

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
FEBRUARY 11, 2013**

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

Councilmembers absent was:      None.

Staff members present were:      City Manager Andres Garza, Jr., Finance Director Joan Andel, City Secretary Paula Favors, City Attorney Paul Webb, EMS Director John Kowalik, Airport Manager David Allen, and Police Chief Tim Guin.

Visitors present were:      Carlos Cotton, P.E. of Jones & Carter, Inc., Jim Gilley of Coastal Securities, and Ben Sharp, Wharton Journal Spectator.

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

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

The fourth item on the agenda was the Wharton Moment. Mayor Domingo Montalvo, Jr. stated Assistant to City Manager Jackie Jansky was ill and asked for Council and citizens to keep her in their prayers.

The fifth item on the agenda was to review and consider reading of the minutes from the regular meeting held January 14, 2013 and the regular meeting held January 28, 2013. After some discussion, Councilmember Karen Schulz moved to approve the minutes from the regular meeting held January 14, 2013 and the regular meeting held January 28, 2013. Councilmember Al Bryant seconded the motion. All voted in favor.

The sixth item discussed on the agenda was to review and consider an ordinance authorizing the issuance of City of Wharton, Texas, General Obligation Refunding Bonds, Series 2013; Setting certain parameters for the bonds; Authorizing the redemption prior to maturity of certain outstanding obligations; Authorizing the pricing officer to approve the amount, the interest rate, price, and terms thereof and certain other procedures and provisions relating thereto. City Manager Andres Garza, Jr. stated that the City Staff met with Mr. Jim Gilley of Coastal Securities, the City's financial advisor regarding the opportunity the City had to refund some bond series to realize some savings in interest expense. Mr. Gilley stated that he had made the necessary calculations and determined there was an opportunity for the City to refund some bonds and gain some savings. City Manager Garza said the City Council Finance Committee members met on Thursday, February 7, 2013 and voted to recommend the City Council consider

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moving forward to begin the bond issuance process by approving the ordinance authorizing the issuance of City of Wharton General Obligation Refunding Bonds, Series 2013. City Manager Garza stated that the City Council would need to take the necessary action to proceed with the refunding process. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Ordinance No. 2013-05, which read as follows:

**CITY OF WHARTON  
ORDINANCE NO. 2013-05**

**ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF WHARTON, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2013; SETTING CERTAIN PARAMETERS FOR THE BONDS; AUTHORIZING THE REDEMPTION PRIOR TO MATURITY OF CERTAIN OUTSTANDING OBLIGATIONS; AUTHORIZING THE PRICING OFFICER TO APPROVE THE AMOUNT, THE INTEREST RATE, PRICE, AND TERMS THEREOF AND CERTAIN OTHER PROCEDURES AND PROVISIONS RELATING THERETO.**

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

**WHEREAS**, the City Council of the City of Wharton, Texas (the “City”) has heretofore issued the obligations described on Exhibit A attached hereto; and

**WHEREAS**, the City desires to refund part of said obligations in advance of their maturities as determined pursuant to the parameters set forth herein (the “Refunded Bonds”); and

**WHEREAS**, Chapter 1207, Texas Government Code (the “Act”) authorizes the City to issue refunding bonds payable from taxes, without an election, for the purpose of refunding the Refunded Bonds in advance of their maturities, and to accomplish such refunding by depositing directly with any paying agent for the Refunded Bonds (or other qualified escrow agent), the proceeds of such refunding bonds, together with other available funds, in an amount sufficient to provide for the payment or redemption of the Refunded Bonds, and provides that such deposit shall constitute the making of firm banking and financial arrangements for the discharge and final payment or redemption of the Refunded Bonds; and

**WHEREAS**, the Act further authorizes the City to delegate the authority to effect the sale of the Bonds to the Pricing Officer; and

**WHEREAS**, the City desires to authorize the execution of an escrow agreement and provide for the deposit of proceeds of the refunding bonds herein authorized, together with other funds, to pay the Refunded Bonds; and

**WHEREAS**, upon the issuance of the refunding bonds herein authorized and the deposit of funds referred to above, the Refunded Bonds shall no longer be regarded as being outstanding, except for the purpose of being paid pursuant to such deposit, and the pledges, liens, trusts and

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all other covenants, provisions, terms and conditions of the ordinances authorizing the issuance of the Refunded Bonds shall be, with respect to the Refunded Bonds, discharged, terminated and defeased; Now, therefore

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

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

It is hereby found and determined that the refunding contemplated in this Ordinance will benefit the City by providing a present value savings in the debt service payable by the City, that such benefit is sufficient consideration for the refunding of the Refunded Bonds, and that the issuance of the refunding bonds is in the best interests of the City.

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

“Blanket Issuer Letter of Representations” means the Blanket Issuer Letter of Representations between the City, the Registrar and DTC.

“Bonds” means the City of Wharton, Texas, General Obligation Refunding Bonds, Series 2013 authorized in this Ordinance, unless the context clearly indicates otherwise.

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

“City” means the City of Wharton, Texas.

“City Manager” means Andres Garza, Jr., or any successor in that office.

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

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

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

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

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

“Escrow Agent” means Amegy Bank of Texas

“Escrow Agreement” means the agreement between the City and the Escrow Agent relating to the escrow of funds to pay the Refunded Obligations.

“Finance Director” means Joan Andel, or any successor in that office.

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

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

“Interest Payment Date”, when used in connection with any Bond, means December 1, 2013, and each June 1 and December 1 thereafter until maturity.

“Mayor” means Domingo Montalvo, Jr., or any successor in that office.

“MSRB” means the Municipal Securities Rulemaking Board.

“Officer’s Pricing Certificate” means a certificate signed by the Pricing Officer pursuant to Section 5 hereof.

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

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

“Pricing Officer” means the Mayor or the City Manager or the Finance Director.

“Record Date” means, with respect to the Bonds, the close of business on the last Business Day of the month preceding such Interest Payment Date.

“Refunded Bonds” means any of the obligations described on Exhibit A attached hereto and as more specifically described in the Officer’s Pricing Certificate.

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

“Registrar” means Amegy Bank of Texas, and its successors in that capacity.

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

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

“Underwriter” means the individual underwriter or underwriting syndicate identified in the Officer’s Pricing Certificate.

