

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
February 14, 2011**

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

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

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Andel, 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, David Schroeder with Wharton Economic Development Corporation, Ray Linseisen, Candace Stangs, Glenn Stangs, W.S. House, Charles H. Mortiz, Leland Buenger, Evelyn Buenger, Patsy Moritz, Jerry Bahn, Keith Bahn, Mary Ann Erdelt, Rosemary Prochaska, Charles Erdelt, Yvonne L. Martin, John Martin, Jim Cockrell, Gerald Freytag, Allen Rachunek, Fred Pyka, Mozelle Stephen, Glen Evanicky, Carol Russ, Karen Pyka, Michele Rachunek, Ascenscion Quintanilla, Elener Paul, Mary McDonnell, Karen Moss, Robert Richardson, Joseph Miller, Coleman Locke, James Kelley, Marjorie Sklar, Betty Mueller, Mary Duyka, Tim Duyka, Eva Schroeder, Alan Priem, Shirley Wolfe, Kathleen Cochran Cline, and David Samuelson.

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. Mr. Charles H. Moritz addressed the City Council with his concerns regarding a proposed apartment complex, and the increase in traffic it could bring to the area. Ms. Evelyn Cochran addressed the City Council regarding her concerns about the proposed apartment complex and the amount of traffic it could bring. She also stated that it could create a tremendous safety issue. Mr. Fred Pyka addressed the City Council and stated the proposed apartment complex could create a negative impact on the water shed. Mr. Robert Richardson addressed the City Council and stated that the proposed complex would not

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add revenue to the City. He further stated that the City Council should oppose its construction at the proposed current site. Ms. Shirley S. Wolfe addressed the City Council that she opposed the location of the proposed apartment complex and that it could create safety and drainage issues. No action was taken.

The fourth item discussed on the agenda was to review and consider a proposed Apartment Complex Development by Rolling Creek Cove, Ltd. c/o The NRP Group LLC. Mayor Domingo Montalvo, Jr., stated that the proposed apartment complex would be located in Wharton County jurisdiction in Commissioner Leroy Dettling's precinct. Mayor Montalvo stated that City Manager Andres Garza, Jr. and he had met with the company and that they requested the company to allow the citizens of Wharton time to comment regarding the project. Councilmember Jeffery Gubbels stated that the City Council heard a unified voice from the community and that he had met with Commissioner Dettling, who was not supporting the project. He said that there were other areas in town or in the County that had better potential for the apartment complex. After some discussion, Councilmember Jeffery Gubbels made a motion for the City of Wharton to send a letter to the Texas Department of Housing and Community Affairs (TDHCA) and Rolling Creek Cove Ltd, c/o The NRP Group LLC opposing the construction of the proposed apartment complex development, at the proposed site. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The fifth item discussed on the agenda was the Wharton Moment. Councilmember Terry David Lynch complimented Wharton High School on the 3<sup>rd</sup> Annual Father Daughter Dance held February 12<sup>th</sup> 2011, and on the Wharton Police Department receiving 3<sup>rd</sup> place in the 100 Club's Spaghetti Supper Cook Off. Councilmember Jeffery Gubbels stated that the Wharton High School debate team won first and second place in district and two sets of students would be going to the state competition. No action was taken.

The sixth item discussed on the agenda item was to review and consider the reading of the minutes from the regular meetings held January 10, 2011 and January 24, 2011. After some discussion, Councilmember Terry David Lynch made a motion to approve the minutes from the regular meetings held January 10, 2011 and January 24, 2011 as presented. Councilmember Donald Mueller seconded the motion. All voted in favor.

The seventh item discussed on the agenda was to review and consider the City of Wharton City Councilmembers.

- A. City Council acceptance of the resignation of Mr. Lewis Fortenberry, Jr. as City Councilmember for District 2.

City Manager Andres Garza, Jr. presented a copy of his memorandum dated February 1, 2011 to the Councilmembers providing them with a copy of the letter dated January 25, 2011 from Mr. Lewis Fortenberry, Jr. providing his resignation from his position as Councilmember District 2. He said City Council's acceptance of his resignation was required. After some discussion, Councilmember Donald Mueller made a motion to accept the resignation of Mr. Lewis Fortenberry, Jr. as Councilmember District 2. Councilmember Terry David Lynch seconded the motion. All voted in favor.

- B. City Council recommendation to fill the following vacant City Council Positions:
1. District 1.
  2. District 2.

City Manager Andres Garza, Jr. stated that since there was a vacancy in the Councilmember District No. 1 seat, which was due to the passing of Councilmember V. L. Wiley, Jr., and with the resignation of Councilmember Lewis Fortenberry, Jr., a vacancy also existed in the District 2 position. City Attorney Paul Webb provided his opinion of the process for the City Council to fill vacant City Council positions. After some discussion, Bryce Kocian made a motion to not fill the vacant City Council positions since the filing for the Election has started. Councilmember Jeffery Gubbels seconded the motion. All voted in favor.

The eighth item discussed on the agenda was to review and consider the 2011 City of Wharton Election:

- A. **Ordinance:** An ordinance ordering a City Officer's Election to be held as a joint election with Wharton County Elections Department for the purpose of electing the positions of Councilmembers; Providing for the date, time and place of the election, Notice of the Election, Filing Applications; Drawing for Ballot Positions, Use of Accessible Voting System, and Making Election Returns.

Una ordenanza ordenando una eleccion de funcionarios de la ciudad a celebrarse de forma conjunta con el departamento de elecciones del condado de Wharton con el proposito de elegir Puestos de concejales; Asignando la fecha, horas, y lugar de la eleccion, el aviso de la eleccion, presentacion de solicitudes, sorteo para lugares en la balota, uso de sistema de votacion accesible, nombramiento de los trabajadores de la eleccion, votacion anticipada, y entrega de los resultados de la eleccion.

