

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
JANUARY 25, 2010**

Mayor David W. Samuelson declared a Regular Meeting duly open for the transaction of business at 7:02 P.M. Councilmember V. L. Wiley, Jr. led the opening devotion and then Mayor David W. Samuelson led the pledge of allegiance.

Councilmember's present were: Mayor David W. Samuelson, Councilmembers V. L. Wiley, Jr., Lewis Fortenberry, Jr., Terry David Lynch, Don Mueller, Domingo Montalvo, Jr., and Jeff Gubbels.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Olmeda, Assistant to City Manager Jackie Jansky, Public Works Director Carter Miska, Community Services Director Jo Knezek, and City Attorney Paul Webb.

Visitors present were: Barry Halvorson with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Carlos Cotton with Jones & Carter, Janet Goings, and Tammy Sewell.

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

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

The fourth item on the agenda was Wharton Moment. Councilmember Domingo Montalvo, Jr. stated that he attended the LCRA Coalition Meeting and was advised that the House requested \$15 million in the budget for the flood reduction project; however, the budget was not approved as of this date. No action was taken.

The fifth item on the agenda was to review and consider the City of Wharton Financial Report for the month of December 2009. Finance Director Joyce Vasut presented the financial report for the month of December 2009, which was at 25% or three month into the fiscal year. Mrs. Vasut stated that the total ad valorem taxes collected were \$272,772 and the sales tax for the month of November 2009 was \$118,143 with \$78,762 to the City and \$39,381 to WEDC. She further stated the TexPool balance for December was \$49,132.53 with an average monthly yield of 0.2090%. The Prosperity Bank balance for December 2009 was \$530,759.47 with an average monthly yield of 0.25%. She stated that other investments included \$2,649.11 at TexasGulf Federal Credit Union in the debt fund, \$252,807.92 at Capital One Marketing 2%; and Prosperity

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Bank \$1,000,000 3 months at .50% interest, \$1,500,000 6 month at 1% interest, and \$250,000 1 year at 1.25% interest. After some discussion, Councilmember Don Mueller made a motion to approve the City of Wharton Financial Report for the month of December 2009. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the recommendation by the Planning Commission for City Council approval of the request by Mr. Gary Hmaidan for approval of the preliminary/final plat of HQ Properties Subdivision being a replat of a portion of a 2.820 Acre Tract and a 1.767 Acre Tract situated in the William Kincheloe League, Abstract 38, Wharton County, Texas. Assistant to City Manager Jackie Jansky presented a copy of the Planning Commission Application for Re-plat submitted by Mr. Gary Hmaidan. She also presented a copy of the plat and a drawing indicating the location of the property and the neighboring property owners. She said that HQ Properties owned the Reserve 2.730 Ac. and 1.767 Ac. Tracts located in the William Kincheloe League, Abstract 38. She said that Mr. Hmaidan was wishing to create three lots, one of which would be for a business relocation on Lot 1. She said that Lot 1 and Lot 2 was in the process of being sold. She said that the Planning Commission met January 19, 2010 and voted to recommend the City Council consider approving the replat. She said that access would be from Fulton Street, which Lots 1 and 2 would share access. After some discussion, Councilmember Don Mueller made a motion to approve the request by Mr. Gary Hmaidan for approval of the preliminary/final plat of HQ Properties Subdivision being a replat of a portion of a 2.820 Acre Tract and a 1.767 Acre Tract situated in the William Kincheloe League, Abstract 38, Wharton County, Texas. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider the request by Ms. Janet Goings, Ms. Tami Sewell and Ms. Nikki Araguz on behalf of the Monterey Square Merchants to hold the Merchant's Market in Guffey Park on the first Saturday of each month beginning in February 2010. City Manager Andres Garza, Jr. presented a copy of the letter received January 21, 2010 from Ms. Janet Goings, Ms. Tami Sewell and Ms. Nikki Araguz on behalf of the Monterey Square Merchants who were requesting the City Council's approval to hold the Merchant's Market event in Guffey Park on the first Saturday of each month beginning in February 2010. Ms. Tammy Sewell and Mrs. Janet Goings addressed the City Council and stated that the event would be incorporated with the Farmers Market and the Merchant's Market would not participate during the Freedom Fest event. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Ms. Janet Goings, Ms. Tami Sewell and Ms. Nikki Araguz on behalf of the Monterey Square Merchants to hold the Merchant's Market in Guffey Park on the first Saturday of each month beginning in February 2010. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider the 2010 City of Wharton Election:

A. **Ordinance:** An ordinance ordering a City Officer's Election to be held as a joint election with Wharton County Elections Department for the purpose of electing the positions of Mayor and 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.