3. Authorization. The Bonds shall be issued in fully registered form in a maximum principal amount not to exceed \$3,900,000 the purpose of refunding the Refunded Bonds, under and in strict conformity with the Constitution and laws of the State of Texas, particularly Chapter 1207, Texas Government Code.

4. Date, Denomination, Interest Rates, and Maturities. The Bonds shall be designated as "CITY OF WHARTON, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2013" and shall be dated, shall mature on the dates, in each of the years and in the amounts set out in the Officer's Pricing Certificate, shall be subject to prior optional and mandatory redemption on the dates, for the redemption prices and in the amounts set out in the Officer's Pricing Certificate and shall bear interest from their issue date at the rates set forth in the Officer's Pricing Certificate payable on the dates set forth in the Officer's Pricing Certificate. The Bonds may be transferred and exchanged as set out in this Ordinance. The Initial Bond shall be numbered I-1 and all other Bonds shall be numbered in sequence beginning with R-1. Bonds delivered on transfer of or in exchange for other Bonds shall be numbered in order of their authentication by the Registrar, shall be in the denomination of \$5,000 or integral multiples thereof, and shall mature on the same date and bear interest on the same rate as the Bond or Bonds in lieu of which they are delivered.

5. Selling and Delivering the Bonds. As authorized by Section 1207.007, Texas Government Code, as amended, any Pricing Officer is hereby authorized to act on behalf of the City through a date 180 days from the date of this Ordinance in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including without limitation determining the price at which the Bonds will be sold, the issuance date for the Bonds, the form in which the Bonds shall be issued (whether as current interest bonds or as any combination of current interest bonds and compound interest bonds), the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the dates, prices and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory redemption provisions for the Bonds, the selection of the particular maturities and principal amounts of the Refunded Bonds, and all other matters not expressly provided in this Ordinance, relating to the issuance, sale and delivery of the Bonds, and the refunding of the Refunded Bonds, all of which shall be specified in the Officer's Pricing Certificate; provided that:

- (i) the price to be paid for the Bonds shall not be less than 90% of the aggregate original principal amount of the current interest bonds or 90% of the present value of any compound interest bonds plus accrued interest thereon from their date to their delivery;
- (ii) none of the Bonds shall bear interest at a rate greater than 15% per annum or in excess of the maximum rate allowed by Chapter 1204, Texas Government Code, as amended;
- (iii) the proceeds from the sale of the Bonds, along with any available funds of the City that may be used in the refunding, must be sufficient to provide, after all original issue discount and underwriter's discount, amounts necessary to fund the costs and expenses of refunding the Refunded Bonds and the estimated costs of issuance of the Bonds; and
- (iv) the net present value savings in debt service resulting from the refunding of the Refunded Bonds shall be at least 4.000% of the principal amount of

the Refunded Bonds, as shown by a table of calculations prepared by the City's financial advisor and attached to the Officer's Pricing Certificate.

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

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

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

(d) On the Closing Date, the Initial Bond, being a single bond representing the entire principal amount of the Bonds, payable in stated installments to the Underwriter or its designee, executed by manual or facsimile signature of the Mayor and City Secretary of the City, approved by the Attorney General, and registered and manually signed by the Comptroller, shall be delivered to the Underwriter or its designee. Upon payment for the Initial Bond, the Registrar shall cancel the Initial Bond and deliver definitive Bonds to DTC.

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

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

8. Successor Registrars. The City covenants that at all times while any Bonds are outstanding it will provide a commercial bank or trust company, organized under the laws of the United States or any state, and duly qualified and legally authorized to serve as Registrar for the Bonds. The City reserves the right to change the Registrar on not less than 60 days written notice to the Registrar, so long as any such notice is effective not less than 60 days prior to the next succeeding principal or interest payment date on the Bonds. Promptly upon the appointment of any successor Registrar, the previous Registrar shall deliver the Register or copies thereof to the new Registrar, and the new Registrar shall notify each Owner, by United States mail, first class postage prepaid, of such change and of the address of the new Registrar. Each Registrar hereunder, by acting in that capacity, shall be deemed to have agreed to the provisions of this Section.

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

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

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

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

Each Bond shall be transferable only upon the presentation and surrender thereof at the principal payment office of the Registrar in Houston, Texas, duly endorsed for transfer, or accompanied by an assignment duly executed by the registered Owner or his authorized representative in form satisfactory to the Registrar. Upon due presentation of any Bond for transfer, the Registrar shall authenticate and deliver in exchange therefor, within three Business

Days after such presentation, a new Bond or Bonds registered in the name of the transferee or transferees, in authorized denominations and of the same maturity and aggregate principal amount and bearing interest at the same rate as the Bond or Bonds so presented.

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

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

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

The City or the Registrar may require the Owner of a mutilated Bond to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith and any other expenses connected therewith, including the fees and expenses of the Registrar. The City or the Registrar may require the Owner of a lost, apparently destroyed or wrongfully taken Bond, before any replacement Bond is issued, to:

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

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

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

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

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

14. Book-Entry Only System. (a) The Initial Bond shall be registered in the name designated in the Officer's Pricing Certificate. Except as provided in Section 15 hereof, all other Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

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

of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions of this Ordinance with respect to interest checks being mailed to the Owner of record as of the Record Date, the phrase "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

15. Successor Securities Depository; Transfer Outside Book-Entry Only System. In the event that the City in its sole discretion, determines that the beneficial owners of the Bonds be able to obtain certificated Bonds, or in the event DTC discontinues the services described herein, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants, as identified by DTC, of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants, as identified by DTC, of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts, as identified by DTC. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

16. Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the Blanket Letter of Representations.

17. Optional and/or Mandatory Redemption; Defeasance. The Bonds are subject to optional and/or mandatory redemption as set forth in the Form of Bond in this Ordinance and in the Officer's Pricing Certificate.

