. To the extent necessary to prevent the Certificates from constituting “arbitrage bonds,” the City will make such payments as are necessary to cause the yield on all yield restricted nonpurpose investments allocable to the Certificates to be less than the yield that is materially higher than the yield on the Certificates.
- (f) The City will not take any action or knowingly omit to take any action that, if taken or omitted, would cause the Certificates to be treated as “federally guaranteed” obligations for purposes of Section 149(b) of the Code.

- (g) The City represents that not more than fifty percent (50%) of the proceeds of the Certificates will be invested in nonpurpose investments (as defined in Section 148(f)(6)(A) of the Code) having a substantially guaranteed yield for four years or more within the meaning of Section 149(g)(3)(A)(ii) of the Code, and the City reasonably expects that at least eighty-five percent (85%) of the spendable proceeds of the Certificates will be used to carry out the governmental purpose of the Certificates within the three-year period beginning on the date of issue of the Certificates.
- (h) The City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the gross proceeds of the Certificates, if any, be rebated to the federal government. Specifically, the City will (i) maintain records regarding the receipt, investment, and expenditure of the gross proceeds of the Certificates as may be required to calculate such excess arbitrage profits separately from records of amounts on deposit in the funds and accounts of the City allocable to other obligations of the City or moneys which do not represent gross proceeds of any obligations of the City and retain such records for at least six years after the day on which the last outstanding Certificate is discharged, (ii) account for all gross proceeds under a reasonable, consistently applied method of accounting, not employed as an artifice or device to avoid in whole or in part, the requirements of Section 148 of the Code, including any specified method of accounting required by applicable Regulations to be used for all or a portion of any gross proceeds, (iii) calculate, at such times as are required by applicable Regulations, the amount of excess arbitrage profits, if any, earned from the investment of the gross proceeds of the Certificates and (iv) timely pay, as required by applicable Regulations, all amounts required to be rebated to the federal government. In addition, the City will exercise reasonable diligence to assure that no errors are made in the calculations required by the preceding sentence and, if such an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter, including payment to the federal government of any delinquent amounts owed to it, interest thereon and any penalty.
- (i) The City will not directly or indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Certificates that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if such arrangement had been at arm's length and had the yield on the Certificates not been relevant to either party.
- (j) The City will timely file or cause to be filed with the Secretary of the Treasury of the United States the information required by Section 149(e) of the Code with respect to the Certificates on such form and in such place as the Secretary may prescribe.

- (k) The City will not issue or use the Certificates as part of an “abusive arbitrage device” (as defined in Section 1.148-10(a) of the Regulations). Without limiting the foregoing, the Certificates are not and will not be a part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code and the Regulations, by (i) enabling the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, or (ii) increasing the burden on the market for tax-exempt obligations.
- (l) Proper officers of the City charged with the responsibility for issuing the Certificates are hereby directed to make, execute and deliver certifications as to facts, estimates or circumstances in existence as of the date of issuance of the Certificates and stating whether there are facts, estimates or circumstances that would materially change the City’s expectations. On or after the date of issuance of the Certificates, the City will take such actions as are necessary and appropriate to assure the continuous accuracy of the representations contained in such certificates.
- (m) The covenants and representations made or required by this Section are for the benefit of the Certificate holders and any subsequent Certificate holder, and may be relied upon by the Certificate holders and any subsequent Certificate holder and bond counsel to the City.

In complying with the foregoing covenants, the City may rely upon an unqualified opinion issued to the City by nationally recognized bond counsel that any action by the City or reliance upon any interpretation of the Code or Regulations contained in such opinion will not cause interest on the Certificates to be includable in gross income for federal income tax purposes under existing law.

Notwithstanding any other provision of this Ordinance, the City’s representations and obligations under the covenants and provisions of this Section 6.5 shall survive the defeasance and discharge of the Certificates for as long as such matters are relevant to the exclusion of interest on the Certificates from the gross income of the owners for federal income tax purposes.

27. Use of Proceeds. Proceeds from the sale of the Certificates shall, promptly upon receipt by the City, be applied as follows:

- (a) Accrued interest in the amount of \$12,900.94 on the Certificates shall be deposited into the Interest and Sinking Fund.
- (b) The remaining proceeds of the Certificates shall be used for the purposes described in Section 3 of this Ordinance and for paying the costs of issuance of the Certificates. Any certificate proceeds remaining after accomplishing the purposes set out in Section 2 and paying costs of issuance, plus earnings on investments of such proceeds, shall be transferred to the Interest and Sinking Fund.

28. **Official Statement.** The City hereby approves the form and content and distribution of the Official Notice of Sale and Bidding Instructions and Preliminary Official Statement prepared in the initial offering and sale of the Certificates and hereby authorizes the preparation of a final Official Statement reflecting the terms of the Purchase Agreement and other relevant information. The use of such final Official Statement by the Underwriter is hereby approved and authorized and the proper officials of the City are authorized to sign such Official Statement.

29. Continuing Disclosure Undertaking. As used in this Article, the following terms have the meanings ascribed to such terms below:

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

(a) The City will provide certain updated financial information and operating data to the MSRB annually in an electronic format as prescribed by the MSRB and available via the Electronic Municipal Market Access (“EMMA”) system at www.emma.msrb.org. The information to be updated includes all quantitative financial information and operating data with respect to the City of the general type included in the official statement authorized by Section 28 of this Ordinance, in tables 1-8 of Appendix A and in Appendix C. The City shall update such information within six months after the end of each fiscal year. Any financial statements so to be provided shall be (1) prepared in accordance with such accounting principles as the City may be required to employ from time to time pursuant to State law or regulation and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not so provided, then the City shall provide unaudited financial statements for the applicable fiscal year by the required time, and audited financial statements when and if audited financial statements become available.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to documents (i) available to the public on the MSRB’s internet web site or (ii) filed with the SEC. All filings shall be made electronically, in the format specified by the MSRB.