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Una ordenanza ordenando una elección de funcionarios de la ciudad a celebrarse de forma conjunta con el departamento de elecciones alcalde y del condado de Wharton con el propósito de elegir puestos de concejales; asignando la fecha, Horas, Y 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 Secretary Lisa Olmeda presented a copy of the draft ordinance calling for a City Officers Election to be held as a joint election with Wharton County Elections Department for the purpose of electing the positions of Mayor and 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. She stated that the first day for filing was February 6, 2010, with the deadline to file an application for place on ballot was March 8, 2010. She stated that early voting would be April 26-30, 2010 for the hours of 8:00 a.m. – 5:00 p.m. and May 3-4, 2010 for the hours of 7:00 a.m. - 7:00 p.m. She stated that the election would be May 8, 2010 for the hours of 7:00 a.m. - 7:00 p.m. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve Ordinance No. 2010-01, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2010-01**

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 MAYOR AND 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:

Mayor – At Large
Councilmember - District No. 2
Councilmember - District No. 4
Councilmember at Large - Place No. 6

Date

An election shall be held in the City of Wharton, Texas on **May 8, 2010**.

Time

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

Location

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

Notice of City Officers' Election

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

The Mayor shall also give notice of the election by causing a copy of the notice of election to be posted not later than the **21st day** before election day on the bulletin board located at the City Hall, 120 East Caney, Wharton, Texas and used for posting notices of meetings of the Wharton City Council. The notice shall include the location of the polling place.

Eligibility to Vote

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

Candidate Names

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

Filing

Candidates must file applications for a place on the ballot with the City Secretary of the City of Wharton, Texas beginning on **February 6, 2010** and continuing through **5 p.m.** on **March 8, 2010**. A declaration of write-in candidacy must be filed not later than 5:00 P.M. on

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March 15, 2010, the 5th day after an application for a place on the ballot is required to be filed that is on Saturday, March 13, 2010; therefore, the date is moved to Monday, March 15, 2010.

Candidates for City Councilmember must designate the position filed for either Mayor at Large, Councilmember District No. 2, Councilmember District No. 4, or Councilmember at Large - Place No. 6.

Drawing for Ballot Positions

On March 11, 2010 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: Magdalena Rodriguez
Alternate Presiding Judge: Joyce Baker

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

Early Voting

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

The early voting by personal appearance for the above-designated election shall take place at the Wharton Community/Civic Center at 1924 North Fulton Street, Wharton, Texas. The place for early voting shall remain open on each day that is not a Saturday, Sunday, or an official state holiday, between the hours of **8 a.m.** and **5 p.m.**, beginning on **April 26, 2010** and continuing through **April 30, 2010; Monday, May 3, 2010** and continuing through **Tuesday, May 4, 2010** 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 8, 2010 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 8, 2010 General Election shall be paid \$8.50 per hour.

The Election Clerk(s) for the May 8, 2010 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 11th day after the election day." The period for official canvass shall be from May 11 - 19, 2010. 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, 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 25th day of January, 2010.

CITY OF WHARTON, TEXAS

ATTEST:

By: _____
David W. Samuelson
Mayor

Lisa Olmeda
City Secretary

APPROVED AS:

Paul Webb
City Attorney

CIUDAD DE WHARTON, TEXAS

ORDENANZA N° 2010-01

UNA ORDENANZA ORDENANDO UNA ELECCIÓN DE FUNCIONARIOS DE LA CIUDAD A CELEBRARSE DE FORMA CONJUNTA CON EL DEPARTAMENTO DE ELECCIONES ALCALDE Y 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:

Alcalde – en Grande

Concejal - Distrito No. 2

Concejal - Distrito No. 4

Concejal de forma irrestricta - Posición No. 6

Fecha

Se celebrará una elección en la ciudad de Wharton, Texas el 8 de mayo de 2010.

Horas

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

Lugar

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

Aviso de elección de oficiales municipales

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

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

Elegibilidad para votar

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

Nombres de los candidatos

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

Período de presentación

Los candidatos deben presentar sus solicitudes para un lugar en la balota a la Secretaria Municipal de la Ciudad de Wharton, Texas a partir del **6 de febrero de 2010** y continuando hasta las 5:00 de la tarde del **8 de marzo de 2010**. La declaración de solicitud de candidato anotado se debe presentar no más tarde de las 5:00 de la tarde del **15 de marzo de 2010**, el quinto (5º) día después de que se requiere la solicitud para un lugar en la balota es el sábado 13 de marzo de 2010, así pues la fecha se cambia al lunes 15 de marzo de 2010.