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

Notice of any redemption identifying the Bonds to be redeemed in whole or in part shall be given by the Registrar at least thirty days prior to the date fixed for redemption by sending written notice by first class mail to the Owner of each Bond to be redeemed in whole or in part at the address shown on the Register. Such notices shall state the redemption date, the redemption price, the place at which Bonds are to be surrendered for payment and, if less than all Bonds outstanding of a particular maturity are to be redeemed, the numbers of the Bonds or portions thereof of such maturity to be redeemed. Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice. By the date fixed for redemption, due provision shall be made with the Registrar for payment of

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the redemption price of the Bonds or portions thereof to be redeemed, plus accrued interest to the date fixed for redemption. When Bonds have been called for redemption in whole or in part and due provision has been made to redeem same as herein provided, the Bonds or portions thereof so redeemed shall no longer be regarded as outstanding except for the purpose of receiving payment solely from the funds so provided for redemption, and the rights of the Owners to collect interest which would otherwise accrue after the redemption date on any Bond or portion thereof called for redemption shall terminate on the date fixed for redemption.

The Bonds may be discharged, defeased, redeemed or refunded in any manner now or hereafter permitted by law.

18. Forms. The form of the Bond, including the form of Registration Certificate of the Comptroller, which shall be attached or affixed to the Initial Bond, the form of Assignment and the form of the Registrar's Authentication Certificate, , shall be, respectively, substantially as follows, with such additions, deletions and variations as may be necessary to conform to the terms specified in the Officer's Pricing Certificate:

(a) Form of Bond.

UNITED STATES OF AMERICA  
STATE OF TEXAS  
COUNTY OF HARRIS

REGISTERED  
NUMBER  
\_\_\_\_\_

REGISTERED  
DENOMINATION  
\$ \_\_\_\_\_

CITY OF WHARTON, TEXAS  
GENERAL OBLIGATION REFUNDING BOND  
SERIES 2013

INTEREST RATE: MATURITY DATE: ISSUE DATE: CUSIP:  
December 1, 20\_\_ <sup>1</sup> \_\_\_\_\_

REGISTERED OWNER:

PRINCIPAL AMOUNT: DOLLARS

The City of Wharton, Texas (the "City") promises to pay to the registered owner identified above, or registered assigns, on the maturity date specified above, upon presentation and surrender of this Bond at the principal payment office of Amegy Bank of Texas, (the "Registrar"), the principal amount identified above, payable in any coin or currency of the

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<sup>1</sup> Insert from Officers Pricing Certificate.

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United States of America which on the date of payment is legal tender for the payment of debts due the United States of America, and to pay interest thereon at the rate shown above, calculated on the basis of a 360-day year of twelve 30-day months, from the Issue Date, or the most recent interest payment date to which interest has been paid or duly provided for. Interest on this Bond is payable by check on June 1 and December 1 beginning on December 1, 2013, mailed to the registered owner of record as of the close of business on the last business day of the month preceding each interest payment date.

THIS BOND is one of a duly authorized issue of Bonds, aggregating \$<sup>2</sup> (the "Bonds"), issued for the purpose of refunding a portion of the City's outstanding obligations, under and in strict conformity with the Constitution and laws of the State of Texas, particularly Chapter 1207, Texas Government Code, and pursuant to an ordinance adopted by the City Council (the "Ordinance"), which Ordinance is of record in the official minutes of the City.

THE CITY RESERVES THE RIGHT, at its option, to redeem Bonds maturing on and after December 1, 2023, in whole or from time to time in part, in integral multiples of \$5,000, on December 1, 2022, or any date thereafter at par plus accrued interest on the principal amounts called for redemption to the date fixed for redemption. If less than all the Bonds are to be redeemed, the City shall select the Bonds to be redeemed.

[If applicable, mandatory redemption language]

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

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

THE BONDS ARE EXCHANGEABLE at the principal payment office of the Registrar in Houston, Texas, for Bonds in the principal amount of \$5,000 or any integral multiple thereof, subject to the terms and conditions of the Ordinance.

THIS BOND shall not be valid or obligatory for any purpose or be entitled to any benefit under the Ordinance unless this Bond is either (i) registered by the Comptroller of Public Accounts of the State of Texas by registration certificate attached or affixed hereto or (ii) authenticated by the Registrar by due execution of the authentication certificate endorsed hereon.

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<sup>2</sup> Insert from Officers Pricing Certificate.

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

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

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

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

(AUTHENTICATION  
CERTIFICATE) (SEAL) CITY OF WHARTON, TEXAS

---

Domingo Montalvo, Jr.  
Mayor

---

Paula Favors  
City Secretary

(b) Form of Registration Certificate of Comptroller of Public Accounts.

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

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

WITNESS MY SIGNATURE AND SEAL this \_\_\_\_\_.

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Comptroller of Public Accounts  
of the State of Texas

(SEAL)

City of Wharton  
Regular City Council Meeting  
February 11, 2013

(c) Form of Registrar's Authentication Certificate.

## AUTHENTICATION CERTIFICATE

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

**Amegy Bank of Texas  
As Paying Agent/Registrar**

By \_\_\_\_\_  
Authorized Signature  
Date of Authentication \_\_\_\_\_

(d) Form of Assignment.

## ASSIGNMENT

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

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

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

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

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

### Signature Guaranteed:

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

## Registered Owner

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

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

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

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

[Information to be inserted from the Officer’s Pricing Certificate]

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

19. CUSIP Numbers. CUSIP Numbers may be printed on the Bonds, but errors or omissions in the printing of such numbers shall have no effect on the validity of the Bonds.

20. Interest and Sinking Fund; Tax Levy. There is hereby established a separate fund of the City to be known as the City of Wharton, Texas, General Obligation Refunding Bonds, Series 2013 Interest and Sinking Fund (the “Interest and Sinking Fund”), which shall be kept separate and apart from all other funds of the City. The proceeds from all taxes levied, assessed and collected for and on account of the Bonds authorized by this Ordinance shall be deposited, as collected, in the Interest and Sinking Fund. While the Bonds or any part of the principal thereof or interest thereon remain outstanding and unpaid, there is hereby levied and there shall be annually assessed and collected in due time, form and manner, and at the same time as other City taxes are assessed, levied and collected, in each year, a continuing direct annual ad valorem tax, within the limits prescribed by law, upon all taxable property in the City, sufficient to pay the current interest on the Bonds as the same becomes due and to provide and maintain a sinking fund of not less than two percent of the principal amount of the Bonds or the amount required to pay each installment of principal of the Bonds as the same matures, whichever is greater, full allowance being made for delinquencies and costs of collection, and said taxes are hereby irrevocably pledged to the payment of the interest on and principal of the Bonds and to no other purpose.

