

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

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

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

Councilmember absent was: None

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Anel, City Secretary Paula Favors, Assistant to City Manager Jackie Jansky, Public Works Director Carter Miska, P.E., City Attorney Paul Webb, and Emergency Management Coordinator Jim Cooper.

Visitors present were: David Schroeder, Executive Director, Wharton Economic Development Corporation; Natalie Bednorz, Wharton Journal Spectator; Rachel Rust, Paul Sherland, I.O. Colman, Jr., and Carlos Cotton P.E., Jones and Carter, Inc.

The second item on the agenda was Roll Call and Excuses Absences. All Councilmembers 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. stated the Wharton High School varsity football game held on Friday, November 11, 2011 was a very exciting game ending in a win for the Tigers of 36-35. City Manager Garza stated he was very proud of the hard work put in by the team as they defeated Ingleside in the bi-district playoff game.

The fifth item on the agenda item was to review and consider the reading of the minutes from the regular meetings held October 10, 2011 and October 24, 2011. After some discussion, Councilmember Karen Schulz moved to approve the minutes from the regular meetings held October 10, 2011 and October 24, 2011. Councilmember Terry David Lynch seconded the motion. All voted in favor.

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The sixth item on the agenda was a public hearing on an ordinance establishing new boundaries for the City's four single-member council districts. City Manager Andres Garza, Jr. stated that a public hearing was required to provide citizens an opportunity to provide comments regarding the adoption of the final ordinance establishing new boundaries for the City's four-single member districts.

Mayor Domingo Montalvo, Jr. opened the public hearing at 7:04 p.m.  
Mayor Domingo Montalvo, Jr. closed the public hearing at 7:05 p.m.

No comments were made.

The seventh item on the agenda was to review and consider an ordinance of the City of Wharton, Texas, establishing new single-member district boundaries for the current four City Council single-member Districts; Establishing: Findings of Fact, Proper Notice & Meeting, and Providing an Effective Date. City Manager Andres Garza, Jr. stated that during the regular City Council Meeting on October 24, 2011, the City Council authorized the Bojorquez Law Firm, Inc. to draft the final ordinance that was required to establish new single-member district boundaries for the current four City Council single-member districts. City Manager Garza further stated that once the ordinance had been adopted by the City Council, the attorneys of the Bojorquez Law Firm would create the final map and begin the preclearance submission. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Ordinance No. 2011-19, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2011-19**

**AN ORDINANCE OF THE CITY OF WHARTON, TEXAS  
ESTABLISHING NEW SINGLE-MEMBER DISTRICT  
BOUNDARIES FOR THE CURRENT FOUR CITY  
COUNCIL SINGLE-MEMBER DISTRICTS;  
ESTABLISHING: FINDINGS OF FACT, PROPER NOTICE  
& MEETING, AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the Charter for the City of Wharton ("City") calls for four (4) City Council members to be elected by each of the four (4) geographic districts in the City; and

**WHEREAS,** the most recent decennial Census has revealed that the City's districts must be redrawn so that they are within the ten percent (10%) Total Maximum Deviation required by the "one person, one vote" constitutional principal; and

**WHEREAS,** the City has certain responsibilities when redrawing district boundaries under federal and state law including, but not limited to, Amendments 14 and 15 to the United States Constitution, the Voting Rights Act, 42 U.S.C.A. § 1973, *et seq.*, and Texas Government Code §§ 2058.001 and 2058.002; and

**WHEREAS,** it is the intent of the City to comply with the Voting Rights Act and with all other relevant law, including *Shaw v. Reno* jurisprudence; and

**WHEREAS,** the City Council passed Resolution No. 2011-50, for use in creation of Council Member districts, which formally adopted redistricting criteria and a defined project timeline that will serve as a framework to guide the City in the consideration of redistricting plans and assist the City in its efforts to comply with all applicable federal and state laws; and

**WHEREAS,** the City Council has considered various plans prepared by the City's legal consultant and demographer for the redrawing of the four (4) City Council single-member districts; and

**WHEREAS,** notice of all public hearings on the redrawing of the four (4) City Council single-member districts was timely published in the local newspaper so as to give the City's residents an opportunity to attend and comment on the redistricting plans recommended by the City Council and those prepared by the City's legal consultant and demographer; and

**WHEREAS,** letters soliciting feedback and participation were sent to known civic leaders; and

**WHEREAS,** notices, draft plans, and related documentation were posted on the City's website throughout this process; and

**WHEREAS,** the City has received input from civic leaders and citizens generally supporting the City's process and the proposed plan; and

**WHEREAS,** the City Council is of the opinion that the plan for the redrawing of the four (4) City Council single-member districts, a copy of which is attached hereto as *Exhibit "A"* and incorporated herein by reference, best meets the redistricting criteria previously adopted by the City Council, is preferable to the other plans submitted and considered, and should be adopted by the City for Council Member elections to be held on March 6, 2012, and subsequent elections until redistricting becomes necessary following the release of the 2020 Census data.