(b) The City shall notify the MSRB in an electronic format prescribed by the MSRB, in a timely manner (not in excess of ten (10) days after the occurrence of the event), of any of the following events with respect to the Certificates:

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
- (vii) Modifications to rights of holders of the Certificates, if material;
- (viii) Certificate calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the Certificates, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership or similar event of the City;
- (xiii) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

The City shall notify the MSRB in an electronic format prescribed by the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with this Section by the time required by such Section.

All documents provided to the MSRB shall be accompanied by identifying information, as prescribed by the MSRB.

(c) The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the City in any event will give the notice required by this Section of any Certificate calls and defeasance that cause the City to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Registered Owners and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements,

and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE REGISTERED OWNER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under the Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended to or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

(d) The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell the Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Registered Owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Registered Owners and beneficial owners of the Certificates. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided. The City may also amend or repeal the provisions of this Section if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, and the City also may amend the provisions of this Section in its discretion in any other manner or circumstance, but in any case only if and to the extent that the provisions of this sentence would not have prevented an underwriter from lawfully purchasing or selling Certificates in the primary offering of the Certificates, giving effect to (a) such provisions as so amended and (b) any amendments or interpretations of the Rule.

30. Related Matters. The Mayor, the City Manager, the City Secretary, the Finance Director, and other appropriate officials of the City are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms of this Ordinance.

31. Registrar. The form of agreement setting forth the duties of the Registrar is hereby approved, and the appropriate officials of the City are hereby authorized to execute such agreement for and on behalf of the City.

32. No Personal Liability. No recourse shall be had for payment of the principal of or interest on any Certificates or for any claim based thereon, or on this Ordinance, against any official or employee of the City or any person executing any Certificates.

33. Open Meeting. It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public, and that public notice of the time, place and purpose of said meeting was given, all as required by the Texas Open Meetings Act.

PASSED AND APPROVED on the 27th day of June, 2011.

Mayor
City of Wharton, Texas

ATTEST:

City Secretary
City of Wharton, Texas

(SEAL)

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

The eighth item on the agenda was to review and consider a request by Ms. Pamela Michulka, owner of History's Hardware and Period Antiques to park a 28-foot tandem trailer to be used to remove inventory from the building along Polk Street from June 23, 2011 through July 7, 2011. City Manager Andres Garza, Jr. presented a copy of the letter dated June 16, 2011 from Ms. Pamela Michulka, property owner of History's Hardware and Period Antiques, requesting to park a 28-foot tandem trailer that would be used for the removal of inventory from the building along Polk Street from June 23rd through June 28th. City Manager Garza stated Mrs. Michulka also asked for permission to extend the length of time to park a trailer for the storage of the items being removed from the building if additional time was required. City Manager Garza also presented a copy of his letter dated June 16th to Mrs. Michulka granting authorization to place the trailer in location specified in her letter and informing her that if additional time was required, City Council approval would be required. After some discussion, Councilmember Don Mueller moved to approve a request by Ms. Pamela Michulka, owner of History's Hardware and Period Antiques to park a 28-foot tandem trailer to be used to remove inventory from the building along Polk Street from June 23, 2011 through July 7, 2011. Councilmember Russell Machann seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider a resolution of the Wharton City Council extending the lease agreement between the City of Wharton and Bagley Pecan House, setting an effective date and authorizing the Mayor of the City of Wharton to execute the contract amendment. City Manager Andres Garza, Jr. presented a copy of the letter dated June 16, 2011 from Mr. Tom Womack of R. B. Bagley & Sons, Inc. requesting the City extend the lease agreement for one additional year in accordance with the lease agreement. City Manager Garza stated the lease agreement was due to expire August 31, 2011; however, it has an option to renew for one additional year. City Manager Garza further stated the City Council Public Works Committee met on June 21, 2011 and voted to recommend the City Council approve to extend the contract an additional year. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Resolution No. 2011-23, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-43**

A RESOLUTION OF THE WHARTON CITY COUNCIL EXTENDING THE LEASE AGREEMENT BETWEEN THE CITY OF WHARTON AND BAGLEY PECAN HOUSE , SETTING AN EFFECTIVE DATE AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE CONTRACT AMENDMENT.

WHEREAS, the Wharton City Council wishes to extend the contract between the City of Wharton and Bagley Pecan Warehouse for one additional year to August 31, 2012 as authorized by said agreement; and

WHEREAS, Bagley Pecan House also wishes to extend the contract with the City of Wharton for that one additional year; and

WHEREAS, the Wharton City Council wishes to set an effective date of September 1, 2011 for the amended contract; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of 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 that:

Section I. The Wharton City Council hereby approves to extend the contract between the City of Wharton and Bagley Pecan House to August 31, 2012.

Section II. The Wharton City Council approves the effective date of the contract to be September 1, 2011.

