

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
DECEMBER 11, 2017**

Mayor Tim Barker declared a Regular Meeting duly open for the transaction of business at 7:00 P.M at City Hall 120 E. Caney Street Wharton, TX. Councilmember Russell Machann led the opening devotion and Mayor Barker led the pledge of allegiance.

Councilmember's present were: Mayor Tim Barker and Councilmembers Al Bryant, Terry Freese, Russell Machann, Don Mueller and Steven Schneider.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Andel, City Secretary Paula Favors, Assistant to the City Manager Brandi Jimenez, Community Development Coordinator Gwyn Teves, City Attorney Paul Webb, Police Sergeant Don Chaney, Building Official Ronnie Bollom, Assistant to the Building Official Claudia Velasquez and Public Works Director Wade Wendt.

Visitors present were: Judd Perry, Gary Minter, Mary Minter, Clay Holland, James Gilley, Jr., Jim Gilley, Mary A. Barnes, Julia Brown, Frank Brown, Marshall Frances, Wharton Chamber Executive Director Ron Sanders and Wharton Economic Development Director Chad Odom, II.

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 on the agenda was the Wharton Moment. City Manager Andres Garza, Jr. congratulated the Boling High School Varsity Football team on a reaching the final four playoffs of the 3A Division and wished them success in their upcoming game against Newton. Mayor Tim Barker thanked the Blue-Ribbon Committee on their successful efforts of assisting Oak Bend Hospital in the reopening of Gulf Coast Medical Center. Councilmember Don Mueller stated that a small town in Alabama donated over 350 Christmas gifts to Holy Family Catholic Church to distribute to survivors of the flooding caused by Hurricane Harvey.

City of Wharton  
Regular Council Meeting  
December 11, 2017

The fifth item on the agenda was to review and consider the reading of the minutes from the regular meetings held November 13, 2017 and November 27, 2017. After some discussion, Councilmember Al Bryant moved to approve the reading of the minutes from the regular meetings held November 13, 2017 and November 27, 2017. Councilmember Russell Machann seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider a letter from the Blue Ribbon Hospital Committee. City Manager Andres Garza, Jr. stated that on January 23, 2017 the Wharton City Council voted to pursue action to bring hospital medical services to the City of Wharton due to the closure of the existing hospital. City Manager Garza said that at the meeting he recommended the establishment of a Blue Ribbon Hospital Committee composed of local citizens to look into what action could be taken to accomplish this goal. He said the Committee was made up of nine (9) individuals who had accepted to explore any and all possible means to bring a hospital and medical services to the citizens of the City of Wharton and the Committee had used their best methods to accomplish this mission. City Manager Garza stated that the work had been concluded by the Committee and the recommendation was that an affiliation be established with Oak Bend Medical Group. He said the Committee felt no further action was needed by them and they were requesting the Committee be terminated by the City Council. After some discussion, Councilmember Russell Machann moved to approve terminating the Blue Ribbon Hospital Committee. Councilmember Don Mueller seconded the motion. All voted in favor.

The seventh item on agenda was to review and consider a request from Jehovah's Witnesses Congregation for a variance for temporary placement of six (6) travel trailers at 608 East Emily Street for disaster relief workers. City Manager Andres Garza, Jr. presented a memo to him from Building Official Ronnie Bollom regarding the request from Jehovah's Witnesses Congregation for a variance for temporary placement of six (6) travel trailers at 608 East Emily Street for disaster relief workers to stay until repairs are completed in the City of Wharton. Assistant to the Building Official Claudia Velasquez stated the request would be for six (6) months. After some discussion, Councilmember Russell Machann moved to approve the request from Jehovah's Witnesses Congregation for a variance for temporary placement of six (6) travel trailers at 608 East Emily Street for disaster relief workers for six (6) months. Councilmember Al Bryant second the motion. All voted in favor.

The eighth item on the agenda was to review and consider an Ordinance amending the City of Wharton Code of Ordinances, Chapter 18, Buildings and Construction, Article IV-Flood Damage Prevention; Section 18-302 Definitions, Section 18-303 General Provisions, and Section 18-305 Provisions for Flood Hazard Reduction; providing for separability; providing a penalty clause; and setting an effective date. Building Official Ronnie Bollom stated that the Federal Emergency Management Agency had developed a new Flood Insurance Rate Maps (FIRM) dated December 21, 2017 and the City must adopt the maps by December 21, 2017 and notify FEMA. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Ordinance No. 2017-15, which read as follows:

**CITY OF WHARTON**

**ORDINANCE NO. 2017-15**

**AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 18, BUILDINGS AND CONSTRUCTION, ARTIVLE IV- FLOOD DAMAGE PREVENTION; SECTION 18-302 DEFINITIONS, SECTION 18-303 GENERAL PROVISIONS, AND SECTION 18-305 PROVISIONS FOR FLOOD HAZARD REDUCTION; PROVIDING FOR SECERABILITY; PROVIDING A PENALTY CLAUSE; AND SETTING AN EFFECTIVE DATE.**

**BE IT ORDAINED** by the City Council of the City of Wharton, Texas that:

**WHEREAS**, it is the desire of the City of Wharton Code of Ordinances to read as follows:

**ARTICLE VI. - FLOOD DAMAGE PREVENTION**

**Sec. 18-302. - Definitions.**

Removing Cumulative damage and Cumulative improvement definitions.

**Sec. 18-303. - General provisions.**

- (b) *Basis for establishing the areas of special flood hazard.* The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for the City of Wharton, Texas," dated December 21, 2017, with accompanying Flood Insurance Rate Maps (FIRM) dated December 21, 2017, and any revisions thereto, are hereby adopted by reference and declared to be a part of this article.