City Secretary Paula Favors presented a copy of the draft ordinance calling for a City Officers Election to be held as a joint election with the Wharton County Elections Department for the purpose of electing the positions of Councilmembers District 1, 3, 5 and the unexpired term of District 2; Providing for the date, time and place of the election, Notice of the Election, Filing Applications; Drawing for Ballot Positions, Use of Accessible Voting System, Appointment of Election Workers, Early Voting and Making Election Returns. After some discussion, Councilmember Bryce D. Kocian made a motion to approve the City of Wharton Ordinance No. 2011-04, reads as follows:

**CITY OF WHARTON, TEXAS  
ORDINANCE NO. 2011-04**

**AN ORDINANCE ORDERING A CITY OFFICERS ELECTION TO BE HELD AS A JOINT ELECTION WITH WHARTON COUNTY ELECTIONS DEPARTMENT FOR THE PURPOSE OF ELECTING THE POSITIONS OF COUNCILMEMBERS; PROVIDING FOR THE DATE, TIME, AND PLACE OF THE ELECTION, NOTICE OF THE ELECTION, FILING APPLICATIONS, DRAWING FOR**

**BALLOT POSITIONS, USE OF ACCESSIBLE VOTING SYSTEM, APPOINTMENT OF ELECTION WORKERS, EARLY VOTING, AND MAKING ELECTION RETURNS.**

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

"Section 32 of the City Charter provides that regular city elections will be held annually on the first Saturday in May; however, pursuant to changes in the Texas Election Code, Section 41.001(a), the General Election date has been changed to the second Saturday in May."

**Joint Election**

Wharton County Elections Department will be conducting the duties as described in the Joint Election Agreement.

**Position**

An election shall be held in the City of Wharton, Texas, for the purpose of electing the following officials for the City:

Councilmember - District No. 1  
Councilmember – District No. 2 – Unexpired Term  
Councilmember - District No. 3  
Councilmember at Large - Place No. 5

**Date**

An election shall be held in the City of Wharton, Texas, on **May 14, 2011**.

**Time**

The polls shall open for voting at **7 a.m.** and shall close at **7 p.m.**

**Location**

The election shall be held at the City of Wharton Civic Center at 1924 North Fulton Street, Wharton, Texas.

**Notice of City Officers' Election**

The Mayor shall cause a notice by publication of this election to be published at least once in a newspaper that is published in the City of Wharton, Texas, and that is in the jurisdiction of the City of Wharton, Texas, which publication shall be not earlier than the **30th day** nor later than the **10th day** before election day.

The Mayor shall also give notice of the election by causing a copy of the notice of election to be posted not later than the **21st day** before election day on the bulletin board located

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at the City Hall, 120 East Caney, Wharton, Texas, and used for posting notices of meetings of the Wharton City Council. The notice shall include the location of the polling place.

### **Eligibility to Vote**

The election shall be held in accordance with the Election Code of the State of Texas. Only qualified resident voters of the City of Wharton, Texas, shall be eligible to vote in the election.

### **Candidate Names**

The City Secretary shall, in accordance with the terms and provisions of the Texas Election Code, order the candidate names to be printed on the ballots for said General Election.

### **Filing**

Candidates must file applications for a place on the ballot with the City Secretary of the City of Wharton, Texas, beginning on **February 14, 2011** and continuing through **5 p.m.** on **March 14, 2011**. A declaration of write-in candidacy must be filed not later than 5:00 P.M. on **March 21, 2011**, the 5th day after an application for a place on the ballot is required to be filed that is on Saturday, March 19, 2011; therefore, the date is moved to Monday, March 21, 2011.

Candidates for City Councilmember must designate the position filed for either Councilmember District No. 1, Councilmember District No. 3, Councilmember at Large - Place No. 5, or unexpired term Councilmember District No. 2.

### **Drawing for Ballot Positions**

On March 16, 2011 at 10:00 a.m., a drawing will take place in the office of the City Secretary for the purpose of determining the order of the candidates' names as they are to appear on the ballot.

The City Secretary shall post a notice of the date, hour, and place of the drawing and this notice shall remain posted continuously for at least 72 hours immediately preceding the scheduled time of the drawing.

### **Ballots**

Paper ballots shall be used for the purposes of provisional and mail-out for early voting and provisional for election day.

### **Accessible Voting System**

Section 61.012 of the Texas Election Code requires that the City of Wharton must provide at least one accessible voting system in each polling place used in a Texas election on or

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after January 1, 2006. This system must comply with state and federal laws setting the requirements for voting systems that permit voters with physical disabilities to cast a secret ballot.

The Office of the Texas Secretary of State has certified that the iVotronic (DRE) voting machines is an accessible voting system that may legally be used in Texas elections.

Sections 123.032 and 123.035 of the Texas Election Code authorize the acquisition of voting systems by local political subdivisions and further mandate certain minimum requirements for contracts relating to the acquisition of such voting systems. The City of Wharton shall lease or rent from the County of Wharton as authorized by Section 123.032.

The City of Wharton hereby adopts for use in Early Voting and Election Day Voting the iVotronic (DRE) voting machines as approved by the Secretary of State to comply with HAVA requirements.

### **Elections Recording Management Tabulation System**

The City of Wharton shall lease or rent from the County the ERM (Elections Recording Management) systems for tabulation purposes, if needed.