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

Passed, Approved, and Adopted this 27th day of June 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Al Bryant seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider a resolution of the Wharton City Council approving the Amendment No. 5 to the Franchise Agreement for Solid Waste Collection Services with Waste Corporation of America and Authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the Solid Waste Collection and Disposal Contract, Section 4.03 Holidays & Special Pickups. City Manager Garza stated the City Staff had received a few complaints regarding the holiday solid waste collection schedule in that if a residential customers pick up day fell on a holiday, their solid waste debris was not collected until their next regular service day. City Manager Garza further stated that on June 13, 2011, the City Staff met with representatives of Waste Corporation of America (WCA) who indicated that the company was willing to work with the City to assist those residential customers whose collection day fell on a holiday. City Manager Garza added the fact that WCA had agreed that it could consider amending the contract to state that if a residential customers solid waste service day fell on a holiday, those residential customers would be serviced the next day. City Manager Garza stated the City Council Public Works Committee met on June 21, 2011 and voted to recommend the City Council approve to amend the contract to include the provision. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Resolution No. 2011-44, which read as follows:

CITY OF WHARTON
RESOLUTION NO. 2011-44

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE AMENDMENT NO. 5 TO THE FRANCHISE AGREEMENT FOR SOLID WASTE COLLECTION SERVICES WITH WASTE CORPORATION OF AMERICA AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, On August 7, 2008, the Wharton City Council approved Resolution No. 2008-50 approving the franchise agreement between the City of Wharton and Waste Corporation of America (WCA) to be effective October 1, 2008; and

WHEREAS, The Wharton City Council wishes to amend Section 4.03 Holidays and Special Pickups as per Amendment No. 5; and

WHEREAS, WCA and the City of Wharton wishes to be bound by the conditions outlined the agreement; and

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

WHEREAS, this resolution is passed in accordance with said 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 to amend Section 4.03 Holidays and Special Pickups of the franchise contract between the City of Wharton and Waste Corporation of America.

Section II. That the Mayor of the City of Wharton is hereby authorized to execute the contract amendment.

Passed, Approved, and Adopted this 27th day of June 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Al Bryant seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider a resolution approving an Interlocal Agreement by and between Wharton County Junior College, the City of Wharton and Wharton County for Street Construction and Maintenance Services and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the email dated May 3, 2011 and May 16, 2011 from Mr. Mike Feyen, Director of Facilities for the

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Wharton County Junior College requesting assistance from the City of Wharton to assist in funding a partial cost in the materials needed for road improvements on Horton Foote Drive. City Manager Garza stated that Mr. Feyen indicated that Wharton County Commissioner Chris King indicated to him that Wharton County was willing to assist by providing labor and equipment through an interlocal agreement. City Manager Garza further stated the request was for funding assistance from the City of Wharton for materials for the project; however, the City Council Public Works Committee met on May 23, 2011 and voted to recommend the City Council consider approving to assist WCJC with labor and equipment only. After some discussion, Councilmember Don Mueller moved to approve City of Wharton Resolution No. 2011-45, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-45**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN WHARTON COUNTY JUNIOR COLLEGE, THE CITY OF WHARTON AND WHARTON COUNTY FOR STREET CONSTRUCTION AND MAINTENANCE SERVICES AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Wharton wishes to assist the Wharton County Junior College with street construction and maintenance services by providing labor and equipment for the Horton Foote Drive Street from Pioneer Street to Junior College Blvd.; and

WHEREAS, the City of Wharton, Wharton County and the Wharton County Junior College wishes to enter into an Interlocal Cooperation Agreement for said services; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of 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 that:

Section I. The Wharton City Council hereby approves an Interlocal Cooperation Agreement between the City of Wharton, Wharton County and the Wharton County Junior College for street construction and maintenance services by providing labor and equipment for the Horton Foote Drive Street from Pioneer Street to Junior College Blvd.

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

Passed, Approved, and Adopted this 27th day of June 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Karen Schulz seconded the motion. Councilmember Terry David Lynch abstained. The motion carried. Councilmember Al Bryant, Don Mueller, Karen Schulz, Russell Machann, and Jeff Gubbels voted in favor.

The twelfth item on the agenda was to review and consider a resolution of the Wharton City Council approving the Section 8 Housing Assistance Payments Program Local Operator Contract between the City of Wharton and the Texas Department of Housing and Community Affairs and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the letter from Ms. Willie Faye Hurd, Section 8 Program Manager for the Texas Department of Housing and Community Affairs (TDHCA) providing the Section 8 Housing Assistance Payments Program Local Operator Contract for the City of Wharton. Ms. Jo Beth Knezek, Director of Community Services stated that the contract period would be from June 1, 2011 through May 31, 2012. Ms. Knezek further stated the contract was for an initial one-year period with an automatic renewal in one year increments for a period not to exceed four additional years conditioned on the City maintaining compliance with the eligibility criteria. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Resolution No. 2011-46, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-46**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM LOCAL OPERATOR CONTRACT BETWEEN THE CITY OF WHARTON AND THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Wharton wishes to enter into the newly revised Section 8 Housing Assistance Payments Program Local Operator Contract provided by the Texas Department of Housing and Community Affairs; and

WHEREAS, the City of Wharton and the Texas Department of Housing and Community Affairs wishes to be bound by the conditions outlined in the agreement; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of 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 that:

Section I. The Wharton City Council hereby approves the newly revised Section 8 Housing Assistance Payments Program Local Operator Contract provided by the Texas Department of Housing and Community Affairs.

Section II. The City of Wharton and the Texas Department of Housing and Community Affairs are hereby bound by the conditions outlined in said agreement.