**Sec. 18-305. - Provisions for flood hazard reduction.**

- (1) All new construction and substantial improvement of any residential or non-residential structures located in areas outside of the special flood hazard areas shall have the lowest floor elevated to at least twelve inches above the nearest street curb or natural ground, whichever is higher

Removing (6) Cumulative damage/substantial improvement threshold

Changing (7) *Recreational Vehicles* to item number (6)

**Sec. 18-306. - Enforcement: penalties, repealer, severability.**

- (a) No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the provisions of this article and other applicable regulations. Violation of the provisions of this article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a Class "C" Misdemeanor. Any person who intentionally,

knowingly, or recklessly violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 for each violation, and in addition shall pay all costs and expenses involved in the case. Each day a violation occurs is a separate offense. Nothing herein contained shall prevent the City of Wharton from taking such other lawful action as is necessary to prevent or remedy any violation.

- (b) The city council may file suit for injunctive relief or civil penalties or both for any violation or threatened violation of this article.
- (c) As an addition or alternative to the remedies of section 18-306(b), the city council may submit a declaration to FEMA that the property is in continuous violation of the article and for the Administrator of the National Flood Insurance Program to declare that the property, pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended, no longer qualifies for flood insurance.
- (d) The City of Wharton, Texas, Flood Damage Prevention Ordinance, contained in the City of Wharton Code of Ordinances, Chapter 18, Article 6, adopted May 24, 1982, together with all other ordinances or parts of ordinances inconsistent or in conflict herewith are hereby repealed.
- (e) In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of the article or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Article as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the city council declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

### **Severability**

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

### **Effective Date**

This Ordinance shall become effective at 12:01 a.m. on 21st day of December 2017.

### **Passage and Approval**

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas, on the 11<sup>th</sup> day of December 2017.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**TIM BARKER**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**PAUL WEBB**  
City Attorney

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

The ninth item on the agenda was to review and consider a request from Mr. Ali Qattom regarding the variance time limitation lapse for his previous application for the property at 1323 N. Alabama Rd.-Washington Home, Lot 18B, Block 4. City Manager Andres Garza, Jr. presented a memo to him from Building Official Ronnie Bollom regarding Mr. Ali Qattom's request to proceed with the construction of a new building located at 1323 N. Alabama Road-Washington Home, Lot 18B, Block 4. Mr. Bollom stated that due to personal issues Mr. Qattom was delayed in starting the construction which included demolishing the existing building, removing fuel tanks and starting the construction of the new building. Mr. Bollom said that Mr. Qattom wished to proceed using the original variances that were approved by Council on October 29, 2014 but have since reached the time limitation. After some discussion, Councilmember Al Bryant moved to approve the request from Mr. Ali Qattom regarding the variance time limitation lapse for his previous application for the property at 1323 N. Alabama Rd.-Washington Home, Lot 18B, Block 4. Councilmember Terry Freese seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider City of Wharton Land Lease Agreements:

City of Wharton  
Regular Council Meeting  
December 11, 2017

**A. Resolution:** A resolution of the Wharton City Council approving an amendment to the Land Lease Agreement between the City of Wharton and Wharton Tractor and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement.

City Manager Andres Garza, Jr. presented a copy of the Extension to Amended Lease Agreement between the City of Wharton and Wharton Tractor, which expired on November 13, 2013. City Manager Garza stated that the lease rate would remain the current rate. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No. 2017-117, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2017-117**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN AMENDMENT TO THE LAND LEASE AGREEMENT BEWEN THE CITY OF WHARTON AND WHARTON TRACTOR AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.**

**WHEREAS,** The Wharton City Council approved to enter into a land lease agreement between the City of Wharton and Wharton Tractor for the property described as a 1.308 acre tract located in the William Kincheloe League, Abstract 38 in the City of Wharton, Wharton County, Texas; and,

**WHEREAS,** Wharton Tractor wishes to extend said land lease agreement for one additional year as per the requirements set forth in said agreement with the option to extend every year; and,

**WHEREAS,** The City of Wharton wishes to approve the land lease agreement with Wharton Tractor to be extended as per the requirements set forth in said agreement; and,

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute a contract extension for the leasing of the property described as a 1.308 acre tract located in the William Kincheloe League, Abstract 38 in the City of Wharton, Wharton County, Texas.

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

**Section I.** The City Council hereby approves to extend the land lease agreement for one year with the option to extend every year thereafter in accordance with the land lease agreement between the City of Wharton and Wharton Tractor Company beginning November 13, 2013.

**Section II.** The City Council of the City of Wharton hereby authorizes the Mayor of the City of Wharton to execute the contract extension of the land lease agreement with Wharton Tractor Company for the lease of City of Wharton property

described as a 1.308 acre tract located in the William Kincheloe League, Abstract 38.

**Section III.** That the City of Wharton and Wharton Tractor Company are hereby bound by the conditions set forth in the agreement.

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

**Passed, Approved, and Adopted** this 11<sup>th</sup> of December 2017.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**TIM BARKER**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary

Councilmember Steve Schneider seconded the motion. All voted in favor.

**B. Resolution:** A resolution of the Wharton City Council approving an amendment to the Land Lease Agreement between the City of Wharton and R. B. Bagley & Sons, Inc. and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement.

City Manager Andres Garza, Jr. presented a copy of the Extension to Amended Lease Agreement between the City of Wharton and Bagley Pecan House, which expired on August 31, 2017. City Manager Garza stated that the lease rate would remain the current rate. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No. 2017-118, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2017-118**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN AMENDMENT TO THE LAND LEASE AGREEMENT BEWEEN THE CITY OF WHARTON AND R.B. BAGLEY & SONS, INC. AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.**

**WHEREAS,** R.B. Bagley & Sons, Inc. wishes to extend said land lease agreement for one additional year as per the requirements set forth in said agreement with the option to extend every year; and,

City of Wharton  
Regular Council Meeting  
December 11, 2017

**WHEREAS,** The City of Wharton wishes to approve the land lease agreement with R.B. Bagley & Sons, Inc. to be extended as per the requirements set forth in said agreement; and,

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute a contract extension between the City of Wharton and R.B. Bagley & Sons, Inc.