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

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

comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

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

23. Sale; Engagement Letter. The Bonds shall be sold and delivered to the Underwriter at a price to be set forth in the Officer's Pricing Certificate, plus accrued interest to the date of delivery, in accordance with the form of Official Bid Form, which is hereby approved by the City Council, subject to completion in accordance with the terms of the Officer's Pricing Certificate. The Pricing Officer is hereby authorized and directed to execute the Official Bid Form on behalf of the City, and the Mayor, City Manager and all other officers, agents and representatives of the City are hereby authorized to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of the Bonds.

The engagement of Andrews Kurth LLP as bond counsel for the City in connection with the issuance, sale and delivery of the Bonds is hereby approved, ratified and confirmed, and the Mayor is hereby authorized to execute and deliver an engagement letter between the City and such firm, with respect to services as bond counsel, in such form as may be approved by the City Council.

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

(a) The City shall not use, permit the use of or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which, if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes.

Without limiting the generality of the foregoing, unless and until the City shall have received a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(b) Except as permitted by Section 141 of the Code and the regulations and rulings thereunder, the City shall, at all times prior to the last stated maturity of the Bonds,

(1) exclusively own, operate, and possess all property the acquisition, construction, or improvement of which is to be financed directly or indirectly with Gross Proceeds of such series of the Bonds (including property financed with Gross Proceeds of the Refunded Bonds or notes or bonds refunded by the Refunded Bonds and not use or permit the use of such Gross Proceeds or any property acquired, constructed, or improved with such Gross Proceeds in any activity carried on by any person or entity other than a state or local government, unless such use is solely as a member of the general public, or

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

(c) Except to the extent permitted by Section 141 of the Code and the regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, Gross Proceeds are considered to be "loaned" to a person or entity if (1) property acquired, constructed or improved with Gross Proceeds (including property financed with Gross Proceeds of the Refunded Bonds or notes or bonds refunded by the Refunded Bonds) is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes, (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output, or similar contract or arrangement, or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or such property are otherwise transferred in a transaction which is the economic equivalent of a loan.

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

(e) Based on all of the facts and estimates now known or reasonably expected to be in existence on the date the Bonds are delivered, the City reasonably expects that the proceeds of the Bonds and the Refunded Bonds (to the extent any of such proceeds remain unexpended) will not be used in a manner that would cause the Bonds or the Refunded Bonds or any portion thereof to be "arbitrage bonds" within the meaning of Section 148 of the Code.

(f) At all times while the Bonds are outstanding, the City will identify and properly account for all amounts constituting gross proceeds of the Bonds in accordance with the Regulations. The City will monitor the yield on the investments of the proceeds of the Bonds and, to the extent required by the Code and the Regulations, will restrict the yield on such investments to a yield which is not materially higher than the yield on the Bonds. To the extent necessary to prevent the Bonds from constituting "arbitrage bonds," the City will make such payments as are necessary to cause the yield on all yield restricted nonpurpose investments allocable to the Bonds to be less than the yield that is materially higher than the yield on the Bonds.

(g) The City will not take any action or knowingly omit to take any action, if taken or omitted, would cause the Bonds to be treated as "federally guaranteed" obligations for purposes of Section 149(b) of the Code.

(h) The City represents that not more than fifty percent (50%) of the proceeds of any new money portion of the Bonds or any new money issue refunded by, the Refunded Bonds was invested in nonpurpose investments (as defined in Section 148(f)(b)(A) of the Code) having a substantially guaranteed yield for four years or more within the meaning of Section 149(g)(3)(A)(ii) of the Code, and the City reasonably expected at the time each issue of the Refunded Bonds was issued that at least eighty-five percent (85%) of the spendable proceeds of the Bonds or the Refunded Bonds would be used to carry out the governmental purpose of such Bonds within the corresponding three-year period beginning on the respective dates of the Bonds or the Refunded Bonds.

(i) The City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the gross proceeds of the Bonds, if any, be rebated to the federal government. Specifically, the City will (i) maintain records regarding the receipt, investment and expenditure of the gross proceeds of the Bonds as may be required to calculate such excess arbitrage profits separately from records of amounts on deposit in the funds and accounts of the City allocable to other obligations of the City or moneys which do not represent gross proceeds of any obligations of the City and retain such records for at least six years after the day on which the last outstanding Bond is discharged, (ii) account for all gross proceeds under a reasonable, consistently applied method of accounting, not employed as an artifice or device to avoid, in whole or in part, the requirements of Section 148 of the Code, including any specified method of accounting required by applicable Regulations to be used for all or a portion of the gross proceeds, (iii) calculate, at such times as are required by applicable Regulations, the amount of excess arbitrage profits, if any, earned from the investment of the gross proceeds of the Bonds and (iv) timely pay, as required by applicable Regulations, all amounts required to be rebated to the federal government. In addition, the City will exercise reasonable diligence to assure that no errors are made in the calculations required by the preceding sentence and, if such an error is made, to discover and promptly correct such error

within a reasonable amount of time thereafter, including payment to the federal government of any delinquent amounts owed to it, including interest thereon and penalty.

(j) The City will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Bonds that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in smaller profit or a larger loss than would have resulted if such arrangement had been at arm's length and had the yield on the issue not been relevant to either party.

(k) The City will timely file or cause to be filed with the Secretary of the Treasury of the United States the information required by Section 149(e) of the Code with respect to the Bonds on such form and in such place as the Secretary may prescribe.

(l) The City will not issue or use the Bonds as part of an "abusive arbitrage device" (as defined in Section 1.148 10(a) of the Regulations). Without limiting the foregoing, the Bonds are not and will not be a part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code and the Regulations, by (i) enabling the City to exploit the difference between tax exempt and taxable interest rates to gain a material financial advantage, or (ii) increasing the burden on the market for tax-exempt obligations.

(m) Proper officers of the City charged with the responsibility for issuing the Bonds are hereby directed to make, execute and deliver certifications as to facts, estimates or circumstances in existence as of the Issue Date and stating whether there are facts, estimates or circumstances that would materially change the City's expectations. On or after the Issue Date, the City will take such actions as are necessary and appropriate to assure the continuous accuracy of the representations contained in such certificates.