Los candidatos para concejales municipales deben designar el puesto al que se están postulando, ya sea para Alcalde – en Grande, concejal del Distrito No. 2, concejal del Distrito No. 4, o concejal de forma irrestricta - Posición No. 6.

Sorteo para los lugares en las balotas

El 11 de marzo de 2010, 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: Magdalena Rodríguez

Juez presidente Alterno: Joyce Baker

El Departamento de Elecciones del Condado de Wharton dispondrá el entrenamiento. El Departamento de Elecciones del Condado de Wharton es responsable de notificar al juez presidente y al juez presidente alterno de los requisitos del Subcapítulo C del Capítulo 32 del Código de Elecciones de Texas, y tomará las medidas necesarias para asegurar que el juez presidente y el juez presidente alterno nombrados sean elegibles para desempeñar el cargo. El juez presidente, con la asistencia del WCED, será responsable de asegurar la elegibilidad de cada secretaria nombrada para asistir al juez presidente a realizar la elección.

Votación anticipada

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

La votación anticipada por comparecencia personal para la elección nombrada aquí arriba se realizará en la comunidad de Wharton, en el Centro Cívico, 1924 North Fulton Street, Wharton, Texas. El lugar de votación anticipada permanecerá abierto cada día que no sea sábado, domingo, o fiesta estatal oficial, desde las **8:00 de la mañana hasta las 5:00 de la tarde**, comenzando el **26 de abril de 2010** y continuando hasta el **30 de abril de 2010**; el lunes 3 de mayo de 2010 y continuando el martes, **4 de mayo de 2010** 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 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 8 de mayo de 2010 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 8 de mayo de 2010 será pagado \$8.50 por hora.

Los secretarios de la elección para la elección general del 8 de mayo de 2010 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 11 hasta el 19 de mayo de 2010. Los oficiales que realicen la elección deberán entregar los resultados de ella al alcalde de esta ciudad, según lo requiere el Código de Elecciones de Texas.

Orden

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

Divisibilidad

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

Promulgación y Aprobación

PASADO Y APROBADO por El Consejo Municipal de la Ciudad de Wharton, Texas este día 25 de enero de 2010.

CIUDAD DE WHARTON, TEXAS

ATESTIGUACIÓN:

Por: _____

David W. Samuelson
Alcalde

Por: _____

Lisa Olmeda
Secretaria Municipal

APROBADO:

Paul Webb
Abogado Municipal

Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

B. Resolution: A resolution of the Wharton City Council approving a Joint Election Agreement with the Wharton County Elections Administrator between Wharton County and the City of Wharton and authorizing the Mayor of the City of Wharton to execute the agreement. City Secretary Lisa Olmeda presented a copy of the resolution approving a Joint Election Agreement and Election Service Contract with Wharton County for the May 8, 2010 election. She stated that the election costs would be split with all other entities having an election. After some discussion, Councilmember Terry David Lynch made a motion to approve Resolution No. 2010-03, which read as follows:

CITY OF WHARTON
RESOLUTION NO. 2010-03

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A JOINT ELECTION AGREEMENT WITH WHARTON COUNTY FOR THE CITY ELECTION; AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENTS.

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

WHEREAS, The City of Wharton and Wharton County wishes to be bound by the conditions of the agreement; and

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

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

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

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

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

Passed, Approved, and Adopted this the 25th day of January 2010.

CITY OF WHARTON

By: _____

DAVID W. SAMUELSON
Mayor

ATTEST:

LISA OLMEDA

City Secretary

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

The ninth item on the agenda was to review and consider a resolution approving a professional engineering services agreement between the City of Wharton and Jones & Carter, Inc. for the City of Wharton Ahldag Addition Sanitary Sewer System Improvement Project, TxCDBG Contract No. R729710 and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. stated that the City Council Consultant Selection Committee met on January 20, 2010 with Mr. Carlos Cotton, P.E. to negotiate the professional engineering services contract for the City of Wharton Ahldag Addition Sanitary Sewer System Improvement Project, TxCDBG Contract No. R729710. He said that after negotiations with Mr. Cotton, the Committee voted to recommend the engineering services contract be awarded in the amount of \$60,000 for the work outlined in the Performance Statement. He said that should additional funds be available, then the engineering contract could be supplemented at a later time. He then presented a copy of the memorandum dated January 20, 2010 from the Committee providing their recommendation, a draft copy of the agreement and a draft copy of the resolution approving the agreement. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2010-04, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2010-04**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A PROFESSIONAL ENGINEERING SERVICES AGREEMENT BETWEEN THE CITY OF WHARTON AND JONES & CARTER, INC. FOR THE FOR THE CITY OF WHARTON AHLDAG ADDITION SANITARY SEWER IMPROVEMENT PROJECT, TXCDBG CONTRACT NO. R729710 AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, On November 9, 2009, the City of Wharton requested proposals/qualifications from engineering firms for consideration by the City Council Consultant Selection Committee for the City of Wharton Ahldag Addition Sanitary Sewer System Improvement Project, TxCDBG Contract No. R729710; and