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

**Section I.** That the City Council hereby approves to extend the land lease agreement for one year with the option to extend every year thereafter in accordance with the land lease agreement between the City of Wharton and R.B. Bagley & Sons, Inc. beginning August 31, 2017.

**Section II.** That the City Council of the City of Wharton hereby authorizes the Mayor of the City of Wharton to execute the contract extension of the land lease agreement with R.B. Bagley & Sons, Inc. for the lease of City of Wharton property.

**Section III.** That the City of Wharton and R.B. Bagley & Sons, Inc. are hereby bound by the conditions set forth in the agreement.

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

**Passed, Approved, and Adopted** this 11<sup>th</sup> of December 2017.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**TIM BARKER**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary

Councilmember Steve Schneider seconded the motion. All voted in favor.

**C. Resolution:** A resolution of the Wharton City Council approving an amendment to the Land Lease Agreement between the City of Wharton and Mr. Manuel Caberra and Mr. Sergio

City of Wharton  
Regular Council Meeting  
December 11, 2017

Caberra and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement.

City Manager Andres Garza, Jr. presented a copy of the Extension to Amended Lease Agreement between the City of Wharton and Mr. Manuel Caberra and Mr. Sergio Caberra, which expired on July 10, 2017. City Manager Garza stated that the lease rate would remain the current rate. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No. 2017-119, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2017-119**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN AMENDMENT TO THE LAND LEASE AGREEMENT BEWEEN THE CITY OF WHARTON AND ROBERT C. VONDERAU AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.**

**WHEREAS,** Mr. Manuel Caberra and Mr. Sergio Caberra wishes to extend said land lease agreement for one additional year as per the requirements set forth in said agreement with the option to extend every year; and,

**WHEREAS,** The City of Wharton wishes to approve the land lease agreement with Mr. Manuel Caberra and Mr. Sergio Caberra to be extended as per the requirements set forth in said agreement; and,

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute a contract extension between the City of Wharton and Mr. Manuel Caberra and Mr. Sergio Caberra.

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

**Section I.** That the City Council hereby approves to extend the land lease agreement for one year with the option to extend every year thereafter in accordance with the land lease agreement between the City of Wharton and Mr. Manuel Caberra and Mr. Sergio Caberra beginning July 10, 2017.

**Section II.** That the City Council of the City of Wharton hereby authorizes the Mayor of the City of Wharton to execute the contract extension of the land lease agreement with Mr. Manuel Caberra and Mr. Sergio Caberra for the lease of City of Wharton property.

**Section III.** That the City of Wharton and Mr. Manuel Caberra and Mr. Sergio Caberra are hereby bound by the conditions set forth in the agreement.

City of Wharton  
Regular Council Meeting  
December 11, 2017

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

**Passed, Approved, and Adopted** this 11<sup>th</sup> of December 2017.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**TIM BARKER**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary

Councilmember Steve Schneider seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider a resolution of the Wharton City Council approving an agreement between the City of Wharton and Mount Carmel Church for use of open space and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement. City Manager Andres Garza, Jr. stated that on August 15, 2017, the City Staff met with Mt. Carmel representatives regarding a section of church property that used to be maintained by the City and used by the public. City Manager Garza said the property was directly behind the church on Southeast Avenue and borders Riverfront Park and the church requested Black Street to be extended therefore separating the properties. He said the church representatives indicated that there was a verbal agreement between the church and the City that allowed the public to use that property for park use in return the City would maintain the property. City Manager Garza stated that the City Facilities Maintenance Department had not been maintaining the parcel and in their meeting the City Staff informed church representatives that a written agreement needed to be developed and the City Staff would present their request to the City Council for consideration. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Resolution No. 2017-120, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2017-120**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN AGREEMENT BETWEEN THE CITY OF WHARTON AND MOUNT CARMEL CHURCH FOR USE OF OPEN SPACE AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENT.**

City of Wharton  
Regular Council Meeting  
December 11, 2017

**WHEREAS,** The City of Wharton and Mount Carmel Church have had a verbal agreement that allowed the public to use the property at Southeast Avenue and borders Riverfront Park; and,

**WHEREAS,** A written agreement was never made between the City and Mount Carmel Church; and,

**WHEREAS,** The City of Wharton wishes to approve the land lease agreement with Mount Carmel Church to enter into said agreement and extended as per the requirements set forth in said agreement; and,

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute a contract with Mount Carmel Church.

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

**Section I.** That the City Council hereby approves the agreement for one year with the option to extend every year thereafter in accordance with the land lease agreement between the City of Wharton and Mount Carmel Church beginning December 11, 2017.

**Section II.** That the City Council of the City of Wharton hereby authorizes the Mayor of the City of Wharton to execute the contract with Mount Carmel Church.

**Section III.** That the City of Wharton and Mount Carmel Church are hereby bound by the conditions set forth in the agreement.

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

**Passed, Approved, and Adopted** this 11<sup>th</sup> of December 2017.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**TIM BARKER**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary

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

The twelfth item on the agenda was to review and consider an ordinance authorizing the issuance of City of Wharton, Texas, Tax Anticipation Notes, Series 2017. City Manager Andres Garza, Jr. stated that on November 27, 2017, the Wharton City Council approved the authorization of issuance for City of Wharton, Texas, Tax Anticipation Notes, Series 2017. City Manager Garza said that the City of Wharton would be responsible for some of the costs associated with debris removal and monitoring services and the notes would also allow the City to pay for other purchases and refinancing an existing lease purchase agreement at a lower interest rate. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Ordinance No. 2017-116, which read as follows:

**ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF  
WHARTON, TEXAS, TAX NOTES, SERIES 2017**

**THE STATE OF TEXAS**                   §  
**COUNTY OF WHARTON**               §  
**CITY OF WHARTON**                   §