(n) The covenants and representations made or required by this Section are for the benefit of the Bond holders and any subsequent Bond holder, and may be relied upon by the Bond holder and any subsequent Bond holder and bond counsel to the City.

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

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

25. Qualified Tax-Exempt Obligations. The City hereby designates the Bonds as "qualified tax-exempt obligations" as defined in Section 265(b)(3) of the Code. In connection therewith, the City represents (a) that the aggregate amount of tax-exempt obligations issued by

the City during calendar year 2013, including the Bonds, which have been designated as “qualified tax-exempt obligations” under section 265(b)(3) of the Code does not exceed \$10,000,000, and (b) that the reasonably anticipated amount of tax-exempt obligations which will be issued by the City during calendar year 2013, including the Bonds, will not exceed \$10,000,000. For purposes of this Section, the term “tax-exempt obligation” does not include “private activity bonds” within the meaning of section 141 of the Code, other than “qualified 501(c)(3) bonds” within the meaning of section 145 of the Code. In addition, for purposes of this Section, the City includes all entities which are aggregated with the City under the Code.

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

- (a) Accrued interest in the amount of \$ <sup>3</sup> \_\_\_\_\_ and, if necessary, net premium on the Bonds in the amount of \$ <sup>4</sup> \_\_\_\_\_, shall be deposited into the Interest and Sinking Fund.
- (b) Premium in the amount of \$ <sup>5</sup> \_\_\_\_\_ shall be used to pay the underwriter's discount.
- (c) Net premium in the amount of \$ <sup>6</sup> \_\_\_\_\_ shall be used to pay the costs of issuance.
- (d) Bond proceeds in the aggregate amount of \$ <sup>7</sup> \_\_\_\_\_, together with other lawfully available funds of the City in the amount of \$ <sup>8</sup> \_\_\_\_\_ shall be deposited directly with the paying agent for the Refunded Bonds to pay all principal of and interest on the Refunded Bonds due on the redemption date specified in the Officer's Pricing Certificate and all costs incurred in the issuance of the Bonds and the refunding of the Refunded Bonds. Any proceeds of the Bonds remaining after making all such deposits and payments shall be deposited into the Interest and Sinking Fund.

27. Redemption of Refunded Bonds. The City has irrevocably exercised its option to call the Refunded Bonds of the City for redemption prior to maturity on the dates and at the prices shown on Exhibit A attached to the Officer's Pricing Certificate, and authorizes and

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<sup>3</sup> Insert from Officer's Pricing Certificate.

<sup>4</sup> Insert from Officer's Pricing Certificate.

<sup>5</sup> Insert from Officer's Pricing Certificate.

<sup>6</sup> Insert from Officer's Pricing Certificate.

<sup>7</sup> Insert from Officer's Pricing Certificate.

<sup>8</sup> Insert from Officer's Pricing Certificate.

directs notice of such redemption to be given in accordance with the ordinances authorizing the issuance of such Refunded Bonds.

28. Continuing Disclosure Undertaking. (a) Annual Reports. The City will provide certain updated financial information and operating data to the MSRB annually in an electronic format as prescribed by the MSRB and available via the Electronic Municipal Market Access (“EMMA”) system at [www.emma.msrb.org](http://www.emma.msrb.org). The information to be updated includes all quantitative financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 30 of this Ordinance in Appendix A in Schedules 1 through 4, 6 through 8 and 10 through 13 and Appendix C. The City will update and provide this information within six months after the end of each fiscal year.

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

The financial information and operating data to be provided may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB’s Internet Web site or filed with the SEC, as permitted by the SEC Rule. The updated information will include audited financial statements, if the City commissions an audit and it is completed by the required time. If audited financial statements are not available by the required time, the City will provide unaudited financial statements by the required time and audited financial statements when and if such audited statements become available. Any such financial statements will be prepared in accordance with the accounting principals described in APPENDIX C or such other accounting principals as the City may require to employ from time to time pursuant to State law or regulation.

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

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) Modifications to rights of holders of the Bonds, if material;
- (viii) Bond calls, if material, and tender offers;
- (ix) Defeasances;

- (x) Release, substitution, or sale of property securing repayment of the Bonds, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership or similar event of the City;
- (xiii) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (xiv) Appointment of a successor Paying Agent/Registrar or change in the name of the Paying Agent/Registrar, if material.

For the purposes, any event described in the immediate proceeding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding Under States Bankruptcy Code or any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

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

(c) Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with Texas law that causes Bonds no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and the beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY

THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE UNLIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

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

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

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, or status or type of principal payment of the City, if (1) the agreement, as so amended, would have permitted an underwriter to purchase or sell Bonds in the initial primary offering in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the holders of a majority in aggregate amount of the outstanding Bonds consent to such amendment or (b) a person unaffiliated with the City (such as nationally recognized bond counsel) determines that the amendment will not materially impair the interests of the holders and beneficial owners of the Bonds. The City may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds. If any such amendment is made, the City will include in its next annual update an explanation in narrative form of the reasons for the change and its impact on the type of operating data or financial information being provided.

All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

29. Related Matters. To satisfy in a timely manner all of the City's obligations under this Ordinance, the Mayor, the City Secretary or an Assistant City Secretary, the City Manager, and all other appropriate officers and agents of the City are hereby authorized and directed to take all other actions that are reasonably necessary to provide for the refunding of the Refunded Bonds, including, without limitation, executing and delivering on behalf of the City all certificates, consents, receipts, requests, and other documents as may be reasonably necessary to satisfy the City's obligations under this Ordinance and to direct the application of funds of the City consistent with the provisions of this Ordinance.

30. Official Statement. The City Council hereby approves the form and content of the Preliminary Official Statement prepared for the initial offering and sale of the Bonds and hereby authorizes the preparation of a final Official Statement reflecting the terms of the Official Bid Form and other relevant matters. The use of such Official Statement in the reoffering of the Bonds by the Underwriter is hereby approved and authorized.

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

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

33. Power to Revise Form of Documents. Notwithstanding any other provision of this Ordinance, the Mayor, City Secretary and other appropriate officials of the City are each hereby authorized to make or approve such revisions, additions, deletions and variations to this Ordinance, in the judgment of the Mayor, City Secretary and other appropriate officials of the City, and in the opinion of Bond Counsel to the City, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Ordinance, the Preliminary Official Statement, and the final Official Statement; provided, however, that any changes to such documents resulting in substantive amendments to the terms and conditions of the Bonds or such documents shall be subject to the prior approval of the City Commission.