### **Election Officers**

The Wharton County Elections Department (WCED) will be responsible for the appointment of the presiding judge and alternate judge. The following-named persons are appointed officers for the election:

Presiding Judge: Magdalena Rodriguez  
Alternate Presiding Judge: Joyce Baker

WCED shall arrange the training. WCED is responsible for notifying the election presiding and alternate judges of the eligibility requirements of Subchapter C of Chapter 32 of the Texas Election Code, and will take the necessary steps to insure that the presiding and alternate judges appointed are eligible to serve. The presiding judge, with the assistance from WCED, will be responsible for insuring the eligibility of each appointed clerk hired to assist the judge in the conduct of the election.

### **Early Voting**

Wharton County Elections Administrator Judy Owens is appointed early voting clerk and is authorized to appoint other deputies to serve as early voting clerks.

The early voting by personal appearance for the above-designated election shall take place at the Wharton Community/Civic Center at 1924 North Fulton Street, Wharton, Texas. The place for early voting shall remain open on each day that is not a Saturday, Sunday, or an official state holiday, between the hours of **8 a.m.** and **5 p.m.**, beginning on **May 2, 2011** and continuing through **May 6, 2011; Monday, May 9, 2011** and continuing through **Tuesday, May 10, 2011** between the hours of **7 a.m.** to **7 p.m.**

Voters may send ballot applications and mailed ballots to the Wharton County Elections Administrator's office at P.O. Box 390, Wharton, TX 77488.

### **Early Voting Ballot Board**

An Early Voting Ballot Board is hereby established for the purpose of early voting results. Wharton County Elections Administrator shall appoint the Presiding Judge of the Early Voting Ballot Board. Wharton County Elections Administrator shall act as Early Voting Ballot Board Clerk.

### **Compensation for Election Officials and Clerks**

The election officials and clerks shall be compensated in the following manner:

The Election Judge for the May 14, 2011 General Election shall be paid \$9.00 per hour. The Election Judge shall also be paid \$25.00 for delivering the precinct records, keys to ballot box or other election equipment and unused election supplies after the election.

The Alternate Judge for the May 14, 2011 General Election shall be paid \$8.50 per hour.

The Election Clerk(s) for the May 14, 2011 General Election shall be paid \$8.00 per hour.

### **Writ of Election**

Wharton County Elections Administrator shall deliver to the above-appointed presiding judge for the election not later than the **15th day** before election day.

### **Returns**

"Section 41 of the City Charter provides that city elections shall be canvassed within one (1) week after the election; however, pursuant to changes in the Texas Election Code, Section 67.003, the local canvass shall convene not earlier than the third day or later than the 11<sup>th</sup> day after the election day." The period for official canvass shall be from May 17 - 25, 2011. The officers holding the election shall make returns of the results thereof to the Mayor of this City, as required by the Election Code of the State of Texas.

### **Order**

The City Council of the City of Wharton, Texas, shall order the election, in accordance with the foregoing provisions.

### **Severability**

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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 such ruling shall not affect the validity of the remaining portions hereof.

**Passage and Approval**

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas, on this 14<sup>th</sup> day of February, 2011.

**CITY OF WHARTON, TEXAS**

**ATTEST:**

By: \_\_\_\_\_  
**Domingo Montalvo, Jr.**  
Mayor

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

**APPROVED AS:**

\_\_\_\_\_  
**Paul Webb**  
City Attorney

**CIUDAD DE WHARTON, TEXAS  
ORDENANZA N° 2011-**

UNA ORDENANZA ORDENANDO UNA ELECCIÓN DE FUNCIONARIOS DE LA CIUDAD A CELEBRARSE DE FORMA CONJUNTA CON EL DEPARTAMENTO DE ELECCIONES DEL CONDADO DE WHARTON CON EL PROPÓSITO DE ELEGIR PUESTOS DE CONCEJALES; ASIGNANDO LA FECHA, HORAS, Y LUGAR DE LA ELECCIÓN, EL AVISO DE LA ELECCIÓN, PRESENTACION DE SOLICITUDES, SORTEO PARA LUGARES EN LA BALOTA, USO DE SISTEMA DE VOTACIÓN ACCESIBLE, NOMBRAMIENTO DE LOS TRABAJADORES DE LA ELECCION, VOTACIÓN ANTICIPADA, Y ENTREGA DE LOS RESULTADOS DE LA ELECCION.

El Consejo Municipal de La Ciudad De Wharton, Texas, ORDENA:

“La Sección 32 de la Carta Constitutiva establece que se realicen elecciones or inarias de la ciudad anualmente el primer sábado de mayo; sin embargo, de acuerdo con los cambios del Código de Elecciones de Texas, Sección 41.001(a) la fecha de la Elección General ha sido cambiada al segundo sábado de mayo”



## **Elección conjunta**

El Departamento de elecciones del condado de Wharton realizará las obligaciones descritas en el Acuerdo de Elección Conjunta.

### **Puesto**

Se celebrará una elección en la ciudad de Wharton, Texas, con el propósito de elegir a los siguientes oficiales de la Ciudad:

Concejal - Distrito No. 1  
Concejal - Distrito No. 2 - Cargo no vencido  
Concejal - Distrito No. 3  
Concejal de forma irrestricta - Posición No. 5

### **Fecha**

Se celebrará una elección en la ciudad de Wharton, Texas, el 14 de mayo de 2011.

### **Horas**

Los lugares de votación abrirán para votar a las 7:00 a.m. y se cerrarán a las 7:00 p.m.

### **Lugar**

La elección se celebrará en el Centro Cívico de la ciudad de Wharton, en 1924 North Fulton Street, Wharton, Texas.

### **Aviso de elección de oficiales municipales**

El Alcalde anunciará el aviso de la elección mediante la publicación del aviso por lo menos una vez en un periódico publicado en la ciudad de Wharton, Texas, y que esté en la jurisdicción de la ciudad de Wharton, Texas, cuya publicación no sea anterior a **30 días** antes ni posterior a **10 días** antes de la fecha del día de la elección.