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

Passed, Approved, and Adopted this 27th day of June 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Russell Machann seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider the *Second Reading*: an ordinance authorizing the Mayor of the City of Wharton to execute on behalf of the City of Wharton, Texas, an Electric Power Distribution Franchise with Wharton County Electrical Cooperative, Inc., and its successors and assigns, to use the Public Rights-of-Way of the City for the Distribution of Electric Power; Providing for Period of Grant; for Consideration; for Construction and Relocation of System Facilities; for assignment; and for Publication in accordance with the Authority Granted in this Ordinance. City Manager Andres Garza, Jr. presented a copy of the City of Wharton Ordinance No. 2011-10 authorizing the execution of the Electric Power Distribution Franchise Agreement with the Wharton County Electrical Cooperative, Inc. (WCEC). City Manager Garza stated the City of Wharton Charter Section 117 – Franchises, maximum life; power of council, required franchise agreements be read at three (3) separate meetings of the City Council. City Manager presented a copy of that section of the Charter. City Manager Garza further stated that during the June 13, 2011 City Council Meeting, the ordinance was first read. After some discussion, Councilmember Don Mueller moved to approve the second reading of City of Wharton Ordinance No. 2011-10, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2011-10**

AN ORDINANCE AUTHORIZING THE MAYOR OF THE TO EXECUTE ON BEHALF OF THE CITY OF WHARTON, TEXAS AN ELECTRIC POWER DISTRIBUTION FRANCHISE WITH WHARTON COUNTY ELECTRIC COOPERATIVE, INC., AND ITS SUCCESSORS AND ASSIGNS, TO USE THE PUBLIC RIGHTS-OF-WAY OF THE CITY FOR THE DISTRIBUTION OF ELECTRIC POWER; PROVIDING FOR PERIOD OF GRANT; FOR CONSIDERATION; FOR CONSTRUCTION AND RELOCATION OF SYSTEM FACILITIES; FOR ASSIGNMENT; AND FOR PUBLICATION IN ACCORDANCE WITH THE AUTHORITY GRANTED IN THIS ORDINANCE.

* * *

The following statements are true and correct and constitute the basis upon which the City Council of the City of Wharton, Texas (the "**City**") may pass, approve and adopt this Ordinance:

WHEREAS, Texas Utilities Code § 41.005 provides that "An electric cooperative shall be an electric utility for purposes of Section 182.025, Tax Code, and Section 33.008."

WHEREAS, Texas Utilities Code § 33.008(a) provides that, "a municipality may impose on an electric utility, transmission and distribution utility ... or electric cooperative that provides distribution service within the municipality a reasonable charge as specified in Subsection (b) for the use of a municipal street, alley, or public way to deliver electricity to a retail customer."; and

WHEREAS, Wharton County Electric Cooperative, Inc. is an "electric cooperative" as that term is defined in the Texas Utilities Code and wishes to use the City of Wharton's streets, alleys, and public ways to deliver electricity to retail customers; and

WHEREAS, the City of Wharton wishes to grant Wharton County Electric Cooperative, Inc. ("**Company**") the right to use its streets, alleys, and public ways to distribute electricity to retail customers for a reasonable charge; and

WHEREAS, the City of Wharton finds that the charge provided in this Franchise Agreement is reasonable and comparable to fees charged to other providers;

WHEREAS, the City Council has reviewed the terms and conditions of the agreement covering the City's grant of the Franchise to Company ("**Franchise**"), as described with greater specificity below; and

WHEREAS, the City Council adopts this Franchise Authorizing Ordinance which authorizes the Mayor of the City to execute a Franchise with Company on behalf of the City strictly upon the terms as set forth herein; and

WHEREAS, City of Wharton finds that the publication of this Ordinance, as required by the City Charter Section 117(b), fully complies with that Charter requirement, with the Franchise being available to the public to review in the City Secretary's Office; and

WHEREAS, upon passage, approval and adoption of this Ordinance, and after publication and written acceptance by the Company, the Mayor may execute the Franchise on behalf of the City, which Franchise shall include the terms and conditions as described herein; and

WHEREAS, as set forth herein, the terms and conditions of the Franchise are provided for summary purposes only and are limited in their entirety by the actual terms and conditions of the

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Franchise to be entered into by and between the City and the Company; capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Franchise.

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

The City Council adopts this Franchise Authorizing Ordinance authorizing the Mayor to execute on behalf of the City a Franchise with Company, which Franchise shall include the following terms and conditions:

The term of the Franchise shall be no longer than ten (10) years;

Company shall provide the City with written acceptance of the Franchise in accordance with its term;

Company shall pay to the City on a quarterly basis a franchise fee in the amount of four percent (4%) of Company's Gross Revenue for the privileges conferred to Company under the Franchise, or the maximum allowed by Section 33.008 of the Texas Utilities Code;

City shall be allowed to review books and records of the Company to verify franchise fee payments;

Company shall agree to abide by with all applicable City ordinances concerning the construction, use, excavation, maintenance, operation, and removal of the Company's electrical system facilities that are in, on or over the public rights-of-way in the City;

Company shall relocate its electrical distribution facilities at its cost for City construction projects;

Company shall indemnify the City;

The Franchise may not be assigned or transferred by Company without the prior written consent of the City, as provided for in the Franchise

The Franchise shall provide for forfeiture and termination for material breaches;

Venue for disputes shall be in Wharton County; and

Company shall distribute electrical power service in full conformity with its tariffs, but only in the areas of the City where the Company is authorized to provide electrical power service.

Upon publication of this Ordinance as required by the City Charter Section 117(b), and written acceptance of the Franchise by Company, the City Council hereby authorized the Mayor to execute on behalf of the City and with Company a Franchise having the terms and conditions as described above.