WHEREAS, the City of Wharton, Texas (the “City”) is authorized to issue notes payable from ad valorem taxes pursuant to Chapter 1431, Texas Government Code, including Section 1431.015, Texas Government Code;

WHEREAS, the Governor of the State of Texas issued a disaster proclamation on August 23, 2017 under Chapter 418, Texas Government Code, declaring a state of disaster in connection with Hurricane Harvey within an area that includes the City;

WHEREAS, Hurricane Harvey produced widespread, severe damage, injury, and loss of property affecting the City, including extensive catastrophic flooding;

WHEREAS, the Governor has issued proclamations on September 20, 2017, October 20, 2017, and November 20, 2017 renewing the disaster declaration due to the catastrophic damage caused by Hurricane Harvey;

WHEREAS, the City Council of the City hereby finds and determines that it is necessary and in the best interest of the City and its citizens to issue the “City of Wharton, Texas Tax Notes, Series 2017” for the purposes herein described and that the Note shall be payable from and secured by ad valorem taxes levied, within the limits prescribed by law, on all taxable property within the City; Now, Therefore

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

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

“Act” means Chapter 1431, Texas Government Code, including Section 1431.015, Texas Government Code.

City of Wharton  
Regular Council Meeting  
December 11, 2017

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

“City” means the City of Wharton, Texas.

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

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

“Debt Service Fund” means the Debt Service fund established by the City pursuant to Section 15 of this Ordinance.

“Initial Note” means the Initial Note authorized by Section 5(d) of this Ordinance.

“Interest Payment Date”, when used in connection with any Note, means June 1, 2018, and each December 1 and June 1 thereafter until maturity.

“Issuance Date” means the date on which the Notes are delivered to and paid for by the Purchaser.

“Note” or “Notes” means any note or all notes, as the case may be, of the City of Wharton, Texas, Tax Notes, Series 2017 authorized in this Ordinance, unless the context clearly indicates otherwise.

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

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

“Private Placement Letter” means the letter agreement described in Section 18 of this Ordinance.

“Purchaser” means TIB The Independent BankersBank, N.A.

“Record Date” means, for any Interest Payment Date, the close of business on the 15<sup>th</sup> 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 of the Notes registered to, each Owner.

“Registrar” means TIB The Independent BankersBank, N.A., Farmers Branch, Texas, and its successors in that capacity.

2. Authorization. The Notes shall be issued pursuant to the Act in fully registered form, without coupons, in the aggregate principal amount of \$1,220,000, for the (i)

City of Wharton  
Regular Council Meeting  
December 11, 2017

construction and rehabilitation of City streets and related drainage, including, without limitation, the acquisition of real estate necessary for streets and drainage, (ii) purchase of street repair and auxiliary power equipment, (iii) costs associated with Hurricane Harvey recovery, to include debris removal and monitoring, (iv) construction and rehabilitation of City water and sewer systems, (v) construction and improvements to City buildings, (vi) purchase of equipment for various City departments, (vii) purchase of materials, supplies, equipment, machinery, in connection with any of the foregoing, (viii) costs of professional services incurred in connection with any of the foregoing and (viii) costs of issuance of the Notes.

3. Designation, Date, and Interest Payment Dates. The Notes shall be designated as the “CITY OF WHARTON, TEXAS, TAX NOTES, SERIES 2017”, and shall be dated December 1, 2017. The Notes shall bear interest payable on each Interest Payment Date at the rate set forth below from the later of the Issuance Date, or the most recent Interest Payment Date to which interest has been paid or duly provided for, calculated on the basis of a 360-day year of twelve 30-day months.

4. Initial Note; Numbers and Denominations. The Notes shall be initially issued as a single fully registered obligation in the principal amount of \$1,220,000, and bearing interest at the rate of 2.09%, and may be transferred and exchanged as set out in this Ordinance. The Notes shall mature on June 1, 2024 with principal installments thereof to become due and payable on June 1 in the years and the amounts set forth in the following schedule. The Initial Note shall be numbered I-1 and all other Notes shall be numbered in sequence beginning with R-1. Notes delivered on transfer of or in exchange for other Notes shall be numbered in order of their authentication by the Registrar, shall be in denominations of \$100,000 and multiples of \$5,000 in excess thereof, and shall mature on the same date and bear interest at the same rate as the Note or Notes in lieu of which they are delivered.

<u>Year</u>	<u>Principal Installments</u>
2018	\$135,000
2019	\$170,000
2020	\$175,000
2021	\$180,000
2022	\$185,000
2023	\$185,000
2024	\$190,000

5. Execution of Notes; Seal. (a) The Notes shall be signed on behalf of the City by the Mayor and countersigned by the City Secretary or Deputy 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 Notes shall have the same effect as if each of the Notes had been signed manually and in person by each of said officers, and such facsimile seal on the Notes shall have the same effect as if the official seal of the City had been manually impressed upon each of the Notes.

(b) If any officer of the City whose manual or facsimile signature shall appear on the Notes shall cease to be such officer before the authentication of such Notes or before the delivery of such Notes, 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 Note 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 Note delivered at the Issuance 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 Note 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 Issuance Date, the Initial Note, being a single note representing the entire principal amount of the Notes, payable in stated installments to the Purchaser or its designee, executed by manual or facsimile signature of the Mayor and the City Secretary or Deputy City Secretary of the City, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, shall be delivered to the Purchaser or its designee. If the Purchaser desires, it may hold the Initial Note in lieu of holding definitive Notes.

6. Payment of Principal and Interest. The Registrar is hereby appointed as the paying agent and registrar for the Notes. The principal of the Notes 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 respectively become due and payable to the Registrar at its principal payment office in Farmers Branch, Texas. The interest on each Note shall be payable on each Interest Payment Date, by check mailed by the Registrar on or before the Interest Payment Date to the Owner of record as of the Record Date, to the address of such Owner as shown on the Register, or by such other method, requested by the Owner, acceptable to the Registrar.

If the date for payment of the principal of or interest on any Note 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 date payment was originally due.