El Alcalde anunciará el aviso de la elección mediante la publicación del aviso en el tablero de anuncios ubicado en la Alcaldía, 120 East Caney, Wharton, Texas, utilizado para publicar los avisos de las reuniones del Concejo Municipal de Wharton no después de **21 días** antes de la elección. El aviso contendrá la ubicación del lugar de la votación.

### **Elegibilidad para votar**

La elección se realizará de acuerdo con el Código de Elecciones del estado de Texas. Solamente los electores capacitados de la ciudad de Wharton, Texas, serán elegibles para votar en la elección.

### **Nombres de los candidatos**

La Secretaria Municipal de acuerdo con los términos y disposiciones del Código de Elecciones del estado de Texas ordenará que los nombres de los candidatos sean impresos en las balotas para dicha Elección General.

### **Período de presentación**

Los candidatos deben presentar sus solicitudes para un lugar en la balota a la Secretaria Municipal de la Ciudad de Wharton, Texas, a partir del **14 de febrero de 2011** y continuando hasta las 5:00 de la tarde del **14 de marzo de 2011**. La declaración de solicitud de candidato anotado se debe presentar no más tarde de las 5:00 de la tarde del **21 de marzo de 2011**, el quinto (5º) día después de que se requiere la solicitud para un lugar en la balota es el sábado 19 de mayo de 2011, así pues la fecha se cambia al lunes 21 de marzo de 2011.

Los candidatos para concejales municipales deben designar el puesto al que se están postulando, ya sea para concejal del Distrito No. 1, concejal del Distrito No. 3, o concejal de forma irrestricta - Posición No. 5, o para el cargo no vencido del concejal del Distrito No. 2.

### **Sorteo para los lugares en las balotas**

El 16 de marzo de 2011, a las 10:00 de la mañana se celebrará un sorteo en las oficinas de la Secretaria Municipal con el propósito de determinar el orden en que los nombres de los candidatos se imprimirán en la balota.

La Secretaria Municipal publicará el aviso de la fecha, hora y lugar del sorteo y este aviso deberá permanecer anunciado continuamente por lo menos las 72 horas inmediatamente anteriores a la hora programada para tal sorteo

### **Balotas**

Se usarán balotas de papel con los propósitos de los votos provisionales y por correo para la votación anticipada y provisionales para el día de la elección.

### **Sistema de votación Accesible**

La sección 61.012 del Código de Elecciones de Texas requiere que la Ciudad de Wharton deberá ofrecer al menos un sistema de votación accesible en cada lugar de votación usado en cualquier elección de Texas a partir del 1° de enero de 2006. Este sistema debe de cumplir con las leyes federales y estatales que establecen los requisitos para sistemas de votaciones que brinden una manera práctica y eficaz para que los votantes con discapacidades físicas voten en una balota secreta.

La oficina del Secretario de Texas ha certificado que las máquinas de votación iVotronic (DRE) son un sistema de votación accesible que puede ser usado legalmente en las elecciones de Texas.

Las secciones 123.032 y 123.035 del Código de Elecciones de Texas autorizan a las subdivisiones políticas la adquisición de sistemas de votación y además ordenan ciertos requisitos mínimos para los contratos relacionados con la adquisición de tales sistemas de votación. La Ciudad de Wharton arrendará o alquilará del condado de Wharton según está autorizado por la sección 123.032.

La Ciudad de Wharton por medio del presente adopta para su uso en la votación anticipada y en el día de la elección las máquinas de votación iVotronic (DRE) según está aprobado por el Secretario del Estado para cumplir con los requisitos HAVA.

### **Sistema de Administración de la Tabulación de los Registros**

La Ciudad de Wharton arrendará o alquilará del condado la (Administración de Registros de Elecciones) (ERM) con los propósitos de tabulación, si fuera necesario.

### **Oficiales de la elección**

El Departamento de Elecciones del Condado de Wharton (WCED) será responsable del nombramiento del juez presidente y del juez presidente alterno. Las siguientes personas nombradas son nombradas como oficiales para la elección:

Juez Presidente: Magdalena Rodríguez

Juez presidente Alterno: Joyce Baker

El Departamento de Elecciones del Condado de Wharton dispondrá el entrenamiento. El Departamento de Elecciones del Condado de Wharton es responsable de notificar al juez presidente y al juez presidente alterno de los requisitos del Subcapítulo C del

Capítulo 32 del Código de Elecciones de Texas, y tomará las medidas necesarias para asegurar que el juez presidente y el juez presidente alterno nombrados sean elegibles para desempeñar el cargo. El juez presidente, con la asistencia del WCED, será responsable de asegurar la elegibilidad de cada secretaria nombrada para asistir al juez presidente a realizar la elección.

### **Votación anticipada**

La administradora de elecciones del Condado de Wharton, Judy Owens, es nombrada como secretaria de la votación anticipada y queda autorizada a nombrar a otros asistentes para desempeñarse como secretarías de la votación anticipada.

La votación anticipada por comparecencia personal para la elección nombrada aquí arriba se realizará en la comunidad de Wharton, en el Centro Cívico, 1924 North Fulton Street, Wharton, Texas. El lugar de votación anticipada permanecerá abierto cada día que no sea sábado, domingo, o fiesta estatal oficial, desde las **8:00 de la mañana hasta las 5:00 de la tarde**, comenzando el **2 de mayo de 2011** y continuando hasta el **6 de mayo de 2011**; el **lunes 9 de mayo de 2011** y continuando el **martes, 10 de mayo de 2011** desde las **7:00 de la mañana a las 7:00 de la noche**.