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

1. The foregoing recitals are found to be true and correct and are hereby adopted and incorporated herein as findings of fact.
2. The City Council finds that the plan for the redrawing of the four (4) City Council single-member districts, which is attached hereto as "*Exhibit A*", and incorporated herein by reference, satisfies and balances the redistricting criteria previously adopted by the City Council.
3. Based upon the foregoing findings and criteria, the City Council hereby approves the redistricting plan for the redrawing of the four (4) City Council single-member districts attached hereto as "*Exhibit A*", such plan to become effective on the latter of

the date this Ordinance is adopted or upon preclearance by the Voting Rights Division of the United States Department of Justice.

4. The City Council directs City staff and its legal consultant and demographer to submit the redistricting plan attached hereto as “*Exhibit A*” to the Voting Rights Division of the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act.
5. It is found that the meeting at which this Ordinance was approved was properly noticed and held in strict compliance with the Texas Open Meetings Act, Ch. 551 Texas Government Code.

**PASSED & APPROVED ON** this 14th day of November 2011, by a vote of 7 (*yeyes*) to 0 (*nays*) to 0 (*abstentions*) of the City Council of the City of Wharton, Texas.

**CITY OF WHARTON, TEXAS:**

by: \_\_\_\_\_  
Domingo Montalvo, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Paula Favors, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alan J. Bojorquez, Attorney-at-Law

**EXHIBIT “A” – APPROVED REDISTRICTING PLAN**

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

The eighth item on the agenda was to review and consider the City of Wharton Window Retrofit Project for the Wharton Police Department and City Hall:

- A. A resolution of the Wharton City Council repealing Resolutions Numbers 2011-56 and 2011-57, passed, approved, and adopted on July 25, 2011, addressing the anticipated purchase and installation of Storm Window Barriers.
- B. A resolution of the Wharton City Council accepting two (2) proposals for the sale and delivery of storm window barrier construction materials provided by Exeter Architectural

Products, Through the Disaster Recovery Purchasing Program Administered by the United States General Services Administration (GSA) for State and Local Governmental Entities, for the City of Wharton Storm Window Barrier Retrofit Project for the Wharton Police Department and City Hall, GSA Contract #GS-07F-0224L.

- C. A resolution of the City Council of the City of Wharton, Texas, Awarding a contract for the installation of Storm Window Barriers at the Police Department, to Warren Green & Associates of New Orleans, Louisiana in the amount of \$39,056.53; Authorizing the City Manager and City Attorney to negotiate the final terms of the installation contract substantially in the draft form attached hereto; Authorizing the Mayor to execute the final contract once prepared; Authorizing the City Finance Director to allocate a funding appropriation to the Project; and establishing the effective date of this resolution.
- D. Authorization for the solicitation of bids for the installation of Storm Window Barriers at the Wharton City Hall.

City Manager Andres Garza, Jr. stated the City Council Finance Committee met on Monday, November 14, 2011 and voted to recommend the City Council consider approving the aforementioned items. After some discussion, Councilmember Jeff Gubbels moved to approve the aforementioned items and the City of Wharton Resolutions No. 2011-80, 2011-81 and 2011-82, which read as follows:

**CITY OF WHARTON  
RESOLUTION-2011-80**

**A RESOLUTION OF THE WHARTON CITY COUNCIL REPEALING  
RESOLUTIONS NUMBERS 2011-56 AND 2011-57, PASSED, APPROVED  
AND ADOPTED ON JULY 25, 2011, ADDRESSING THE ANTICIPATED  
PURCHASE AND INSTALLATION OF STORM WINDOW BARRIERS.**

**WHEREAS**, the City of Wharton previously passed two (2) Resolutions dated July 25, 2011; and

**WHEREAS**, the City of Wharton subsequently learned during negotiations that while Exeter Architectural Products (“Exeter”) supplies the materials and delivery for storm window barriers, Exeter does not itself physically install such barriers. Rather, Exeter trains, authorizes and certifies storm window barrier installation contractors, who then physically construct the barriers under separate installation contracts with property owners, such as the City of Wharton. To preserve the Exeter manufacturing design and performance warranties, owners must utilize installation contractors certified by Exeter; and