7. Successor Registrars. The City covenants that at all times while any Notes are outstanding it will provide a commercial bank, trust company, financial institution or other entity duly qualified and legally authorized to serve as and perform the duties and services of Registrar for the Notes. The City reserves the right to change the Registrar on not less than 30 days written notice to the Registrar, so long as any such notice is effective not less than 60 days prior to the next succeeding principal or interest payment date on the Notes; provided, that the City shall not terminate the initial Paying Agent/Registrar so long as the initial Purchaser is the sole owner of the Notes. 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.

8. Special Record Date. If interest on any Note 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) 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.

9. Ownership; Unclaimed Principal and Interest. The City, the Registrar and any other person may treat the person in whose name any Note is registered as the absolute owner of such Note for the purpose of making and receiving payment of the principal of or interest on such Note, and for all other purposes, whether or not such Note 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 Note in accordance with this Section shall be valid and effectual and shall discharge the liability of the City and the Registrar upon such Note to the extent of the sums paid.

Amounts held by the Registrar which represent principal of and interest on the Notes 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.

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

Each Note shall be transferable only upon the presentation and surrender thereof at the principal payment office of the Registrar in Farmers Branch, 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 Note in proper form for transfer, the Registrar shall authenticate and deliver in exchange therefor, within three Business Days after such presentation, a new Note or Notes, 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 Note or Notes so presented.

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

The City or the Registrar may require the Owner of any Note 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 Note. Any fee or charge of the Registrar for such transfer or exchange shall be paid by the City.

11. Mutilated, Lost, or Stolen Notes. Upon the presentation and surrender to the Registrar of a mutilated Note, the Registrar shall authenticate and deliver in exchange therefor a replacement Note of like maturity, interest rate, and principal amount, bearing a number not contemporaneously outstanding. If any Note 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 Note has been acquired by a bona fide purchaser, shall authorize and the Registrar shall authenticate and deliver a replacement Note 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 Note 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 Note, before any replacement Note 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 Note;
- (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 Note, a bona fide purchaser of the original Note in lieu of which such replacement Note was issued presents for payment such original Note, the City and the Registrar shall be entitled to recover such replacement Note from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall

City of Wharton  
Regular Council Meeting  
December 11, 2017

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 Note has become or is about to become due and payable, the City in its discretion may, instead of issuing a replacement Note, authorize the Registrar to pay such Note.

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

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

13. Optional Redemption; Defeasance. The Notes are not subject to optional redemption. The Notes may be discharged or defeased in any manner now or hereafter permitted by law.

14. Forms. The form of the Notes, including the form of the Registrar's Authentication Certificate, the form of Assignment, and the form of Registration Certificate of the Comptroller shall be, respectively, substantially as follows, with such additions, deletions and variations as may be necessary or desirable and not prohibited by this Ordinance:

(a) Form of Note.

UNITED STATES OF AMERICA  
STATE OF TEXAS  
COUNTY OF WHARTON

NUMBER  
DENOMINATION

REGISTERED

\$1,220,000  
REGISTERED

CITY OF WHARTON, TEXAS  
TAX NOTE  
SERIES 2017

INTEREST RATE: 2.09%      MATURITY DATE: June 1, 2024      DATED DATE: December 1, 2017      ISSUANCE DATE: December 28, 2017

REGISTERED OWNER: TIB THE INDEPENDENT BANKERSBANK, N.A.

PRINCIPAL AMOUNT: ONE MILLION TWO HUNDRED TWENTY THOUSAND DOLLARS

The City of Wharton, Texas (the “City”) promises to pay to the registered owner identified above, or registered assigns (the “Registered Owner”), on the maturity date specified above, the principal amount identified above payable in principal installments on June 1 in each year in accordance with the following schedule:

<u>Year</u>	<u>Principal Installments</u>
2018	\$135,000
2019	\$170,000
2020	\$175,000
2021	\$180,000
2022	\$185,000
2023	\$185,000
2024	\$190,000

and to pay interest on the unpaid principal amount hereof at the rate per annum shown above, calculated on the basis of a 360-day year of twelve 30-day months, on June 1 and December 1 of each year, beginning on June 1, 2018, until maturity, from the later of Issuance Date or the most recent interest payment date to which interest has been paid or duly provided for. The last principal installment of this Note shall be paid to the Registered Owner hereof upon presentation and surrender of this Note at the designated payment office of TIB The Independent Bankers Bank, N.A (the “Registrar”) in Farmers Branch, Texas. The payment of all other principal installments of and interest on this Note is payable by (i) check mailed to the Registered Owner as shown on the books of registration kept by the Registrar as of the close of business on the 15<sup>th</sup> day of the month next preceding each interest payment date or (ii) such other method, acceptable to the Registrar, requested by, and at the expense of the Registered Owner.

THIS NOTE is one of a duly authorized issue of Notes, aggregating \$1,220,000 (the “Notes”), issued for the (i) construction and rehabilitation of City streets and related drainage, including, without limitation, the acquisition of real estate necessary for streets and drainage, (ii) purchase of street repair and auxiliary power equipment, (iii) costs associated with Hurricane Harvey recovery, to include debris removal and monitoring, (iv) construction and rehabilitation of City water and sewer systems, (v) construction and improvements to City buildings, (vi) purchase of equipment for various City departments, (vii) purchase of materials, supplies, equipment, machinery, in connection with any of the foregoing, (viii) costs of professional services incurred in connection with any of the foregoing and (ix) costs of issuance of the Notes, under and in strict conformity with the Constitution and laws of the State of Texas, including Chapter 1431, Texas Government Code, and pursuant to an ordinance adopted by the City (the “Ordinance”), which Ordinance is of record in the official minutes of the City Council.

City of Wharton  
Regular Council Meeting  
December 11, 2017

THIS NOTE MAY BE TRANSFERRED ONLY TO "ACCREDITED INVESTORS" AS THAT TERM IS DEFINED IN SECURITIES AND EXCHANGE COMMISSION RULE 144A.