34. Open Meeting. The meeting at which this Ordinance is adopted was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by the Texas Open Meetings Act; and such notice as given is hereby authorized, approved, adopted and ratified.

PASSED AND APPROVED on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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Mayor  
City of Wharton, Texas

ATTEST:

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City Secretary  
City of Wharton, Texas

(SEAL)

**EXHIBIT A**

**CITY'S OUTSTANDING OBLIGATIONS**

Tax and Revenue Certificates of Obligation, Series 2004  
Tax and Revenue Certificates of Obligation, Series 2006  
Tax and Revenue Certificates of Obligation, Series 2009  
Limited Tax Refunding Bonds, Series 2009  
General Obligation Refunding Bonds, Series 2010  
Tax and Revenue Certificates of Obligation, Series 2011

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

The seventh item on the agenda was to review and consider a resolution of the Wharton City Council approving the Amendment No. 7 to the Franchise Agreement for Solid Waste Collection and Disposal Services with Waste Corporation of America and authorizing the Mayor of the City of Wharton to execute the agreement on behalf of the City. City Manager Andres Garza, Jr. stated that during the regular January 28, 2013 Wharton City Council meeting, the City Council approved the request by Waste Corporation of America (WCA) to extend the franchise agreement for Solid Waste Collection and Disposal Services with the City of Wharton in accordance with the provisions set out in the agreement. City Manager Garza said a contract amendment extending the term to include an additional five (5) year period was required. After some discussion, Councilmember Russell Machann moved to approve City of Wharton Resolution No. 2013-12, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2013-12**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE AMENDMENT NO. 7 TO THE FRANCHISE AGREEMENT FOR SOLID WASTE COLLECTION AND DISPOSAL SERVICES WITH WASTE CORPORATION OF AMERICA AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.**

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

**WHEREAS,** The Wharton City Council wishes to amend said franchise agreement by extending the contract for a five (5) year period as set out in Section 10 Term and Termination of the franchise agreement; and

**WHEREAS,** The Wharton City Council wishes the new term to be October 1, 2013 through September 30, 2018; and

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

**WHEREAS**, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the contract amendment; and

**WHEREAS**, this resolution is passed in accordance with said contract.

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

- Section I.** That the Wharton City Council hereby approves the Amendment No. 7 to the Solid Waste Collection and Disposal Services Franchise Agreement with Waste Corporation of America by extending the contract for a five (5) year period as set out in Section 10 Term and Termination of the franchise agreement.
- Section II.** That the City of Wharton and Waste Corporation of America shall hereby be bound by the conditions set forth in said agreement.
- Section III.** That the Mayor of the City of Wharton is hereby authorized to execute the franchise agreement amendment.
- Section IV.** This resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this 11<sup>th</sup> day of February 2013.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

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**PAULA FAVORS**  
City Secretary

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

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The eighth item on the agenda was to review and consider a resolution of the Wharton City Council approving an agreement for Medical Director Services between Dr. Mystan Gurkin and the City of Wharton and authorizing the Mayor of the City of Wharton to execute the agreement on behalf of the City. City Manager Andres Garza, Jr. presented a copy of the agreement for Medical Director Services between the City of Wharton and Dr. Mystan Gurkin which showed the contract was due to expire on March 31, 2013. EMS Director John Kowalik stated that Dr. Gurkin had indicated in a letter to him that she was willing to continue providing the service to the City of Wharton; however, she was requesting a change in compensation due to her having to obtain her own malpractice insurance to perform this service for the City. City Attorney Paul Webb recommended the contract remain blank on the amount of compensation until the amount of malpractice insurance could be obtained and added to the contract. After some discussion, Councilmember Jeff Gubbels moved to approve City of Wharton Resolution No. 2013-10, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2013 -10**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN AGREEMENT FOR MEDICAL DIRECTOR SERVICES BETWEEN DR. MYSTAN GURKIN AND THE CITY OF WHARTON AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY.**

**WHEREAS**, the City of Wharton wishes to authorize the Mayor of the City of Wharton to execute an agreement between Dr. Mystan Gurkin and the City of Wharton for Medical Director Services for the Emergency Medical Service (EMS) Department; and

**WHEREAS**, the City of Wharton and Dr. Mystan Gurkin wishes to be bound by the conditions as set forth in the agreement; and

**WHEREAS**, the Wharton City Council and Dr. Mystan Gurkin wishes the agreement to become on April 1, 2013; and

**WHEREAS**, the Wharton City Council wishes this resolution to become effective immediately upon its passage.

**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 authorizes the Mayor of the City of Wharton to execute, on behalf of the City of Wharton, the Medical Director Services Agreement with Dr. Mystan Gurkin for the City of Wharton Emergency Medical Services (EMS) Program.

**Section II.** That the City of Wharton and Dr. Mystan Gurkin are hereby bound by the conditions as set forth in the agreement which shall commence on April 1, 2013 and expire on March 31, 2015.

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

**Passed, Approved, and Adopted** this 11<sup>th</sup> day of February 2013.

**CITY OF WHARTON, TEXAS**

**By:**

**DOMINGO MONTALVO, JR.**  
Mayor

**ATTEST:**

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**PAULA FAVORS**

City Secretary

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

The ninth item on the agenda was to review and consider City of Wharton Municipal Election 2013:

- A. Changing of the Absentee Polling Place.
- B. **Ordinance:** 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.

**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 propósito de elegir puestos de concejales; asignando la fecha, horas, y lugar de la elección, el aviso de la elección, presentación de solicitudes, sorteo para lugares en la balota, uso de sistema de votación accesible, nombramiento de los trabajadores de la elección, votación anticipada, y entrega de los resultados de la elección.