**WHEREAS**, the City of Wharton wishes to continue with the intent of the purchase and installation of storm window barriers, it must now do so by executing a separate contract with Exeter to provide specially manufactured storm window barrier materials for both City Hall and the Police Department; while also separately entering into two (2) installation/construction contracts with prime contractors that are either certified by Exeter themselves, or can retain a

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certified subcontractor to install the storm window barrier systems at City Hall and the Police Department respectively; and

**WHEREAS**, this required, new configuration of multiple and separated material supply and construction/installation contracts is inconsistent with the intent and scope of the two (2) previously passed July 25, 2011 City Resolutions, and new replacement Resolutions must now be considered to properly carry out the current intent of the City Council.

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

**Section 1.** City of Wharton, Texas Resolution Numbers 2011-56 and 2011-57, previously passed, approved and adopted on July 25, 2011, are hereby REPEALED by the City of Wharton, Texas.

**Section 2.** This Resolution will become effective immediately upon its passage.

**PASSED, APPROVED and ADOPTED this the 14<sup>th</sup> day of November 2011.**

CITY OF WHARTON, TEXAS

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

ATTEST:

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

**CITY OF WHARTON  
RESOLUTION 2011-81**

**A RESOLUTION OF THE WHARTON CITY COUNCIL ACCEPTING TWO (2) PROPOSALS FOR THE SALE AND DELIVERY OF STORM WINDOW BARRIER CONSTRUCTION MATERIALS PROVIDED BY EXETER ARCHITECTURAL PRODUCTS, THROUGH THE DISASTER RECOVERY PURCHASING PROGRAM ADMINISTERED BY THE UNITED STATES GENERAL SERVICES ADMINISTRATION (GSA) FOR STATE AND LOCAL GOVERNMENTAL ENTITIES, FOR THE CITY OF WHARTON STORM WINDOW BARRIER RETROFIT PROJECT FOR THE WHARTON**

**POLICE DEPARTMENT AND CITY HALL, GSA CONTRACT #GS-07F-0224L.**

**WHEREAS**, the City of Wharton is eligible to participate in the United States General Services Administration (GSA), Disaster Recovery Program available to State and Local Governmental Entities; and

**WHEREAS**, the City of Wharton received quotes from Exeter Architectural Products through GSA through Contract #GS-07F-0224L for the City of Wharton Window Retrofit Project for the Wharton Police Department and City Hall; and

**WHEREAS**, the materials and delivery only, November 1, 2011 quote, provided for the Wharton Police Department phase of said Project was in the amount of \$43,331.47, and the November 1, 2011 quote provided for the Wharton City Hall phase of said Project was in the amount of \$68,194.99, for a total materials and delivery only quote of \$111,526.46; and

**WHEREAS**, the Wharton City Council wishes to accept the two (2) November 1, 2011 materials purchase and delivery quotes provided by Exeter Architectural Products through the United States General Services Administration (GSA), Disaster Recovery Program, available to the State and Local Governmental Entities for the City of Wharton Window Retrofit Project, for the Wharton Police Department and City Hall, for a total materials and delivery only quote of \$111,526.46.

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

**Section 1.** The Wharton City Council hereby accepts the two (2) November 1, 2011 materials and delivery only quotes provided by Exeter Architectural Products, of 242 West Eighth Street, Wyoming, Penn., 18644, through the United States General Services Administration (GSA), Disaster Recovery Program, available to the State and Local Governmental Entities for the City of Wharton Window Retrofit Project for the Wharton Police Department and City Hall, in accordance with the two (2) materials and delivery only quotes listed above, for a total City of Wharton financial appropriation of \$111,526.46.

**Section 2.** This Resolution will become effective immediately upon its passage.

**PASSED and APPROVED ON this the 14<sup>th</sup> day of November 2011.**

CITY OF WHARTON

\_\_\_\_\_  
DOMINGO MONTALVO, JR.,  
Mayor

ATTEST:

\_\_\_\_\_

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PAULA FAVORS  
City Secretary