THIS NOTE IS EXCHANGEABLE at the principal payment office of the Registrar in Farners Branch, Texas, for notes in the principal amount of \$100,000 or any integral multiple of \$5,000 in excess thereof, subject to the terms and conditions of the Ordinance.

THIS NOTE is not subject to optional redemption; however, the City reserves the right to defease this Note in any manner now or hereafter permitted by law.

THIS NOTE shall not be valid or obligatory for any purpose or be entitled to any benefit under the Ordinance unless this Note 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 Note, 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 Notes 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 Note 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 Note have been performed, exist and have been done in accordance with law; and that annual ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Note, as such interest comes due and such principal matures, have been levied and ordered to be levied, within the limits prescribed by law, against all taxable property in the City and have been pledged irrevocably for such payment.

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

(AUTHENTICATION  
CERTIFICATE)

(SEAL)

CITY OF WHARTON, TEXAS

---

Mayor

---

City Secretary

(b) Form of Registration Certificate.

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. \_\_\_\_\_

I hereby certify that this Note has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Note 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 Note has been delivered pursuant to the Ordinance described in the text of this Note.

TIB THE INDEPENDENT BANKERS BANK,  
N.A.  
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 Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

DATED: \_\_\_\_\_  
\_\_\_\_\_

Signature Guaranteed:  
\_\_\_\_\_

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

Registered Owner

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

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

(i) the Initial Note shall be numbered I-1.

15. Debt Service Fund; Tax Levy. The proceeds from all taxes levied, assessed and collected for and on account of the Notes authorized by this Ordinance shall be deposited, as collected, in a special fund to be designated "City of Wharton, Texas, Tax Notes, Series 2017, Debt Service Fund". While the Notes or any part of the principal thereof or interest thereon remain outstanding and unpaid, there is hereby levied and there shall be annually levied, assessed and collected in due time, form and manner and at the same time other City taxes are levied, assessed and collected, in each year, a continuing direct annual ad valorem tax, within the limits prescribed by law, upon all taxable property in the City sufficient to pay the current interest on said Notes as the same becomes due, and to provide and maintain a sinking fund sufficient to pay the principal of the Notes as such principal matures but never less than two percent (2%) of the original principal amount of the Notes each year, full allowance being made for delinquencies and costs of collection, and said taxes when collected shall be applied to the payment of the interest on and principal of the Notes and to no other purpose.

To pay the debt service coming due on the Notes prior to receipt of 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 amounts shall be used for no other purpose.

16. Application of Chapter 1208, Government Code. Chapter 1208, Government Code, applies to the issuance of the Notes and the pledge of the taxes granted by the City under Section 15 of this Ordinance, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Notes are outstanding and unpaid such that the pledge of the taxes granted by the City under Section 15 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 Notes 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.

17. Further Proceedings. After the Initial Note has been executed, it shall be the duty of the Mayor and other appropriate officials and agents of the City to deliver the Initial Note and all pertinent records and proceedings to the Attorney General of the State of Texas, for examination and approval. After the Initial Note has been approved by the Attorney General, it shall be delivered to the Comptroller for registration. Upon registration of the Initial Note, 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.

18. Sale; Private Placement Letter. The Notes are hereby sold and shall be delivered to the Purchaser at a price of par, in accordance with the terms of the Private Placement Letter of even date herewith, presented to and hereby approved by the City Council, which price and terms are hereby found and determined to be the most advantageous reasonably obtainable by the City. The Mayor and other appropriate officials of the City are hereby authorized to execute the Private Placement Letter and to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of the Notes.

19. Covenants to Maintain Tax Exempt Status.

(a) Definitions. When used in this Section, the following terms have the following meanings:

“Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, enacted on or before the Issue Date.

“Computation Date” has the meaning stated in Section 1.148-1(b) of the Regulations.

“Gross Proceeds” has the meaning stated in Section 1.148-1(b) of the Regulations.

“Investment” has the meaning stated in Section 1.148-1(b) of the Regulations.

“Issue Date” for each series or sub-series of the Notes or other obligations of the City is the respective date on which such series or sub-series of the Notes or other obligations of the City is delivered against payment therefor.

“Net Sale Proceeds” has the meaning stated in Section 1.148-1(b) of the Regulations.

“Nonpurpose Investment” has the meaning stated in Section 1.148-1(b) of the Regulations.

“Proceeds” has the meaning stated in Section 1.148-1(b) of the Regulations.

“Rebate Amount” has the meaning stated in Section 1.148-3 of the Regulations.

“Regulations” means the temporary or final Income Tax Regulations applicable to the Notes issued pursuant to Sections 141 through 150 of the Code. Any reference to a section of the Regulations shall also refer to any successor provision to such section hereafter promulgated by the Internal Revenue Service pursuant to Sections 141 through 150 of the Code and applicable to the Notes.

“Yield of”

(1) any Investment shall be computed in accordance with Section 1.148-5 of the Regulations, and

(2) the Notes shall be computed in accordance with Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of or omit to use Gross Proceeds of the Notes or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which, if made or omitted, respectively, would cause the interest on any Note to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City shall have received a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Notes, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the regulations and rulings thereunder, the City shall, at all times after the Issue Date of any Note and prior to the last stated maturity of the Notes,

(i) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed directly or indirectly with Gross Proceeds of the Notes and not use or permit the use of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity other

than a state or local government, unless such use is solely as a member of the general public, or

(ii) not directly or indirectly impose or accept any charge or other payment for use of Gross Proceeds of the Notes or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with such Gross Proceeds other than taxes of general application and interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the regulations and rulings relating to section 141 of the Code, the City shall not use Gross Proceeds of the Notes to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, Gross Proceeds are considered to be “loaned” to a person or entity if (1) property acquired, constructed or improved with Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes, (2) capacity in or service from such property is committed to such person or entity under a take or pay, output, or similar contract or arrangement, or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or such property are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the final stated maturity or final payment of the Notes, directly or indirectly invest Gross Proceeds of the Notes in any Investment (or use such Gross Proceeds to replace money so invested), if as a result of such investment the Yield of all Investments allocated to such Gross Proceeds whether then held or previously disposed of, exceeds the Yield on the Notes.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Notes to be federally guaranteed within the meaning of Section 149(b) of the Code and the regulations and rulings thereunder.