This Ordinance shall be in full force and effect following its publication in accordance with the City Charter Section 117(b).

Read in full and passed and adopted on first reading at a regular meeting of the City Council of Wharton, Texas, on the 13th day of June 2011, and approved by the Mayor.

APPROVED:

DOMINGO MONTALVO, JR.
MAYOR OF THE CITY OF
WHARTON, TEXAS

ATTEST:

PAULA FAVORS
CITY SECRETARY OF WHARTON, TEXAS

Read in full and passed and adopted on second reading at a regular meeting of the City Council of Wharton, Texas, on the 27th day of June 2011, and approved by the Mayor.

APPROVED:

DOMINGO MONTALVO, JR.
MAYOR OF THE CITY OF
WHARTON, TEXAS

ATTEST:

PAULA FAVORS
CITY SECRETARY OF WHARTON, TEXAS

Read in full and passed and adopted on third reading at a regular meeting of the City Council of Wharton, Texas, on the _____ day of _____ day of 2011, and approved by the Mayor.

APPROVED:

DOMINGO MONTALVO, JR.
MAYOR OF THE CITY OF
WHARTON, TEXAS

ATTEST:

PAULA FAVORS
CITY SECRETARY OF WHARTON, TEXAS

THE STATE OF TEXAS §
 §
COUNTY OF WHARTON §

I, the duly appointed, qualified and acting City Secretary of Wharton, Texas, do hereby certify that the above and foregoing ordinance was passed and adopted on first reading at a regular meeting of the City Council of said Wharton, Texas, held on the 13th day of June 2011;

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that written notice of the date, place and subject of said meeting was posted on a bulletin board located at a place convenient to the public in the City Hall for at least 72 hours preceding the day of said meeting; that the Mayor Domingo Montalvo, Jr. and five (5) Councilmembers Al Bryant, Karen Schulz, Terry D. Lynch, Don Mueller, and Russell Machann, were present at said meeting and acted as the Council throughout, that the above and was passed and adopted on second reading at a regular meeting of the City Council of said Wharton, Texas, held on the 27th day of June 2011; that written notice of the date, place and subject of said meeting was posted on a bulletin board located at a place convenient to the public in the City Hall for at least 72 hours preceding the day of said meeting; that the Mayor Domingo Montalvo, Jr. and six (6) Councilmembers Al Bryant, Karen Schulz, Terry D. Lynch, Don Mueller, Russell Machann and Jeff Gubbels were present at said meeting and acted as the Council throughout; that the above and was passed and adopted on third reading at a regular meeting of the City Council of said Wharton, Texas, held on the _____ day of _____, 2011; that written notice of the date, place and subject of said meeting was posted on a bulletin board located at a place convenient to the public in the City Hall for at least 72 hours preceding the day of said meeting; that the Mayor _____, and six (6) Councilmembers, _____, _____, _____, _____, and _____ were present at said meeting and acted as the Council throughout; that after the first reading and before the date of the final reading, the full text of the above and foregoing ordinance was published one each week for four consecutive weeks in the official newspaper of the city; that the same has been signed and approved by the Mayor and is duly attested by the City Secretary; and that the same has been duly filed with the

City Secretary and recorded by the City Secretary in full in the books kept for the purpose of recording the ordinances of the City of Wharton.

EXECUTED under my hand and the official seal of the seal of the City of Wharton, Texas at said City, this the _____ day of _____, 2011.

Paula Favors
City Secretary
City of Wharton, Texas

Councilmember Karen Schulz seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider a resolution of the Wharton City Council authorizing the City Manager to execute on behalf of the City of Wharton Right of Entry Agreements in support of the Lower Colorado River Basin Phase I, Texas, City of Wharton Flood Damage Reduction Project. City Manager Andres Garza, Jr. stated that the City Staff had been working with the US Army Corp of Engineers (USACE) and Halff Associates, on the Lower Colorado River Basin Phase I, Texas City of Wharton Flood Damage Reduction Project Right of Entry Agreements. City Manager Garza further stated the City Staff had been unable to secure agreements from certain property owners using the USACE agreement but, modifications had been made to the agreement, which would be more user friendly to the property owner. City Manager Garza stated the City Staff was requesting City Council approval to execute the agreements with the property owner in lieu of the USACE. City Manager Garza further stated the City Council Public Works Committee met on June 21, 2011 and voted to recommend the City Council consider authorizing the City Staff to use the modified agreement to secure the right of entry to the certain properties to keep the levee project moving forward. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No. 2011-47, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-47**

A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE CITY MANAGER OF THE CITY OF WHARTON TO EXECUTE ON BEHALF OF THE CITY OF WHARTON RIGHT OF ENTRY AGREEMENTS IN SUPPORT OF THE LOWER COLORADO RIVER BASIN PHASE, I TEXAS, CITY OF WHARTON FLOOD DAMAGE REDUCTION PROJECT.

WHEREAS, the City of Wharton has partnered with the United States Army Corp of Engineers (USACE) and Halff Associates to develop the design and engineering for the Lower Colorado River Basin Phase I Texas, City of Wharton Flood Damage Reduction Project; and

WHEREAS, there exists a need for certain properties to be access by consultant (geotechnical, surveyor, soil sampling, etc.) of the USACE and Halff

Associates as part of this project through its rights of entry with property owners ; and

WHEREAS, the Wharton City Council wishes to authorize the City Manager to obtain said right of entry agreements on behalf of the City of Wharton for the USACE consultant contractors; and

WHEREAS, the Wharton City Council wishes to authorize the City Manager to execute said right of entry agreements on behalf of the City of Wharton.