WHEREAS, The City Council Consultant Selection Committee conducted the procurement process in accordance with the approved guidelines and criteria for procuring an engineering firm; and

WHEREAS, On January 20, 2010, the Committee negotiated a lump sum contract amount of \$60,000 with Jones & Carter, Inc. to conduct the professional engineering services for said project; and

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WHEREAS, The Wharton City Council wishes to approve the agreement between the City of Wharton and Jones & Carter, Inc.; and

WHEREAS, The City of Wharton and Jones & Carter, Inc. wishes to be bound the conditions outlined in the contract; and

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

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

Section I: The Wharton City Council hereby approves a professional engineering services agreement between the City of Wharton and Jones & Carter, Inc. in the amount of \$60,000 for the Ahldag Addition Sanitary Sewer Improvement Project, Office of Rural Community Affairs, Texas Community Development Block Grant Program, TxCDBG Contract No. R729710.

Section II: The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute the agreement.

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

Passed, Approved and Adopted this 25th day of January 2010.

CITY OF WHARTON, TEXAS

By: _____
DAVID W. SAMUELSON
Mayor

ATTEST:

LISA OLMEDA

City Secretary

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

The tenth item on the agenda was to review and consider the City of Wharton Water Storage System:

A. City Council approval for the City of Wharton to Request Qualifications for Maintenance of the City of Wharton Water Storage System.

City Manager Andres Garza, Jr. stated that on December 11, 2009, the City Council Public Works Committee discussed the City's water elevated and ground storage tanks concerning long term maintenance. He said that he had spoken with Utility Service Company representatives whose company provide maintenance of these types of facilities. He said that the Committee requested the City Staff to explore this type of long term maintenance agreement to determine if

it was feasible for the City's water system. He said that the City owned three (3) elevated water storage tanks. He said that the one on Cloud Street had been approved by the City Council for dismantling. He said that the City owned four (4) ground storage tanks, which one was located on Valhalla Drive and the three (3) others were located on Alabama Road. He said that the 2009 bond issue allocated funds to refurbish two (2) of the tanks; however, all four (4) ground storage tanks were in need of refurbishing. He said that companies such as Utility Service Company, provided the refurbishing, yearly maintenance and inspection. He said that they also provided the financing of these improvements over a specific time period. He said that the City Staff had found in its research that this could be beneficial to the City, since it would allow for predicable costs in the future and asset protection. He said that the City's six (6) water storage tanks had an estimated replacement value of approximately \$3.5 to \$4 million. He stated that the 6 tanks could service up to 5,200 connections. He stated that the City of Wharton currently had 3,100 connections. He then said that on January 20, 2010 the Public Works Committee voted to recommend the City Council consider authorizing the City Staff to request qualifications from firms who provided this type of service. After some discussion, Councilmember Jeff Gubbels made a motion to approve the City Staff request qualifications for the maintenance of the City of Wharton Water Storage System. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

B. Resolution: A resolution of the Wharton City Council designating a Consultant Selection Committee and Selection Criteria for the procurement of Professional Services for the City of Wharton Water Storage Tank Maintenance Project.

City Manager Andres Garza, Jr. stated that with City Council approval to request qualifications from companies who provided the water storage tank maintenance services, the City Council should also consider designating a Consultant Selection Committee to conduct the procurement process when considering a potential company. He then presented a draft resolution designating a consultant selection committee and selection criteria for the procurement of professional services for the City of Wharton Water Storage Tank Maintenance Project. After some discussion, Councilmember Jeff Gubbels made a motion to approve Resolution No. 2010-, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2010-05**

**A RESOLUTION OF THE WHARTON CITY COUNCIL DESIGNATING A
CONSULTANT SELECTION COMMITTEE AND SELECTION CRITERIA FOR THE
PROCUREMENT OF PROFESSIONAL ENGINEERING SERVICES FOR THE CITY OF
WHARTON WATER STORAGE SYSTEM MAINTENANCE PROJECT.**