**CITY OF WHARTON  
RESOLUTION 2011-82**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS AWARDED A CONTRACT FOR THE INSTALLATION OF STORM WINDOW BARRIERS AT THE POLICE DEPARTMENT, TO WARREN GREEN & ASSOCIATES OF NEW ORLEANS, LOUISIANA IN THE AMOUNT OF \$39,056.53; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE THE FINAL TERMS OF THE INSTALLATION CONTRACT SUBSTANTIALLY IN THE DRAFT FORM ATTACHED HERETO; AUTHORIZING THE MAYOR TO EXECUTE THE FINAL CONTRACT ONCE PREPARED; AUTHORIZING THE CITY FINANCE DIRECTOR TO ALLOCATE A FUNDING APPROPRIATION TO THE PROJECT; AND ESTABLISHING THE EFFECTIVE DATE OF THIS RESOLUTION.**

**WHEREAS**, the City Council of the City of Wharton desires to make cost-effective use of the economic opportunity to utilize the federal General Services Administration (“GSA”) Cooperative Purchasing Program to procure disaster recovery storm barrier construction materials competitively bid on a national scale; and

**WHEREAS**, in anticipation of recurring tropical storms and hurricanes along the Texas coast that require proactive disaster preparedness by municipal officials to prepare and protect the area health and safety of City residents and first responders; and

**WHEREAS**, the Wharton Police Department is an essential public facility to protect during disasters in order to allow officials to continue to orderly manage response and rescue operations for the benefit of area citizenry; and

**WHEREAS**, by utilizing the federally sponsored, competitive bidding, group purchasing program, that is similar to Statewide group purchasing programs in which the City has previously participated, the City can legally minimize the time and administrative costs normally associated with a locally conducted, competitively bid procurement of storm window barrier construction materials, which might not attract the number and type of specialty material supply bidders to yield the best value for the City; and

**WHEREAS**, the City of Wharton has agreed to procure the materials and delivery only for the Police Department Project from Exeter Architectural Storm Shield Products and will assign same to a certified installer for installation; and

**WHEREAS**, the proposed installation services of Warren Green & Associates, as an authorized and certified contractor/installer of Exeter Architectural Storm Shield Products will satisfy the City’s need for acquiring and properly installing the storm window barriers in a timely and cost effective manner.



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

- Section 1.** The City Council hereby conditionally awards the Contract for installation of storm window barriers for the Police Department to: "Warren Green & Associates" of 236, 34<sup>th</sup> Street, New Orleans, La. 70124, in the approximate amount of \$39,056.53, subject to final negotiation of Contract and financial terms to be expeditiously conducted by the City's negotiating team: City Manager, City Finance Director, and City Attorney.
- Section 2.** The Mayor is hereby authorized to execute any resulting negotiated installation Contract upon the advice of the City's negotiating team, and so long as the final document is reasonably consistent with the draft document attached hereto, and the final Contract price does not exceed \$45,000.00. Should the final Contract price exceed \$45,000.00, the Contract proposal will be returned to the City Council for further consideration.
- Section 3.** The City Finance Director is hereby authorized to allocate a not-to-exceed funding appropriation of \$45,000.00 to finance this construction installation Project.
- Section 4.** This public works construction/installation Contract is not required to be competitively bid by the City, pursuant to the exemption found at Texas Local Government Code Section 252.021(a), (expenditure of less than \$50,000.00). Further, this installation of storm window barriers is necessary to preserve and protect the public health and safety of the City's residents pursuant to Texas Local Government Code Section 252.022(a) (2). Warren Green & Associates, installer, is the geographically closest authorized and certified installer of the specially manufactured Exeter Architectural Storm Shield Products, which will enable the City to preserve the equipment design and performance warranties available from the manufacturer, Exeter, while cost-effectively implementing the Project.
- Section 5.** Due to the emergency nature of this procurement action, and in the interest of protecting the health, safety and welfare of the Wharton citizenry, this Resolution shall be in full force and effect, from and after the date of its passage.

**PASSED and APPROVED ON this the 14<sup>th</sup> day of November 2011.**

CITY OF WHARTON

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DOMINGO MONTALVO, JR.,  
Mayor

ATTEST:

PAULA FAVORS  
City Secretary

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

The ninth item on the agenda was to review and consider Waste Corporation of Texas, L.P. (WCA) Rate modification to the Solid Waste Collection and Disposal Service Franchise Agreement. City Manager Andres Garza, Jr. presented a copy of the memorandum dated November 9, 2011 from Finance Director Joan Anandel providing a copy of the letter dated October 31, 2011 from Jim Larson of Waste Corporation of America (WCA) regarding a rate modification to the Solid Waste Collection and Disposal Service Franchise between the City of Wharton and WCA. City Manager Garza stated that WCA could request rate modifications in accordance with Section 14.00, Basis and Methods of Payment, Item 14.02 Modification of Rates of the General Specifications of the Franchise Agreement. Finance Director Joan Anandel stated the rate would need to be approved by the City Council on November 14, 2011 in order for it to be effective January 1, 2012. She said that the City provided a thirty (30) day notification to its customers. Mrs. Anandel further stated that the rate increase was 2.88% in accordance with the price index set forth in the City's franchise agreement with WCA. City Manager Garza stated the Finance Committee met on Monday, November 14, 2011 and recommended the City Council consider approving the request for the requested rate modifications. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Ordinance No. 2011-20, which read as follows:

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

**AN ORDINANCE REPEALING AND REPLACING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 86 UTILITIES & SERVICE, ARTICLE III, SOLID WASTE DISPOSAL EXHIBIT A; PROVIDING THAT A VIOLATION OF THE ORDINANCE OR ANY PART OF THE CODE AS ADOPTED HEREBY SHALL CONSTITUTE A PENALTY UPON CONVICTION OF A FINE AND SETTING AN EFFECTIVE DATE.**

**BE IT ORDAINED** by the City Council of the City of Wharton, Texas, that Chapter 86 Utilities & Service, Article III Solid Waste Disposal Exhibit A shall be replaced as follows:

**SCHEDULE "A"  
Base Rates**

Monthly Residential Waste Collection \$21.52 per Residential Unit which includes a \$3.00 per month fee.

Monthly Commercial Hand Collection \$27.65 per Commercial Unit which includes a \$3.50 per month fee.

**Container Service (per month) includes a \$3.50 fee:**

2 yd 1xwk	\$59.07
2xwk	\$105.76
3xwk	\$135.98
4xwk	\$187.57
5xwk	\$233.59
Additional Pick-up	\$64.45

3yd 1xwk	\$86.86
2xwk	\$155.78
3xwk	\$208.18
4xwk	\$279.61
5xwk	\$348.63
Additional Pick-up	\$93.17

4yd 1xwk	\$108.55
2xwk	\$189.43
3xwk	\$268.45
4xwk	\$371.64
5xwk	\$463.67
Additional Pick-up	\$117.00

6yd 1xwk	\$154.31
2xwk	\$295.62
3xwk	\$412.84
4xwk	\$555.71
5xwk	\$693.77
Additional Pick-up	\$165.08

8yd 1xwk	\$191.29
2xwk	\$356.76
3xwk	\$533.40
4xwk	\$739.78
5xwk	\$923.85
Additional Pick-up	\$202.49

**Rates for Roll-offs:**

Delivery Fee	\$107.35
Monthly Rental	\$128.82
Pull Price (per pull)	\$137.14
Disposal Fee-Loose (per yard)	\$7.51
Disposal Fee-Compact (per yard)	\$8.86

**Rates for Other Services:**

Hourly Rate	\$107.56
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Disposal per cubic yard

\$7.51

**PENALTY**

Except as otherwise provided in this chapter, any person found guilty of intentionally, knowingly or recklessly violating any provision of this article and upon conviction thereof in the municipal court shall be fined in accordance with the terms of Section 1-5 of the Code of Ordinances of the City of Wharton, Texas.

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

**EFFECTIVE DATE**

This Ordinance shall become effective at 12:01 a.m. on the 1st day of January 2012.

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

CITY OF WHARTON, TEXAS

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

ATTEST:

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

**APPROVED AS TO FORM:**

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

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Councilmember Russell Machann seconded the motion. Councilmembers Al Bryant, Don Mueller, and Karen Shultz voted for the motion. Councilmember Terry David Lynch voted against the motion. The motion carried.

The tenth item on the agenda was to review and consider the Environmental Assessment for the FM 102 Relocation, FM 1301 Extension, Overpass(s) and US Hwy. 59 Improvement Project:

- A. **Resolution:** A resolution of the Wharton City Council accepting the offer presented by the Texas Department of Transportation regarding the environmental assessment aspect of the City of Wharton FM 102 Relocation, FM 1301 Extension, Overpass(s) and US Hwy. 59 Project.
- B. **Resolution:** A resolution of the Wharton City Council authorizing the Mayor of the City of Wharton Texas to execute a contract amendment to the professional engineering services agreement between the City of Wharton and IDC Inc. to include the environmental assessment services for the City of Wharton FM 102 Relocation, FM 1301 Road Extension to US 59 and Overpass Project.