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

Section I. The Wharton City Council hereby authorizes the City Manager to obtain right of entry agreements on behalf of the City of Wharton for the Lower Colorado River Basin Phase I Texas, City of Wharton Flood Damage Reduction Project.

Section II. The Wharton City Council hereby authorizes the City Manager of the City of Wharton to execute all documents related to the contract.

Section III. This resolution shall be effective on the date of its passage.

Passed, Approved, and Adopted this 27th day of June 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS, City Secretary

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

The fifteenth item on the agenda was to review and consider a resolution of the Wharton City Council approving to extend the contract for one additional year between the City of Wharton and Gulf Coast Medical Center for Ambulance Transfer Service and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the letter submitted by Mr. Gary N. Williams, Chief Financial Officer for Gulf Coast Medical Center (GCMC) that indicated GCMC would like to extend the Ambulance Transfer Agreement for one (1) additional year as noted in the agreement. City Manager Garza also presented a copy of the agreement and stated Section II of the agreement indicated the contract expired on April 30, 2011; however, the contract contains a one-year extension with written agreement. After some discussion,

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Councilmember Terry David Lynch moved to approve City of Wharton Resolution No. 2011-48, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-48**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING TO EXTEND THE CONTRACT FOR ONE ADDITIONAL YEAR BETWEEN THE CITY OF WHARTON AND GULF COAST MEDICAL CENTER FOR AMBULANCE TRANSFERS AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, the Ambulance Transfer Agreement between the City of Wharton and Gulf Coast Medical Center expired April 30, 2011; and

WHEREAS, Section II of said agreement provides that a one year extension to the contract may be approved upon written notice by each entity; and

WHEREAS, the Wharton City Council wishes to extend said agreement for one additional year expiring April 30, 2012; and

WHEREAS, the City of Wharton and Gulf Coast Medical Center wishes to be bound by the conditions of the agreement; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of 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 that:

Section I. The Wharton City Council hereby approves to extend the contract between the City of Wharton and Gulf Coast Medical Center for Ambulance Transfer Services until April 30, 2012.

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

Passed, Approved, and Adopted this 27th day of June 2011.

CITY OF WHARTON, TEXAS

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Russell Machann seconded the motion. All voted in favor.

The sixteenth item on the agenda was to review and consider a recommendation by the Consultant Selection Committee for the City of Wharton Sidewalk Accessibility and Historic Streetscape Project for City Council to consider approving the following:

- A. Acceptance of final ranking of the Professional Engineering Firms that participated in the interview process.
- B. Authorization for the Consultant Selection Committee to negotiate a professional engineering services contract with the highest ranking firm.

City Manager Andres Garza, Jr. stated that on June 21, 2011, the Consultant Selection Committee for the City of Wharton Sidewalk Accessibility and Historic Streetscape Project met and interviewed the top three highest ranking engineering firms out of the eleven firms that submitted their respective Statements of Qualifications. City Manager Garza further stated that those firms were BEFCO, CivilCorp and Jones & Carter, Inc. City Manager Garza stated the Committee Members re-ranked the firms and was recommending the City Council consider approving the Consultant Selection Committee to negotiate a contract with the highest ranking firm, which was BEFCO. He further stated that if contract negotiations failed, then negotiations would begin with the next highest ranking firm and so forth. After some discussion, Councilmember Don Mueller moved to approve items A. and B as mentioned above. Councilmember Karen Schulz seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider the City of Wharton Construction Services Agreement for the Wharton Fire Department Electrical Connection Project – Barbee Services, Inc. – Change Order No. 1. City Manager Andres Garza, Jr. presented a copy of the memorandum dated June 22, 2011 from Building Official Ronnie Bollom providing his recommendation for the City Council to consider approving the Change Order No. 1 to the contract with Barbee Services, Inc. for the Wharton Fire Department Electrical Connection Project. City Manager stated that Mr. Bollom’s memorandum indicated that Barbee’s original contract was to include a 600 amp manual transfer switch with cam lock quick connects, and the Wharton Fire Department had acquired a self contained diesel powered 180 kv generator from the Community Volunteer Fire Department in Alief. Building Official Ronald Bollom stated the acquisition of the generator also included an automatic transfer switch but it was found that it was not compatible the service entrance applications at the Wharton Fire Station. City Manager Garza stated with the delay in receiving the generator purchased by the Fire Department, the contract required additional days to be added. City Manager Garza further stated the original contract was for 45 days expiring on June 9th. City Manager Garza stated the City Staff was requesting that 90 days be added to the contract increasing the contract term to 135 days, and the new contract termination date would be September 7th upon City Council

approval. After some discussion, Councilmember Terry David Lynch moved to approve the City of Wharton Construction Services Agreement for the Wharton Fire Department Electrical Connection Project – Barbee Services, Inc. – Change Order No. 1. Councilmember Al Bryant seconded the motion. All voted in favor.

The eighteenth item on the agenda was to review and consider a resolution authorizing the sale of City of Wharton Surplus Personal Property in accordance with the City Charter Section 75. City Manager Andres Garza, Jr. presented a copy of the list of surplus personal property that the City Staff was requesting City Council approval to advertise for bids. City Manager Garza also presented a draft resolution authorizing the surplus personal property bidding process and authorizing the City Manager sell items that were sold through the bidding process on a first come first serve basis. City Secretary Paula Favors stated all items would be listed on www.publicsurplus.com for seven to ten days. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Resolution 2011-49, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2011-49**

A RESOLUTION AUTHORIZING THE SALE OF CITY OF WHARTON SURPLUS PERSONAL PROPERTY IN ACCORDANCE WITH THE CITY CHARTER SECTION 75 SALE OF CITY PERSONAL PROPERTY; PROCEDURES.