City Manager Andres Garza, Jr. presented a copy of the memorandum dated February 7, 2013 from City Secretary Paula Favors to him providing the afore-mentioned ordinance and an explanation informing him of the proposed change in the Absentee Polling Place. City Secretary Paula Favors stated the polling place change was only for the Early Voting period and the City of Wharton Election would be held May 11, 2013 at the Wharton Civic Center. Mrs. Favors stated that the Wharton County Commissioners met and voted to change the location of the Absentee Polling Place to the Wharton County Annex D building. Mrs. Favors said the County was responsible to submit the change to the Department of Justice for pre-clearance per the contract with the City. After some discussion, Councilmember Al Bryant moved to approve City of Wharton Ordinance No. 2013-03, which read as follows:

**CITY OF WHARTON, TEXAS**  
**ORDINANCE NO. 2013-03**

**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. 3  
Councilmember at Large - Place No. 5

**Date**

An election shall be held in the City of Wharton, Texas, on **May 11, 2013**.

**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

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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 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 **January 30, 2013** and continuing through **5 p.m. on March 1, 2013**. A declaration of write-in candidacy must be filed not later than 5:00 P.M. on **March 1, 2013**.

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

### **Drawing for Ballot Positions**

On March 8, 2013 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 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: Joyce Barker  
Alternate Presiding Judge: Faye Evans

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 is Audrey Wessels 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 County Annex D, Suite 115, E. Milam, 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 **April 29, 2013** and continuing through **May 3, 2013**;

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**Monday, May 6, 2013** and continuing through **Tuesday, May 7, 2013** 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 11, 2013 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 11, 2013 General Election shall be paid \$8.50 per hour.

The Election Clerk(s) for the May 11, 2013 General Election shall be paid \$8.50 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 14 - 22, 2013. 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**

If any court of competent jurisdiction rules that any section, subsection, sentence,

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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 11<sup>th</sup> day of February, 2013.

**CITY OF WHARTON, TEXAS**

**ATTEST:**

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

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

**APPROVED AS:**

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**Paul Webb**  
**City Attorney**

**CIUDAD DE WHARTON, TEXAS**  
**ORDENANZA N° 2013-04**

**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 ordinarias 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. 3  
Concejal de forma irrestricta - Posición No. 5

**Fecha**

Se celebrará una elección en la ciudad de Wharton, Texas, el 11 de mayo de 2013.

**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 también 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 **30 de enero de 2013** y continuando hasta las **5:00 de la tarde del 1 de marzo de 2013**. La declaración de solicitud de candidato anotado se debe presentar no más tarde de las 5:00 de la tarde del **1 de marzo de 2013**.

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.

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

El 8 de marzo de 2013, 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 1º 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: Joyce Baker

Juez presidente Alterno: Faye Evans

El Departamento de Elecciones del Condado de Wharton (WCED) 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, Audrey Wessels, es nombrada como secretaria de la votación anticipada y queda autorizada a nombrar a otros asistentes para desempeñarse como secretarias de la votación anticipada.

La votación anticipada por comparecencia personal para la elección nombrada aquí arriba se realizará en el Anexo D del Condado de Wharton, Sala 115, E. Milam, 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 **29 de abril de 2013** y continuando hasta el **3 de mayo de 2013**; el lunes **6 de mayo de 2013** y continuando el martes, **7 de mayo de 2013** 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 11 de mayo de 2013 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 alterno para la elección general del 11 de mayo de 2013 será pagado \$8.50 por hora.

Los secretarios de la elección para la elección general del 11 de mayo de 2013 serán pagados \$8.50 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 14 hasta el 22 de mayo de 2013. 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, claúsula, 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 11 de febrero de 2013.

CIUDAD DE WHARTON, TEXAS

ATESTIGUACIÓN:

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

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

## **APROBADO:**

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**Paul Webb**  
**Abogado Municipal**

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

The tenth item on the agenda was to review and consider The Wharton Police Department Annual Contact Report for 2012. City Manager Andres Garza, Jr. presented a copy of the memorandum dated February 1, 2013 to him from Police Chief Tim Guin submitting the City of Wharton 2012 Racial Profiling Report in accordance with Senate Bill 1074 and a copy of the report. Chief Tim Guin stated that no complaints were received regarding racial profiling. He stated that the traffic contacts that resulted in a citation or an arrest by race or ethnicity were:

Caucasian/White	487	37.6%
Hispanic	370	28.6%
Black	421	32.5%
Asian	13	1.0%
Middle Eastern-Descent	3	.2%
Native American	0	.0%

Chief Guin stated that the report needs only to be presented and that action was not required by the City Council. After some discussion, no action was taken.

The eleventh item on the agenda to review and consider a resolution of the Wharton City Council authorizing the Mayor of the City of Wharton to submit a Letter of Intent for the City of Wharton's participation in the Texas Department of Transportation Aviation Division Capital Improvement Program by submitting an application for funding to be used to construct new T-Hangars at the Wharton Regional Airport. City Manager Andres Garza, Jr. stated that the Wharton Regional Airport Board met February 5, 2013 and voted to recommend the City Council consider participating in the Texas Department of Transportation (TxDOT) Aviation Division Capital Improvement Program (CIP) by submitting an application for funding to construct a set of new commercial T-Hangars at the airport. City Manager Garza said participation would require the City of Wharton to submit a Notice of Intent (NOI) to TxDOT Aviation. City Manager Garza presented a copy of the memorandum dated January 15, 2013 from Mr. Gary Williams, Chairman of the Wharton Regional Airport Board, providing the recommendation. Airport Manager David Allen stated additional T-Hangars at Wharton Regional Airport would result in a great payback to the City. After some discussion, Councilmember Terry David Lynch moved to approve City of Wharton Resolution No. 2013-11, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2013-11**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO SUBMIT A LETTER OF INTENT FOR THE CITY OF WHARTON'S PARTICIPATION IN THE TEXAS DEPARTMENT OF TRANSPORTATION AVIATION DIVISION CAPITAL IMPROVEMENT PROGRAM BY SUBMITTING AN APPLICATION FOR FUNDING TO CONSTRUCT A NEW SET OF COMMERCIAL T-HANGARS.**

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**WHEREAS**, the Wharton City Council wishes for certain improvements to be conducted at the Wharton Regional Airport; and

**WHEREAS**, said improvements would include the construction of a new set of Commercial T-Hangars; and

**WHEREAS**, to fund the costs for said project, the Wharton City Council wishes to participate in the Texas Department of Transportation Aviation Division, Capital Improvement Program, which is a 90% federal/ 10% local cost share program; and

**WHEREAS**, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to submit a Notice of Intent to participate in said program.