City Manager Andres Garza, Jr. stated that during the regular October 24, 2011 Wharton City Council meeting, he presented a copy of his memorandum dated October 21, 2011 providing the City Council with the different scenarios the City Council could consider regarding the environmental clearance required for the project whereby the City of Wharton could undertake the environmental assessment aspect of the project. City Manager Garza further stated that with the City Council's approval obtained during the October 24<sup>th</sup> City Council meeting, he submitted a letter dated October 27, 2011 to Mr. Lonnie Gregorcyk, P.E., District Engineer of the Texas Department of Transportation (TxDOT) – Yoakum District where he began negotiations with TxDOT on an amendment to the Local Transportation Project Advance Funding Agreement concerning the environmental phase. City Manager Garza presented a copy of Mr. Gregorcyk's response dated November 4, 2011 providing TxDOT's proposed support of the project in the amount of \$3,700,000. City Manager Garza informed the Council that this was an increase of \$200,000 toward the construction phase of the project should the City of Wharton consider moving forward with undertaking the environmental assessment. City Manager Garza further stated that the proposal submitted by IDC Inc. for basic environmental services was \$161,020 and \$103,000 for additional environmental services for a total of \$264,020 and it was his belief after discussing it with the State, that the environmental assessment phase could be completed utilizing the basic environmental services only. City Manager Garza further stated that the City Council Public Works Committee reviewed the scenarios and was recommending the City Council consider accepting the \$200,000 increase in the Advance Funding Agreement (AFA) making the States total support toward the project \$3,700,000 for construction and to amend the professional engineering services agreement between the City of Wharton and IDC Inc. to include the environmental assessment for the City of Wharton FM 102 Relocation, FM 1301 Road Extension to US 59 with service road and entrance ramp (east side) and Railroad Overpass. After some discussion, Councilmember Don Mueller moved to approve City of Wharton Resolution No. 2011-84 and City of Wharton Resolution No. 2011-85, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2011-84**

**A RESOLUTION OF THE WHARTON CITY COUNCIL ACCEPTING THE OFFER PRESENTED BY THE TEXAS DEPARTMENT OF TRANSPORTATION REGARDING THE ENVIRONMENTAL ASSESSMENT ASPECT OF THE CITY OF WHARTON FM 102 RELOCATION, FM 1301 EXTENSION, OVERPASS(S) AND US HWY. 59 PROJECT.**

**WHEREAS,** On July 11, 2011, the Wharton City Council approved Resolution No.2011-53 approving the Local Transportation Project Advance Funding Agreement to a Category 11 project (Construct New Location Roadway) On System in Wharton, TxDOT CSJ # 1412-03-038; and

**WHEREAS,** as stated in the afore-mentioned agreement the Texas Department of Transportation allocated \$3,500,000.00 toward the construction, environmental assessment, and other requirements; and

**WHEREAS,** the Texas Department of Transportation (TxDOT) has offered to amend said agreement per the letter dated November 4, 2011 from TxDOT Yoakum District Engineer Mr. Lonnie Gregorcyk, P.E., by providing an additional \$200,000.00 toward the construction phase of the project, which would increase the States contribution toward said project to \$3,700,000.00; and

**WHEREAS,** a condition of the additional funding, the City of Wharton would undertake the environmental assessment aspect of the project; and

**WHEREAS,** the Wharton City Council would be required to approve an amendment to the TxDOT Advance Funding Agreement CSJ # 1412-03-038 that would increase the State's contribution toward the project and to release the State from its obligation to conduct the environmental assessment.

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

**Section 1:** That the Wharton City Council hereby accepts the Texas Department of Transportation's (TxDOT's) offer of an additional \$200,000.00 to be allocated toward the construction of the FM 1301 from SH 60 to US 59 in Wharton in accordance with the letter dated November 4, 2011 from TxDOT Yoakum District Engineer Mr. Lonnie Gregorcyk, P.E.

**Section II.** That the Wharton City Council hereby approves to undertake the environmental assessment of said project.

**Section III.** That the Wharton City Council authorizes the City Manager to submit a formal letter accepting the State's added contribution toward said project and to begin the necessary steps to amend the TxDOT Advance Funding Agreement CSJ # 1412-03-038.