Los votantes deben enviar las solicitudes de balotas y las balotas votadas por correo a la oficina de la administradora de elecciones del Condado de Wharton: P.O. Box 390, Wharton, Texas 77488.

### **Junta de Balotas de la Votación Anticipada**

Por medio del presente se establece una Junta de Balotas de la Votación Anticipada con el propósito de los resultados de la votación anticipada. La administradora de elecciones del Condado de Wharton nombrará al juez presidente de la Junta de Balotas de la Votación Anticipada. La administradora de elecciones del Condado de Wharton actuará como secretaria de la Junta de Balotas de la Votación Anticipada.

### **Compensación para los Oficiales y los Secretarios de la Elección**

Los oficiales y los secretarios de la elección serán compensados de la siguiente forma:

El juez de la elección de la elección general del 14 de mayo de 2011 será pagado \$9.00 por hora. El juez de la elección también será pagado \$25.00 por entregar los registros de los

precintos, las llaves de la caja de las balotas u otro equipo electoral y los suministros electorales que no se hayan usado después de la elección.

El Juez alerno para la elección general del 14 de mayo de 2011 será pagado \$8.50 por hora.

Los secretarios de la elección para la elección general del 14 de mayo de 2011 serán pagados \$8.00 por hora.

### **Oficio de Elección**

La administradora de elecciones del Condado de Wharton entregará al arriba nombrado juez presidente para la elección no más tarde de **15 días** antes del día de la elección.

### **Resultados**

“La Sección 41 de la Carta Constitutiva dispone que las elecciones municipales serán escrutinadas durante una (1) semana después de la elección; sin embargo, de acuerdo con los cambios del Código de Elecciones de Texas, Sección 67.003, el escrutinio local se congregará no antes del tercer día ni más tarde del onceavo (11) día después del día de la elección.”. El periodo para los escrutinios oficiales será desde el 17 hasta el 25 de mayo de 2011. Los oficiales que realicen la elección deberán entregar los resultados de ella al alcalde de esta ciudad, según lo requiere el Código de Elecciones de Texas.

### **Orden**

El Consejo Municipal de la Ciudad de Wharton, Texas, ordenará la elección de acuerdo con las siguientes disposiciones.

### **Divisibilidad**

Si algún tribunal de jurisdicción competente dicta que cualquier sección, subsección, oración, cláusula, frase, o parte de esta orden sea inválida o inconstitucional, dicha parte será considerada como disposición separada, distinta e independiente, y dicho dictamen no afectará a la validez de las partes restantes.

### **Promulgación y Aprobación**

**PASADO Y APROBADO** por El Consejo Municipal de la Ciudad de Wharton, Texas, este día 14 de febrero de 2011.

CIUDAD DE WHARTON, TEXAS

A TESTIGUACIÓN:

Por: \_\_\_\_\_  
**Domingo Montalvo, Jr.**  
**Alcalde**

Por: \_\_\_\_\_  
**Paula Favors**  
**Secretaria Municipal**

**APROBADO:**

\_\_\_\_\_  
**Paul Webb**  
**Abogado Municipal**

Councilmember Donald Mueller seconded. All voted in favor.

- B. Resolution:** A resolution of the Wharton City Council approving a Joint Election Agreement with Wharton County Elections Department for the City Election; and authorizing the Mayor of the City of Wharton to execute the agreement.

City Secretary Paula Favors presented a draft copy of the resolution between the City of Wharton and Wharton County Elections Department approving a Joint Election Agreement and Election Service Contract with Wharton County for the May 14, 2011 election. She said the Joint Election Agreement and Election Service Contract was a joint agreement between the Cities of Wharton, East Bernard, El Campo, the Wharton Independent School District, East Bernard School District, and West Wharton County Hospital District and the Wharton County Elections Department. She said the respective entities would share in the elections costs. Mrs. Favors also presented, as Attachment "A" to the agreement, a spreadsheet that indicated the amounts to be paid by each entity. She further stated that the City of Wharton cost would be an estimated total of \$2,139.50. After some discussion, Councilmember Bryce D. Kocian made a motion to approve the City of Wharton Resolution No. 2011- 08, which reads as follows,

**CITY OF WHARTON  
RESOLUTION NO. 2011-08**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A JOINT ELECTION AGREEMENT WITH WHARTON COUNTY ELECTIONS DEPARTMENT FOR THE CITY ELECTION; AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.**

**WHEREAS,** The Wharton City Council wishes to approve the joint agreement with Wharton County Elections Department for the City election; and

**WHEREAS,** The City of Wharton and Wharton County Elections Department wishes to be bound by the conditions set forth in the agreement; and

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

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

**Section I.** That the Wharton City Council hereby approves an agreement between the City of Wharton and Wharton County Elections Department for the City election.

**Section II.** That the City of Wharton and Wharton County Elections Department are hereby bound by the conditions set forth in the agreement.

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

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

**Passed, Approved, and Adopted** this the 14<sup>th</sup> day of February 2011.

**CITY OF WHARTON**

**By:** \_\_\_\_\_  
**Domingo Montalvo, Jr.**  
Mayor

**ATTEST:**

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

Councilmember Donald Mueller seconded. All voted in favor.

The ninth item discussed on the agenda was to review and consider a request by Mr. CJ Kearney, Mr. Paul Kearney and Ms. Mozelle Stephens, Committee Members for the Wharton County Juneteenth Festival Committee, for City Council approval of the following:

- A. Approval to hold the 2<sup>nd</sup> Annual Juneteenth Festival in the downtown area on June 18, 2011.
- B. City of Wharton assistance by providing port-o-lets.
- C. City of Wharton assistance in coordinating with Waste Corporation of America for solid waste disposal receptacles.

- D. City of Wharton assistance by providing funding for security.
- E. City of Wharton personnel assistance to provide the stage, generators, etc.