WHEREAS, the City of Wharton has identified surplus personal property; and

WHEREAS, the Wharton City Council of the City of Wharton wishes to authorize the City Manager to sale the surplus personal property directly to the public by publication notification in accordance with the City Charter Section 75 Sake of City personal property; procedures; and

WHEREAS, the Wharton City Council wishes to authorize the City Manager to sale City personal property out right on a first come first serve basis if said property did not sale through the bidding process.

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

Section I. The City Council of the City of Wharton hereby authorizes the City Manager to sale the City of Wharton surplus personal property in accordance with the City Charter Section 75 Sale of City personal property; procedures.

Section II. The City Council of the City of Wharton hereby authorizes the sale of this personal property by publication notification.

Section III. The Wharton City Council hereby authorizes the City Manager to sale City personal property out right on a first come first serve basis if said property did not sale through the bidding process.

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

Passed, Approved, and Adopted this 27th day of June 2011.

CITY OF WHARTON, TEXAS

By:

DOMINGO MONTALVO, JR.
Mayor

ATTEST:

PAULA FAVORS
City Secretary

Councilmember Karen Schulz seconded the motion. All voted in favor.

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

- A. Wharton Regional Airport Board.
- B. Beautification Commission.
- C. Building Standards Commission.
- D. Electrical Board.
- E. Holiday Light Decorating Chairman.
- F. Mayor's Committee on People with Disabilities.
- G. Planning Commission.
- H. Plumbing and Mechanical Board.
- I. Wharton Economic Development Corporation Board of Directors.
- J. Youth Advisory Commission.
- K. City Council Committees:
 - 1. Annexation Committee.
 - 2. Finance Committee.
 - 3. Housing Committee.
 - 4. Intergovernmental Relations Committee.
 - 5. Legislative Committee.
 - 6. Public Health Committee.
 - 7. Public Safety Committee.
 - 8. Public Works

City Manager Andres Garza, Jr. presented a copy of the letter dated June 15, 2011, which he sent to City Councilmembers in his memorandum dated June 15, 2011 regarding the Wharton Economic Development Corporation (WEDC) vacant positions. City Manager Garza stated the City had received one application to the WEDC Board that was submitted by Ms. Debbie Cenko.

He further stated that the WEDC Board Selection Committee would meet in the near future to consider the application. After some discussion, Councilmember Terry David Lynch moved to approve all appointments as presented:

- A. Electrical Board – Al Bryant – term ending June 30, 2013
- B. Health Officer – Greg Dimmick – term ending June 30, 2013
- C. Veterinarian – Charles Bonnet – term ending June 30, 2013
- D. City Council Committees – terms ending June 30, 2012
 1. Housing Committee – Russell Machann
Al Bryant
 2. Legislative Committee – Karen Schulz
 3. Public Health Committee – Russell Machanan
 4. Public Works Committee – Karen Schultz
 5. Telecommunications Committee – Al Bryant

Councilmember Jeff Gubbels seconded the motion. Councilmembers Don Mueller, Karen Schulz, Russell Machann, and Jeff Gubbels all voted in favor.

The twentieth item on the agenda was to review and consider the Status Report on City of Wharton Projects. City Manager Andres Garza, Jr. presented copy of his memorandum dated June 27, 2011 to the City Council providing the Status Report on City of Wharton Projects, which read as follows:

FLOOD REDUCTION (LEVEE) PROJECT

The U.S. Army Corp of Engineers (USACE) Lower Colorado River Phase I Report - City of Wharton Flood Prevention Project and Recommended report is located at the Wharton County Library and the office of the City of Wharton City Secretary for viewing or the report may be viewed on line at <http://www.swf.usace.army.mil/pubdata/notices/LowerColorado/>.

City Staff met via conference call with Halff Associates to discuss design issues and right of entry issues on May 24, 2011. On June 21, 2011 the Public Works Committee met to discuss the possibility of the City of Wharton executing rights of entry agreements in lieu of the USACE to assist with the property owners a more direct point of contact. The changes are intended to provide a more user friendly agreement to the property owners. The Wharton City Council will consider the right of entry agreements during the June 27th City Council meeting.

Halff Associates has provided a 35% complete set of construction plans for review. City Staff is currently reviewing the changes and will be providing comments to Halff.

DRAINAGE:

1. Santa Fe Outfall Channel.

The Public Works Department has finished excavation up to Alabama Road. The Public Works Department will now focus on installing grade stabilization structures and installing other best management practices needed to control erosion. Excavation will continue weather permitting.

2. Highway 60 & Old Lane City Road Drainage Improvements

The construction plans have been approved by the TxDOT Yoakum District Office. City Staff is working with the Yoakum District to acquire the right of way needed for construction.

City Staff is currently preparing cost estimates on the project and obtaining the necessary right of way needed for the project.

WATER/SEWER IMPROVEMENTS:

1. Ahldag Addition Sanitary Sewer Project – TxCDBG Contract No. R729710.

This project is complete. The City has a one-year warranty with AR Turnkee on this project. Recently City Staff discovered a few problem areas in need of repair. AR Turnkee has been contacted and will be making the needed changes under the one-year warranty agreement.