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

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

**CITY OF WHARTON, TEXAS**

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

ATTEST:

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

**CITY OF WHARTON  
RESOLUTION NO. 2011-85**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHROIZING THE MAYOR OF THE CITY OFWHARTON, TEXAS TO EXECUTE A CONTRACT AMENDMENT TO THE PROFESSIONAL ENGINEERING SERVICES AGREEMENT BETWEEN THE CITY OF WHARTON AND IDC INC TO ENVIRONMENTAL ASSESSMENT SERVICES FOR THE CITY OF WHARTON FM 102 RELOCATION, FM 1301 ROAD EXTENSION TO US 59 WITH SERVICE ROAD AND ENTRANCE RAMP AND RAILROAD OVERPASS.**

**WHEREAS,** On April 25, 2011 the Wharton City Council entered into a professional engineering services agreement with IDC Inc. for the engineering phase of the FM 102 Relocation or FM 1301 to Hwy 59 Expansion and Overpass Project; and

**WHEREAS,** the City of Wharton and IDC Inc. wishes to amend the agreement to include environmental assessment services for said project; and

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute an amendment to the professional engineering services agreement between the City of Wharton and IDC Inc. to include environmental assessment services; and

**WHEREAS,** the City of Wharton and IDC, Inc. wishes to be bound by the conditions as set forth in the agreement.

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

**Section I.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute an amendment to the professional engineering services agreement between the City of Wharton and IDC Inc. for environmental assessment services.

**Section II.** The City of Wharton and IDC Inc. are hereby bound by the conditions as set forth in the contract amendment.

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

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

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

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

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

The eleventh item on the agenda was to review and consider a Certified Resolution of the City of Wharton authorizing personal property lease agreement and its designation as a qualified tax-exempt obligation. City Manager Andres Garza, Jr. stated that during the regular October 24, 2011 Wharton City Council meeting, the City Council approved Resolution No. 2011-79 approving a lease purchase agreement between the City of Wharton and Houston Community Bank for the purchase of three (3) police vehicles and other equipment. City Manager Garza further stated that since that time, Houston Community Bank had indicated that it would require the City of Wharton to approve the attached Exhibit "B" certified resolution authorizing personal property lease agreement and its designation as a qualified tax-exempt obligation. Finance Director Joan Andel stated City Attorney Paul Webb had reviewed the Exhibit "B" and gave his approval. After some discussion, Councilmember Terry David Lynch moved to approve the Certified Resolution of the City of Wharton authorizing personal property lease agreement and its designation as a qualified tax-exempt obligation Exhibit "B", which read as follows:

**EXHIBIT "B"**

**CERTIFIED RESOLUTION OF GOVERNING BODY  
AUTHORIZING PERSONAL PROPERTY LEASE AGREEMENT  
AND ITS  
DESIGNATION AS A QUALIFIED TAX-EXEMPT OBLIGATION**

The undersigned hereby certifies to HOUSTON COMMUNITY BANK, N.A that at a duly called meeting of City Council (the "Board") held on the 14th day of November, 2011, there were at all times present members constituting a quorum of the Board, and that the following resolutions were adopted at said meeting, and remain in full force and effect as of the date hereof and have not been amended, rescinded or repealed:



**WHEREAS**, the CITY OF WHARTON, TEXAS ("Lessee") has determined that a need exists for the acquisition of the equipment ("Equipment") described in the Lease Agreement and Equipment Schedule No. 1 to be entered into between Lessee and HOUSTON COMMUNITY BANK, N.A., ("Lessor") that has been presented to this meeting (the "Lease"), and that the use of such Equipment is essential to Lessee's proper, efficient and economic operation; and

**WHEREAS**, the Board of Lessee has taken the necessary and appropriate steps under applicable law, including, without limitation, any legal bidding requirements, to arrange for the acquisition of the Equipment under the Lease.

**BE IT RESOLVED**, by the Board of Lessee that the Board has reviewed the form of the Lease and finds the terms of said Lease are in the best interests of Lessee;

**FURTHER RESOLVED**, the Board of Lessee designates and confirms the following persons to execute and deliver, and to witness or attest the Lease and to take all other actions necessary and desirable in connection therewith, including, without limitation, execution and delivery of such other related documents and materials in such form and containing such provisions, covenants and agreements as may reasonably be required by the Lessor necessary or appropriate to the consummation of the transactions contemplated by the Lease, and hereby further represents that the signatures opposite their respective names are true and correct signatures:

Name(s) Domingo Montalvo, Jr. and/or \_\_\_\_\_

Title(s) Mayor and/or \_\_\_\_\_

**FURTHER RESOLVED**, Lessee hereby represents and warrants to Lessor that Lessee has full power and authority, without the necessity of further approvals, to fulfill all obligations of Lessee under the terms of the Lease, subject to appropriations;

**FURTHER RESOLVED**, that the authorized officials be, and each of them hereby is, authorized and directed, in the name and on behalf of Lessee, from time to time to execute and deliver modifications, renewals, extensions, and replacements of such agreements and other documents containing such terms and conditions as they, or any of them, in the exercise of their discretion, deem necessary, advisable or appropriate.