Ms. Mozelle Stephens addressed the City Council and stated that the Juneteenth Festival would be the same as the previous year. She said only change was be the date, which was June 18<sup>th</sup>. City Manager Andres Garza, Jr. stated that the City Staff had met with the various festival representatives and informed them that funding for festivals (port-o-lets & security) would not be available this year. He further stated that generators would be the responsibility of the festival organizers. City Manager Garza said that the festival committees were informed that a clean-up plan would need to be submitted. After some discussion, Councilmember Terry David Lynch made the motion to approve items, A. C. and E. as referred above and that all fees associated with the event be waived. Councilmember Jeffery Gubbels seconded the motion. All voted in favor.

The tenth item discussed on the agenda was to review and consider 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. City Council Committees:
  - 1. Finance Committee.
  - 2. Housing Committee.
  - 3. Public Works Committee.
  - 4. Public Safety Committee.
  - 5. Public Works Committee.
  - 6. Telecommunications Committee.
  - 7. Wharton Economic Development Corporation Board of Directors Selection Committee.

City Manager Andres Garza, Jr., presented a copy of the current list of members on the City of Wharton City Council Boards, Commissions, and Committees. City Manger Garza stated vacancies exist on each of the afore-mentioned committees. City Manager Garza added the City Council must appoint someone to fill the Electrical Board in accordance with the City of Wharton Code of Ordinances. After some discussion, Councilmember Donald Mueller made the motion to appoint Councilmember Terry David Lynch to the City Council Public Works Committee. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

Councilmember Donald Mueller made the motion to appoint Councilmember Jeffery Gubbels to the City Council Finance Committee. Councilmember Terry David Lynch seconded the motion. All voted in favor

Councilmember Jeffery Gubbels made the motion to appoint Donald Mueller to the City Council Public Safety Committee. Councilmember Terry David Lynch seconded the motion. All voted in favor.



The eleventh item discussed on the agenda was to review and consider a Resolution: A resolution of the Wharton City Council designating a Consultant Selection Committee and Selection Criteria for the Procurement of Professional Engineering Services for the City of Wharton FM 102 Relocation and Overpass Project. City Manager Andres Garza, Jr. stated on January 29, 2011, the City of Wharton advertised for Requests for Qualifications (RFQs) for the Professional Engineering Services needed. He stated the RFQ's were for the City of Wharton FM 102 Relocation and Overpass Project. City Manager Garza added the City was required to designate a Consultant Selection Committee and selection criteria, utilizing State and Federal Guidelines. City Manager Garza presented a copy of a draft resolution designating the Committee Members (Form Attachment A to the resolution) and establishing the selection criteria (Attachment B to the resolution). City Manager Garza added that in the past, the Committee Members have consisted of the City Manager, the Public Works Director and the City Council Public Works Committee Members. City Manager Garza advised that the City Staff recommended the City Council approve the draft resolution and its attachments and to appoint the City Manager, Public Works Director and the City Council Public Works Committee members as the Consultant Section Committee. Councilmember Bryce D. Kocian made a motion to appoint the Consultant Selection Committee in accordance with Resolution No. 2011-09, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2011 - 09**

**A RESOLUTION OF THE WHARTON CITY COUNCIL DESIGNATING A CONSULTANT SELECTION COMMITTEE AND SELECTION CRITERIA FOR THE PROCUREMENT OF PROFESSIONAL ENGINEERING SERVICES FOR THE CITY OF WHARTON FM 102 RELOCATION AND OVERPASS PROJECT.**

**WHEREAS,** the Wharton City Council approved the City of Wharton Resolution No. 2011-04 approving the City of Wharton to enter into the Local Transportation Project Advance Funding Agreement to a Category 11 Project – On System, namely for the City of Wharton FM 102 Relocation and Overpass Project with the Texas Department of Transportation; and

**WHEREAS,** the City of Wharton wishes to follow the federal and state regulations for the Procurement Process for Professional Services; and

**WHEREAS,** the City Council wishes to designate a consultant selection committee (Attached A) for the procurement of professional engineering services for the engineering phase for the FM 102 Relocation and Overpass Project; and

**WHEREAS,** the Consultant Selection Committee will recommend an engineering firm to the City Council for consideration; and

**WHEREAS,** it is the responsibility of the consultant selection committee to follow the below listed recommended guidelines (Attached B):

- a. Procurement Provisions for Professional Services,

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- b. The Texas Engineering Practice Act,
- c. Procurement Standards, Uniform Grant and Contract Management Standards,
- d. Texas Government Code - Chapter 2254 Professional and Consulting Services, Subchapter A. Professional Services,
- e. Proposal Rating Sheet for Engineering Services.

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

**Section I:** The City Council hereby designates a consultant selection committee for the procurement of professional engineering services for the construction phase for infrastructure for the City of Wharton FM 102 Relocation and Overpass Project.

**Section II:** The City of Wharton hereby accepts the State of Texas Procurement Process procedures for Professional Services (Attached B).