**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 authorizes the Mayor of the City of Wharton to submit a Notice of Intent to participate in the Texas Department of Transportation Aviation Division, Capital Improvement Program to apply for funding the construction of a new set of Commercial T-Hangars.

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

**Passed, Approved, and Adopted** this the 11<sup>th</sup> day of February 2013.

**CITY OF WHARTON**

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

**ATTEST:**

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**PAULA FAVORS**

City Secretary

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

The twelfth item on the agenda was to review and consider the Wharton Regional Airport Board recommendation for the City Council to consider approving the purchase of a Lazer DS Series 60" Kubota Diesel with rear discharge and suspension seat in the amount of \$15,540.00 for use at the Wharton Regional Airport. City Manager Andres Garza, Jr. stated that the Wharton Regional Airport Board met February 7, 2013 and voted to recommend the City Council consider the purchase of a Lazer DS Series 60" Kubota Diesel with rear discharge and suspension seat in the amount of \$15,540.00 for use at the Wharton Regional Airport. City Manager Garza presented a copy of the Airport Board Communications that provide a copy of the quotes that were received by Airport Manager David Allen. Mr. Allen stated that the quotes

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received were from Hill Country Outdoor Power with one being in the amount of \$11,124.20 for a Exmark Mower with a 60 inch deck and canopy cover and the second quote was for a Lazer DS Series 60" Kubota Diesel with rear discharge and suspension seat in the amount of \$15,450.45. City Manager Garza said the Airport Board voted to recommend the City Council approve the purchase for the Kubota mower. After some discussion, Councilmember Don Mueller moved to approve the purchase of a Lazer DS Series 60" Kubota Diesel with rear discharge and suspension seat in the amount of \$15,540.00 for use at the Wharton Regional Airport. Councilmember Karen Schulz seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider The Texas Colorado River Floodplain Coalition:

- A. Resolution:** A resolution of the Wharton City Council approving an Interlocal Cooperation Agreement between the City of Wharton and the Texas Colorado River Floodplain Coalition and authorizing the Mayor of the City of Wharton to execute said agreement.
- B. Resolution:** A resolution of the Wharton City Council and the Texas Colorado River Floodplain Coalition to appoint members of the Executive and Technical Committees of the Texas Colorado River Floodplain Coalition.

City Manager Garza presented a copy of the email January 30, 2013 from Ms. Karen Baskin, Executive Office and Mr. Mickey Reynolds, Executive Director of the Texas Colorado River Floodplain Coalition (TCRFC) providing a copy of the two items listed above. City Manager Garza stated that the TCRFC provided important mapping services, Hazard Mitigation Grant Program (HMGP) services by assisting in the development of the City's HMGP Mitigation Plan, which was approved by FEMA, and other services. After some discussion, Don Mueller moved to approve City of Wharton Resolution No. 2013-13 and City of Wharton Resolution No. 2013-14, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2013-13**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPOINTING MEMBERS OF THE EXECUTIVE AND TECHNICAL COMMITTEES OF THE TEXAS COLORADO RIVER FLOODPLAIN COALITION.**

**WHEREAS**, the City of Wharton has agreed to participate in the Texas Colorado River Floodplain Coalition; and

**WHEREAS**, the Interlocal Agreement creating the Texas Colorado River Floodplain Coalition provided for each participating community to appoint representatives to the Executive and Technical Committees of the Coalition.

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

**Section I.** Appoints the following City of Wharton representatives to serve on two committees, one executive and one technical, to carry out the duties and responsibilities of these committee members as provided when the Interlocal Agreement creates the Texas Colorado River Floodplain Coalition; and

<i><b>Executive Committee</b></i>	<i><b>Technical Committee</b></i>
Elected Officials	EMC/FPA
<u>Domingo Montalvo, Jr.</u> <u>Official</u> (Primary Member)	<u>Ronnie Bollom, CFM, Building</u> (Primary Member)
<u>Karen Schulz</u> (Alternate Member)	<u>Carter Miska, Public Works Director</u> (Alternate Member)

**Section II.** Assures the other committee members that the above representatives will strive to diligently represent the City and will faithfully attend and contribute to the scheduled working committee meetings of the Coalition.

**NOW THEREFORE, on this the 11<sup>th</sup> day of February 2013, in a meeting of the City Council of Wharton, Texas, duly convened and acting in its capacity as governing body of the City of Wharton, on motion of Councilmember Terry David Lynch seconded by Councilmember Al Bryant, duly put and carried, this Resolution is hereby adopted.**

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

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**PAULA FAVORS**

City Secretary

**CITY OF WHARTON  
RESOLUTION NO. 2013-14**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF WHARTON AND THE TEXAS COLORADO RIVER FLOODPLAIN COALITION.**

**WHEREAS,** an Interlocal Agreement between the City of Wharton, Texas Colorado River Floodplain Coalition and other cities, counties, special districts and other legally constituted political subdivision of the State of Texas relating to the creation and implementation of the Texas Colorado River Floodplain Coalition for the pursuit of

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common goals for the lower Colorado River basin including flood protection and damage reduction and other appropriate floodplain management goals; and

**WHEREAS**, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute an interlocal agreement effective February 11, 2013 between the City of Wharton and the Texas Colorado River Floodplain Coalition.

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

**Section I.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute an interlocal agreement between the City of Wharton and the Texas Colorado River Floodplain Coalition.

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

**Passed, Approved, and Adopted** this 11<sup>TH</sup> day of February 2013.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

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**PAULA FAVORS**  
City Secretary

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

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

- A. Holiday Light Decoration Chairman.
- B. Mayor's Committee on People with Disabilities.

City Manager Andres Garza, Jr. stated that each of the committees listed above had one (1) vacancy respectively. City Manager Garza said the City Council could consider possible appointments to fill the vacancies. After some discussion, no action was taken.

The fifteenth item on the agenda was to review and consider City Council Boards, Committees and Commissions reports:

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- A. Wharton Economic Development Corporation meetings held January 21, 2013 and January 22, 2013.
- B. Wharton Regional Airport Board meeting held February 5, 2013.
- C. City Council Finance Committee meeting held February 7, 2013.

After some discussion, no action was taken.

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

The meeting adjourned at 7:28 p.m.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**Don Mueller**  
**Mayor Pro-Tem**

**ATTEST:**

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**Paula Favors**  
**City Secretary**