**FURTHER RESOLVED**, that the authorized officials be, and each of them hereby is authorized and directed to mortgage, pledge and assign to Lessor, to grant to Lessor a security interest in, and to deliver to Lessor as security for all obligations of Lessee arising under or in connection with the leases now existing or hereafter entered into, and for all other indebtedness and obligations of Lessee to Lessor, whenever and however arising, any property, real or personal, belonging to Lessee, and from time to time to substitute for such property, or any part thereof, other property for the same purpose;

**FURTHER RESOLVED**, that the authorized officials be, and each of them hereby is, authorized and directed to execute and deliver any mortgages, deeds of trust, pledges,

assignments, security agreements or other agreements of any type to secure all obligations of Lessee arising under or in connection with the leases between Lessor and Lessee, now existing or hereafter entered into, and all other indebtedness and obligations of Lessee to Lessor, whenever and however arising, and any financing statements, memoranda or notices for filing or recording related thereto, all of which shall be in such form and contain such provisions, covenants and agreements as Lessor may require;

**FURTHER RESOLVED**, that the obligations of Lessee authorized hereby are in addition to all other financial accommodations, if any, now or hereafter extended by Lessor to or for the benefit of Lessee, and future resolutions may be adopted by Lessee authorizing additional leases, loans, credits and other financial accommodations from Lessor to Lessee without derogation of the authority set forth herein;

**FURTHER RESOLVED**, that all prior acts of any officers, employees or agents of Lessee (including but not limited to the authorized officials) in obtaining leases, loans, credits and other financial accommodations to Lessee from Lessor and the execution of any instruments or documents to evidence or secure any obligations due Lessor are hereby ratified and approved; and this resolution shall remain in full force and effect and Lessor may rely on these resolutions until written notice of their revocation is received by the Lessor and until all obligations of Lessee to Lessor have been fully paid and satisfied; and

**FURTHER RESOLVED**, that pursuant to Section 265(b)(3)(B)(I) of the Internal Revenue Code of 1986 (the "Code"), Lessee hereby specifically designates the Lease as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3)(A) of the Code;

and

**FURTHER RESOLVED**, that the aggregate face amount of all tax-exempt obligations issued or to be issued by the Lessee and all subordinate entities thereof during calendar year 2011 is not reasonably expected to exceed ten million (10,000,000) dollars.

**FURTHER RESOLVED**, that the authority granted by this resolution shall apply with equal force and effect to the respective successors in office of the individuals herein named.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of Wharton this 16th day of November, 2011.

LESSEE: CITY OF WHARTON, TEXAS

By: Domingo Montalvo, Jr.

Title: Mayor

WITNESS OR ATTEST:

By: Paula Favors

Date: November 16, 2011

Title: City Secretary

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

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

**A. Discussion:** CenterPoint – COSA 3 Tariff – GUD 9791 – Opinion issued by Third Ct. of Appeals.

Mayor Domingo Montalvo, Jr. adjourned into executive session at 7:29 p.m.

The thirteenth item on the agenda was to return to open session: Action on items discussed in Executive Session:

**A. Review & Consider:** CenterPoint – COSA 3 Tariff – GUD 9791 – Opinion issued by Third Ct. of Appeals.

Mayor Domingo Montalvo, Jr. returned to open session at 7:47 p.m.

Mayor Montalvo, Jr. stated that no action would be taken and the Executive Session was for information purposes only.

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

- A. Beautification Commission.
- B. Building Standards Commission.
- C. Holiday Light Decorating Chairman.
- D. Mayor's Committee on People with Disabilities.

Assistant to City Manager Jackie Jansky stated that Ms. Doris Teague was submitting her resignation to the Beautification Commission and a replacement would be needed to fill the position. After some discussion, no action was taken.

The fifteenth item on the agenda was to review and consider Boards, Commissions and Committee Reports:

- A. City Council Public Works Committee meeting held November 8, 2011.

City Manager Andres Garza, Jr. presented the City Council Public Works report for the meeting held on November 8, 2011. After some discussion, no action was taken.

City of Wharton  
Regular City Council Meeting  
November 14, 2011

The sixteenth item on the agenda was agenda was adjournment. There being no further discussion, Mayor Domingo Montalvo, Jr. moved to adjourn. Councilmember Don Mueller seconded the motion. All voted in favor.

The meeting adjourned at 7:50 p.m.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

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