**Section III:** This resolution will become effective immediately upon its passage.

**Passed, Approved and Adopted this 14<sup>th</sup> day of February 2011.**

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**DOMINGO MONTALVO, JR.**  
Mayor

**Attest:**

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

**CITY OF WHARTON**

**DESIGNATION OF SPONSOR'S  
CONSULTANT SELECTION COMMITTEE  
FOR PROCUREMENT OF PROFESSIONAL ENGINEERING SERVICES  
CITY OF WHARTON FM 102 RELOCATION AND OVERPASS PROJECT**

**ATTACHMENT "A"**

**The Wharton City Council hereby designates the following named individuals as the Consultant Selection Committee, for the procurement of professional engineering services for the City of Wharton FM 102 Relocation and Overpass Project. The committee is authorized**

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**to determine selection criteria, review qualifications and proposals of candidate firms, conduct interviews, if necessary, and select a firm for the award of the contract, based on a consensus ranking by the committee members. The decision of the selection committee will be final unless some discrepancy is determined to have occurred in the selection process.**

Name	Title (if appropriate):
<b>Domingo Montalvo, Jr.</b>	<b>Mayor</b>
<u>Don Mueller</u>	<u>Councilmember</u>
<u>Terry D. Lynch</u>	<u>Councilmember</u>
<u>Andres Garza, Jr.</u>	<u>City Manager</u>
<u>Carter Miska</u>	<u>Public Works Director</u>

The City of Wharton has caused this to be duly executed in its name, this 14<sup>th</sup> day of February 2011.

CITY OF WHARTON, TEXAS

By: \_\_\_\_\_  
DOMINGO MONTALVO, JR.  
MAYOR

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

The twelfth item discussed on the agenda was to review and consider the City of Wharton Fire Station Expansion Project.

- A. Bid Tabulation.
- B. **Resolution:** A resolution of the Wharton City Council awarding the bid for the purchase of a new building for the City of Wharton Fire Station Building and authorizing the Mayor to execute all documents relating to the purchase agreement.

City Manager Andres Garza, Jr. provided a copy of the memorandum dated February 10, 2011, from Facilities Maintenance Director Bob Baker providing the quotes for the Fire Station Expansion Project. He said that Mr. Bob Baker had approached four (4) companies to obtain

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quotes for the buildings purchase. He said that two (2) quotes were received, one from Mueller, Inc. in the amount of \$42,312.16 and one from Drymalla Construction Co., Ltd. in the amount of \$40,173.00. City Manager Garza advised that Mr. Baker recommended that the City Council consider purchasing the building from Drymalla Construction Co., Ltd. as quoted. City Manager Garza stated that he concurred with his recommendation. After some discussion, Councilmember Donald Mueller made a motion to approve the building's purchase from Drymalla Construction Co., Ltd. in the amount of \$40,173.00, and in accordance with the City of Wharton Resolution No. 2011- 10, which reads as follows:

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

**A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING A CONTRACT FOR THE PURCHASE OF A NEW BUILDING FOR THE CITY OF WHARTON FIRE STATION BUILDING AND AUTHROIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE PURCHASE AGREEMENT.**

**WHEREAS,** the City of Wharton received quotes in accordance with the City of Wharton purchasing policy for the purchase of a new building for the City of Wharton Fire Station Expansion Project; and

**WHEREAS,** Drymalla Construction Company, Ltd. submitted the lowest and best qualified quote in the amount of \$40,173.00 in accordance with the specifications for the new building for the Wharton Fire Station Expansion Project; and

**WHEREAS,** the Wharton City Council wishes to award the purchase agreement to Drymalla Construction Company, Ltd. for submitting the lowest and best qualified quote in the amount of \$40,173.00 for the new building; and

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor to execute all necessary documents related to the purchase of said new building for the Wharton Fire Station Expansion Project; and

**WHEREAS,** this resolution is passed in accordance with the quotes provided.

**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 award a contract to Drymalla Construction Company, Inc. in the amount of \$40,173.00 for the purchase of a new building for the City of Wharton Fire Station Expansion Project.

**Section II.** That the Wharton City Council hereby authorizes the Mayor to execute all necessary documents related to the purchase of said new building for the Wharton Fire Station Expansion Project.

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

**Passed, Approved, and Adopted** this 14<sup>th</sup> of February 2011.

**CITY OF WHARTON, TEXAS**

**By:**

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**DOMINGO MONTALVO, JR.**  
Mayor

**ATTEST:**

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**PAULA FAVORS**  
City Secretary

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

The thirteenth item discussed on the agenda was to review and consider the City of Wharton Emergency Generator Quick Connect for Certain City Facilities Project – Electrical Automation Controls – Pay Request No. 2 in the amount of \$65,258.94. City Manager Andres Garza, Jr. presented a copy of the Pay Request No. 2 submitted by Electrical Automation Controls in the amount of \$65,258.94 for the City of Wharton Emergency Generator Quick Connect for Certain City Facilities. City Manager Garza also presented a copy of the memorandum dated February 8, 2011 from Building Official Ronnie Bollom indicating that he had reviewed the pay request and had made site inspections of the locations the contractor listed on the request. He said that Mr. Bollom also indicated that progress continued to be made on this project and the controls at eight (8) of the locations have been connected to the power supply. He further stated that Mr. Bollom was in agreement with the pay request and the City Staff was recommending the City Council consider approving the payment. After some discussion, Councilmember Bryce D. Kocian made the motion to approve the Emergency Generator Quick Connect for Certain City Facilities Project – Electrical Automation Controls – Pay Request No. 2 in the amount of \$65,258.94. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The fourteenth item discussed on the agenda was to review and consider the City of Wharton Additional Ahldag Sanitary Sewer Rehab Project – AR TurnKee Construction Company, Inc. – Change Order No. 2. Mr. Carlos Cotton, P.E. of Jones & Carter presented a copy of the Change Order No. for the City of Wharton Additional Ahldag Sanitary Sewer Rehab Project, TxCDBG Contract No. R729710 that was conducted by AR TurnKee Construction Company, Inc. He said the change order involved the installation of two (2) 18” x 24” poured-in-place inlets on a 15” culvert and concrete removal and replacement. He said reason for the changes was that the contractor was instructed to install two (2) 18” x 24” poured-in-place inlets on a long section of 15” culvert to provide better access for future cleaning. He further stated the change order stated that it was necessary for the contractor to remove and replace a portion of the concrete drive/parking area along Mulberry Avenue in order to install MH “A-1” and proposed eight-inch (8”) sanitary sewer. After some discussion, Councilmember Donald Mueller made a motion to approve the Change Order No. 2 for the City of Wharton Additional Ahldag Sanitary Sewer Rehab Project, TxCDBG Contract No. R729710. Councilmember Jeffery Gubbels seconded the motion. All voted in favor.