(g) Information Report. The City shall timely file with the Secretary of the Treasury the information required by Section 149(e) of the Code with respect to the Notes on such forms and in such place as such Secretary may prescribe.

(h) Payment of Rebate Amount. Except to the extent otherwise provided in Section 148(f) of the Code and the regulations and rulings thereunder, the City shall:

(i) account for all Gross Proceeds of the Notes (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of such accounting for at least nine years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of the Notes with other

money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith,

(ii) calculate the Rebate Amount with respect to the Notes not less frequently than each Computation Date, in accordance with rules set forth in Section 148(f) of the Code, Section 1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least three years after the final Computation Date,

(iii) as additional consideration for the purchase of the Notes by the initial purchasers thereof and the loan of the money represented thereby, and in order to induce such purchase by measures designed to ensure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (2) above at the times, in the installments, to the place, in the manner and accompanied by such forms or other information as is or may be required by Section 148(f) of the Code and the regulations and rulings thereunder, and

(iv) exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (2) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the regulations and rulings thereunder, the City shall not, at any time after the Issue Date of the Notes and prior to the earlier of the final stated maturity or final payment of the Notes, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Notes not been relevant to either party.

(j) Not Hedge Bonds. The City will not invest more than 50 percent of the Proceeds of the Notes in Nonpurpose Investments having a guaranteed yield for four years or more. On the Issue Date, the City will reasonably expect that at least 85 percent of the Net Sale Proceeds of the Notes will be used to carry out the governmental purpose of such series within three years after the Issue Date.

20. Qualified Tax-Exempt Obligations. The City hereby designates the Notes as "qualified tax-exempt obligations" for purposes of section 265(b) of the Code. In connection therewith, the City represents (a) that the aggregate amount of tax-exempt obligations issued by the City during calendar year 2017, including the Notes, which have been designated as "qualified tax-exempt obligations" under section 265(b)(3) of the Code does not exceed \$10,000,000, and (b) that the reasonably anticipated amount of tax-exempt obligations which will be issued by the City during calendar year 2017, including the Notes, will not exceed \$10,000,000. For purposes of this Section, the term "tax-exempt obligation" does not include

“private activity bonds” within the meaning of section 141 of the Code, other than “qualified 501(c)(3) bonds” within the meaning of section 145 of the Code. In addition, for purposes of this Section, the City includes all entities which are aggregated with the City under the Code.

21. Use of Proceeds. Proceeds from the sale of the Notes shall be used for the purposes described in Section 2 of this Ordinance and for paying the costs of issuance of the Notes. Any proceeds remaining after accomplishing the purposes set out in Section 2 and paying costs of issuance, including earnings on investments of such proceeds, shall be transferred to the Debt Service Fund.

22. Related Matters. The Mayor, the City Manager, the City Secretary, the Deputy City Secretary 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.

23. 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.

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

25. 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 11<sup>th</sup> day of December, 2017.

---

Mayor  
City of Wharton, Texas

ATTEST:

---

City Secretary  
City of Wharton, Texas

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

The thirteenth item on the agenda was to review and consider Pay Request No. 1 from Debris Tech Electronic Debris Management Systems for debris monitoring. City Manager Andres

City of Wharton  
Regular Council Meeting  
December 11, 2017

Garza, Jr. presented Pay Request No. 1 in the amount of \$ 87,758.75 for debris monitoring services from Debris Tech Electronic Debris Management Systems for the period of 10/11/17 to 11/03/17. Community Development Director Gwyn Teves requested that the City Council consider the approval of Pay Request No. 1. After some discussion, Councilmember Al Bryant moved to approve Pay Request No. 1 from Debris Tech Electronic Debris Management Systems for debris monitoring services in the amount of \$87,758.75 for the period of 10/11/17 to 11/03/17. Councilmember Steve Schneider seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider Pay Request No. 1 and No. 2 from Tetra Tech, Inc. for debris monitoring. City Manager Andres Garza, Jr. presented Pay Request No. 1 in the amount of \$97,373.00 and Pay Request No. 2 in the amount of \$41,351.75 for debris monitoring services from Tetra Tech, Inc. for the periods of September and October 2017. City Manager Garza stated that the City staff was recommending payment be approved with the condition that the reconciliation of the Ceres invoices be completed prior to release of funds. After some discussion, Councilmember Al Bryant moved to approve Pay Request No. 1 in the amount of \$97,373.00 and Pay Request No. 2 in the amount of \$41,351.75 for debris monitoring services from Tetra Tech, Inc. for the periods of September and October 2017. Councilmember Terry Freese seconded the motion. All voted in favor.

The fifteenth item on the agenda was to review and consider the termination of CB&I contract for consulting services. City Manager Andres Garza, Jr. presented a memo recommending the termination of the City's agreement with CB&I by giving the required notice. City Manager Garza stated that CB&I had been purchased from another company and a 45-day notice was required for the termination of the contract. After some discussion, Councilmember Russell Machann moved to approve the termination of the CB&I contract for consulting services. Councilmember Don Mueller seconded the motion. All voted in favor.