2. Water Storage Tank Maintenance Program.

The City of Wharton has received the professional engineering services agreement with Dunham Engineering and the City Staff is currently working with Dunham Engineering to develop plans and specifications for renovating two ground storage tanks. One of three tanks at Alabama will be renovated and the Vahalla tank will be renovated under this contract. Dunham has submitted draft specifications and City Staff is currently reviewing them. Staff will have comments to Dunham no later than July 8, 2011 concerning the specifications for renovation.

In addition, Dunham Engineering just completed the annual TCEQ inspections on the three elevated storage tanks. They have submitted their report which is being reviewed by the City Staff.

3. Quick Connect/Transfer Switch Project

Quick connects and transfer switches are being installed at all city lift stations, city water plants, City Hall, the Fire Station, EMS Headquarters, WWTP #1, and WWTP#2. Electrical Automation Controls is approximately 90% complete.

4. Pressure Switches at City Water Plants

This project is complete; however, the Public Works Staff continues to monitor the system to insure that it is working properly.

5. Energy Efficiency Audit

The City Staff met with representatives from Seimens Industry on June 17th and reviewed the areas that could be improved to provide better energy efficiency. The company representatives will be meeting with Jones & Carter, Inc. to review alternatives for the wastewater treatment plant number one since the water plant rehabilitation report is being prepared by Jones & Carter. The City Staff will meet again with Seimens once the alternatives have been determined.

6. Wastewater Treatment Plant No. 1 Rehabilitation Proposal

City Council approved a proposal from Jones and Carter, Inc. to prepare a report that establishes a plan for the rehabilitation of and improvements to Wastewater Treatment Plant No. 1 to meet the future needs of the City and to meet future permit requirements.

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On June 7th the Public Works Director and the Water and Sewer Superintendent met with Jones & Carter, Inc. Staff in Houston to begin the planning process. Jones & Carter, Inc. and City Staff discussed several options. City Staff agreed to complete a capacity analysis for WWTP #1 which will help to enhance the rehabilitation proposal Jones & Carter, Inc. is developing.

STREET IMPROVEMENTS

1. FM 102 Relocation and/or FM 1301 Extension and Overpass Project

A. Progress Report on Project.

The City Staff met with representatives of IDC Inc. on June 16, 2011 and discussed the project. IDC Inc. presented various preliminary drawings of routes for the proposed FM 102 Relocation and/or the FM 1301 Extension and Overpass Project. A meeting between IDC Inc., the City Staff and the City Council Public Works Committee has been tentatively scheduled for Friday, July 1, 2011 at 12:00 Noon to review the alternatives on routes and recommend to the City Council a preferred alternative for the FM 102 Relocation and the FM 1301 Road Extension routes. Also, the alternatives and preferred alternative for the road between the railroad and Business 59 will be discussed.

B. Update on status of Advance Funding Agreement between the City of Wharton and the Texas Department of Transportation (TxDOT).

TxDOT is making modifications to the proposed Advance Funding Agreement (AFA). TxDOT is also in the process of determining the project name for the agreement. The City Staff is awaiting the contract from the State.

2. 2011 Street Improvement Program

Public Works Staff is currently identifying and preparing cost estimates for possible street improvements during the next fiscal year.

3. Wharton Sidewalk Accessibility and Historic Streetscape Project

The Consultant Selection Committee (CSC) scored the eleven engineering firms that submitted their Statements of Qualifications to the City and voted to interview the top three highest ranking firms. Interviews were held on July 24, 2011 the CSC. The top three firms were BEFCO Engineering, Jones & Carter, and CivilCorp. CSC members will now rank the top three and make a final selection. The CSC is scheduled to complete ranking of the top three by Friday, June 24, 2011. The CSC will meet on Monday, June 27th at 6:30 p.m. to make a recommendation to the City Council regarding contract negotiations.

OTHER PROJECTS

1. Fire Station Expansion Project

Public Works Staff completed the construction of the earthen pad required for the new building foundation on February 22, 2011. Public Works has also completed the water tap for the new facility.

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The Facilities Maintenance Director has been coordinating the efforts of the concrete, plumbing, electrical, and building contractors. The building is nearing completion. Upon completion, Public Works will have the task of grading the site for drainage and the concrete driveways.

WHARTON REGIONAL AIRPORT

1. Capital Improvement Drainage Project.

The TxDOT Aviation Division negotiated an engineering contract with O'Malley Engineers to design the Drainage Project for the airport being conducted under the 2010 Capital Improvement Program. The City Staff met with the State and O'Malley Engineers on March 17, 2011 to kick-off the project. O'Malley Engineers has submitted the preliminary engineering report to TxDOT Aviation and the City of Wharton for review and comment.

After some discussion, no action was taken.

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

- A. Beautification Commission meeting held June 8, 2011.
- B. Wharton Economic Development Corporation meeting held on June 20, 2011.
- C. City Council Public Works Committee meeting held June 21, 2011.
- D. Consultant Selection Committee for the Sidewalk Accessibility and Historic Streetscape Project held June 21, 2011.

City Manager Andres Garza, Jr. presented a copy of the reports to the City Council. After some discussion, no action was taken.

The twenty-second item discussed on the agenda was to review and consider the City's Reports:

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

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

The twenty-first item on the agenda was adjournment. After some discussion, Councilmember Donald Mueller made a motion to adjourn. Councilmember Alfred Bryant seconded the motion. All voted in favor.

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The meeting adjourned at 7:55 p.m.

CITY OF WHARTON, TEXAS

By: _____
Domingo Montalvo, Jr
Mayor

ATTEST:

Paula Favors
City Secretary