The fifteenth item discussed on the agenda was to review and consider Resolution: A resolution designating the City of Wharton Representatives to the Houston Galveston Area Council for the 2011 General Assembly. City Manager Andres Garza, Jr. stated that during the regular September 13, 2010 Wharton City Council meeting, the City Council approved Resolution No. 2010-69 designating Councilmember V. L. Wiley, Jr. as the designated representative and Councilmember Jeff Gubbels as the alternate representative to the Houston-Galveston Area Council (H-GAC) 2011 General Assembly. He said that with Councilmember Wiley's passing, Councilmember Gubbels became the designated representative and that an alternate representative needed to be appointed. After some discussion, Councilmember Donald Mueller made a motion to appoint Councilmember Jeffery Gubbels as the designated representative to the Houston-Galveston Area Council (H-GAC) 2011 General Assembly. Councilmember Terry David Lynch seconded the motion. All voted in favor. Councilmember Jeffery Gubbels then made a motion to appoint Councilmember Donald Mueller as the alternate representative to the Houston-Galveston Area Council (H-GAC) 2011 General Assembly. Councilmember Terry David Lynch seconded the motion. All voted in favor. Councilmember Terry David Lynch then made a motion to approve City of Wharton Resolution No. 2011-11, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2011 - 11**

**A RESOLUTION DESIGNATING A CITY OF WHARTON ALTERNATE REPRESENTATIVE TO THE HOUSTON-GALVESTON AREA COUNCIL 2011 GENERAL ASSEMBLY.**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** that Councilmember Jeffrey Gubbels, MD is hereby designated as its Representative to the General Assembly of the Houston-Galveston Area Council for the year 2011.

**FURTHER,** that the Official Alternate authorized to serve as the voting representative should the hereinabove named representative become ineligible, or should he/she resign, is Councilmember Don Mueller.

**THAT,** the Executive Director of the Houston-Galveston Area Council be notified of the designation of the hereinabove named representative and alternate.

**Passed, Approved, and Adopted** this 14<sup>th</sup> day of February 14, 2011.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**DOMINGO MONTALVO, JR.**  
**Mayor**

**ATTEST:**

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**PAULA FAVORS**

City Secretary

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

The sixteenth item discussed on the agenda was to review and consider the City of Wharton Flood Reduction and Levee Project – Design of Embankments. City Manager Andres Garza, Jr. stated that on January 20, 2011, the City Staff held a conference call with representatives from Halff Associates and the USACE and discussed the Wharton Flood Reduction and Levee Project. City Manager Garza presented a draft copy of the minutes from the meeting and a copy of the email dated January 25, 2011 from Mr. Andrew Ickert, P.E. of Halff Associates providing an explanation of the project status and action that needed to be considered by the City of Wharton concerning the tie-in of the levee system and proposed floodwalls. He said a copy of the cost estimate for the construction alternatives was also attached, which indicated that the cost of the utilization of floodwalls would significantly increase the overall project cost by approximately \$1 million. He said the City Council Public Works Committee met on February 1, 2011 and discussed the project. He said the Committee Members voted to recommend that earthen embankments be constructed in lieu of floodwalls to reduce the project costs. City Manager Andres Garza, Jr. recommended to the City Council that a letter be sent to Halff Associates advising them the City was recommending that earthen embankments be constructed in lieu of floodwalls to reduce project costs. After some discussion, Councilmember Donald Mueller made the motion to submit a formal letter to Halff Associates advising them the City of Wharton was recommending that earthen embankments be constructed in lieu of floodwalls to reduce project costs. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The seventeenth item discussed on the agenda was to review and consider the City Manager request for Travel Reimbursement. City Manager Andres Garza, Jr. presented a copy of his travel expenses to the City Council. After some discussion, Councilmember Terry David Lynch made the motion to approve the City Manager request for travel reimbursement in the amount of \$1,089.06 for the period of October 6, 2010 to November 18, 2010. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The eighteenth item discussed on the agenda was to review and consider City Council approval of travel costs for Mayor Domingo Montalvo, Jr. to attend future meetings of the I-69 Alliance, Texas Department of Transportation (TxDOT) Segment 3 Committee, Lower Colorado River Authority (LCRA) Regional Committee, Texas Colorado River Floodplain Coalition (TCRFC). City Manager Andres Garza, Jr. stated on September 13, 2010, the City Council voted to allocate \$1,250.00 to Mayor Domingo Montalvo, Jr. to attend the listed meetings while he was a member of each respective committee or coalition. He said that the allotted funding has been exhausted. City Manager Garza made the request that additional funds be allocated to Mayor Montalvo

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within the budgeted amount for the Mayor and City Council expenses. He further stated that the Mayor and City Council budget was \$3,500.00 and approximately \$2,300.00 has been expended. After some discussion, no action was taken.

The nineteenth item discussed on the agenda was to review and consider City Council Committees, Boards and Commission's Reports. City Manager Andres Garza, Jr. presented the report from the City Council Public Works Committee to the City Council. City Manager Garza said the City Council Public Works Committee met on February 1, 2011. No action was taken.

The twentieth item on the agenda was adjournment. After some discussion, Councilmember Donald Mueller made a motion to adjourn. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The meeting adjourned at 8:20 p.m.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**Domingo Montalvo, Jr**  
**Mayor**

**ATTEST:**

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