The sixteenth item a resolution of the Wharton City Council approving a change order to the contract between the City of Wharton and Ceres Environmental Services, Inc. for addition of Reduction of Debris unit pricing to the contract and authorizing the Mayor of the City of Wharton to execute all documents related to the change order on behalf of the City of Wharton. City Manager Andres Garza, Jr. presented a copy of the resolution and change order to the Ceres Environmental contract entered into by the City on October 11, 2017. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Resolution No. 2017-121, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2017-121**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A CHANGE ORDER TO THE CONTRACT BETWEEN THE CITY OF WHARTON AND CERES ENVIRONMENTAL SERVICES, INC. FOR ADDITION OF REDUCTION OF DEBRIS UNIT PRICING TO THE CONTRACT AND AUTHORIZING THE MAYOR**

City of Wharton  
Regular Council Meeting  
December 11, 2017

**OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO THE CHANGE ORDER ON BEHALF OF THE CITY OF WHARTON.**

**WHEREAS,** The Wharton City Council wishes to approve and add the change order to the contract with Ceres Environmental Services, Inc. for addition of reduction of debris unit pricing; and,

**WHEREAS,** The City of Wharton and Ceres Environmental Services, Inc. wishes to be bound by the conditions set forth in the change order; and,

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to the change order 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 approves a change order between the City of Wharton and Ceres Environmental Services, Inc.

**Section II.** The City of Wharton and Ceres Environmental Services, Inc. are hereby bound by the conditions set forth in the change order.

**Section III.** The Mayor of the City of Wharton is hereby authorized to execute the change order.

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

**Passed, Approved, and Adopted** this 11<sup>th</sup> day of December 2017.

**CITY OF WHARTON, TEXAS**

**By:**

\_\_\_\_\_  
**TIM BARKER**

Mayor

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**

City Secretary

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

The seventeenth item on the agenda was to review and consider the cancellation of the December 26, 2017 Regular Wharton City Council meeting. City Manager Andres Garza, Jr.

City of Wharton  
Regular Council Meeting  
December 11, 2017

stated that due to the Holiday Season, he was requesting the Mayor and City Council consider canceling the December 25, 2017 regular City Council Meeting. City Manager Garza said that if it becomes necessary, a special meeting would be scheduled. After some discussion, Councilmember Al Bryant moved to approve the cancellation of the December 26, 2017 Regular Wharton City Council meeting. Councilmember Terry Freese seconded the motion. All voted in favor.

The eighteenth item on the agenda was **Executive Session:** City Council may adjourn into an Executive Session in accordance with Section 551.071 of the Local Government Code, Revised Civil Statutes of Texas. Final action, decision or vote, if any with regard to any matter considered in Executive Session shall be made in Open Meeting.

**Discussion:**

A. Consultation with City Attorney regarding ExGen Power LLC, Bankruptcy, Case No. 17-12377 (BLS).

Mayor Tim Barker moved the meeting into closed session at 7:33 p.m.

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

**Review & Consider:**

A. ExGen Power LLC, Bankruptcy, Case No. 17-12377 (BLS).

Mayor Tim Barker opened the meeting at 7:58 p.m. Mayor Barker stated that information only was received.

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

- A. Beautification Commission.
- B. Building Standards Commission.
- C. Plumbing and Mechanical Board.
- D. Wharton County Central Appraisal District Board.

After some discussion, Councilmember Terry Freese moved to appoint the follows:

D. Wharton County Central Appraisal District Board.

Term Expiring

Russell Machann

December 31, 2018

Councilmember Steve Schneider seconded the motion. All voted in favor.

City of Wharton  
Regular Council Meeting  
December 11, 2017

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

- A. Public Works Committee meeting held November 27, 2017.
- B. Finance Committee meeting held November 27, 2017.

After some discussion, no action was taken.

The twenty-second item on the agenda was to review and consider the Houston-Galveston Area Council Advisory (H-GAC) Committee-Regional Flood Management Council. City Manager Andres Garza, Jr. presented a memo to him from City Secretary Paula Favors regarding the nomination of a primary representative and alternate representative to the H-GAC Regional Flood Management Council. Mrs. Favors stated that the purpose of the Council was to assist and advise elected officials in the decision making responsibilities regarding to flood management issues and the representative was not required to be an elected official. After some discussion, Councilmember Russell Machann moved to nominate Building Official Ronnie Bollom as the primary representative and Community Development Coordinator Gwyn Teves as the alternate representative to the H-GAC Regional Flood Management Council. Councilmember Al Bryant seconded the motion. All voted in favor.

The twenty-third item on the agenda was to review and consider a request from Mr. Philip Wuthrich to address the Council regarding the Temporary Food Vendor Variance. City Manager Andres Garza, Jr. presented the request from Mr. Philip Wuthrich to address the Council regarding the Temporary Food Vendor Variance that the City Council approved on November 27, 2017. Mr. Wuthrich requested the City Council reconsider earlier action to grant a Temporary Food Vendor Variance to a Bar-B-Que food truck that would be located 13 ½ feet from his driveway. Mr. Frank Brown, owner and operator of the Bar-B-Que food truck stated that he and Mr. Wuthrich had previously discussed the business being at the location and that he seemed “really excited” to have him there. City Attorney Paul Webb requested that in future requests for variances of this type that adjacent land owners be notified and given an opportunity to provide their response to the request. After some discussion, no action was taken.

The twenty-fourth item on the agenda was to review and consider the FM 1301 Extension and Railroad Overpass Project. Councilmember Don Mueller had requested to address the Council regarding the FM 1301 Extension and Railroad Overpass Project. City Manager Andres Garza, Jr. stated that he had requested from Mr. Paul Reitz, P.E. Director of Transportation Planning and Development for TxDOT, Yoakum District, an update on the project. Councilmember Mueller stated that the project had been developed several decades ago to help assist Police, Fire and EMS with possible faster response times and since that time the cost has tripled. He requested his desires to see the project move forward. After some discussion, no action was taken.

The twenty-fifth item on the agenda was adjournment. There being no further discussion, Councilmember Don Mueller moved to adjourn. Councilmember Al Bryant seconded the motion. All voted in favor.

City of Wharton  
Regular Council Meeting  
December 11, 2017

The meeting adjourned at 8:40 p.m.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**Tim Barker**  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**Paula Favors**  
**City Secretary**