WHEREAS, the Wharton City Council felt that it is in the best interest of the citizens of the City of Wharton to develop a maintenance program for the City of Wharton Water Storage Tanks; and

WHEREAS, the City of Wharton wishes to follow the State of Texas Procurement Process for Professional Services; and

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WHEREAS, the City Council wishes to designate a consultant selection committee (Attached A) for the procurement of professional engineering services the Water Storage Tank Maintenance Project; and

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

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

- a. The Texas Engineering Practice Act,
- b. Procurement Standards, Uniform Grant and Contract Management Standards,
- c. Proposal Rating Sheet for Engineering Services.

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

Section I: The City Council hereby designates a consultant selection committee for the procurement of professional engineering services for the Water Storage Tank Maintenance Project.

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

Passed, Approved and Adopted this 25th day of January 2010.

CITY OF WHARTON, TEXAS

By: _____
David W. Samuelson
Mayor

Attest:

LISA OLMEDA
City Secretary

EXHIBIT "A"
DESIGNATION OF THE CITY OF WHARTON'S
CONSULTANT SELECTION COMMITTEE

The City Council of the City of Wharton, Texas, hereby designates the following named individuals as the Consultant Selection Committee, for the procurement of professional services for the City of Wharton Water Storage Tank Maintenance Project. The committee is authorized to determine selection criteria, review qualifications and proposals of candidate firms, conduct interviews, if necessary, and select a firm for the award of the design contract, based on a consensus ranking by the committee members. The decision of the selection committee shall be

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submitted to the City Council for final approval.

Name	Title (if appropriate):
<u>Domingo Montalvo, Jr.</u>	<u>City Councilmember</u>
<u>Don Mueller</u>	<u>City Councilmember</u>
<u>V. L. Wiley, Jr.</u>	<u>City Councilmember</u>
<u>Andres Garza, Jr.</u>	<u>City Manager</u>
<u>Carter Miska</u>	<u>Public Works Director</u>

The City of Wharton, Texas, has caused this to be duly executed in its name, this 25th day of January 2010.

City of Wharton, Texas

By: _____

David W. Samuelson, Mayor

Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The eleventh item on the agenda was **Executive Session:** City Council may adjourn into an Executive Session in accordance with Section 551.072 of the Government Code, Revised Civil Statutes of Texas. Final action, decision or vote, if any with regard to any matter considered in Executive Session shall be made in Open Meeting.

A. Discussion: Acquisition of property for the Road Extension Project between FM 1301 and County Road 235.

Mayor David W. Samuelson adjourned into executive session at 7:29 p.m.

Mayor David W. Samuelson returned to open meeting at 7:50 p.m.

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

A. Review & Consider: Acquisition of property for the Road Extension Project between FM 1301 and County Road 235.

Mayor David W. Samuelson stated that no action would be taken.

The thirteenth item discussed on the agenda was to review and consider a status report on the City of Wharton projects. City Manager Andres Garza, Jr. presented a copy of the memorandum dated January 25, 2010 providing a status report on the City of Wharton projects, which read as follows:

FLOOD REDUCTION (LEVEE) PROJECT

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

The project was continuing to move forward. In regards to the pre-construction, engineering and design (PED) aspect of the project, the LCRA Board had approved their continuing as sponsor of the PED. On September 28, 2009, the Wharton City Council approved to amend the agreement between the City of Wharton and the Lower Colorado River Authority (LCRA) for the Lower

Colorado River Basin Phase I – Texas, City of Wharton Flood Damage Reduction Project by amending the project scope to reflect the partial development of the project design and to increase the project cost by \$37,000. On January 22, 2010, the City of Wharton received the contracts for second amendment to the contract for execution by the Mayor.

DRAINAGE:

1. Santa Fe Outfall Channel.

Excavation continued on the Santa Fe Outfall Channel. Weather had slowed progress to some degree. Approximately 10,650 feet of channel had been cut down to the design flow line. Final slopes and dimensions would still need to be excavated, however the ditch had positive drainage from the Old Lane City Road area to FM 1299. Survey crews had collected topographic data in the Mahan/Kincaid neighborhood, Stavena Addition, and along Highway 60. This data would be analyzed to determine how to route water away from the City and into the Santa Fe Outfall Channel. In an effort to provide flood relief to the Price Dr. neighborhood, Linwood Dr. neighborhood, and the Briar Ln. neighborhood the Public Works Department had installed temporary emergency spillways into the Santa Fe Channel. If the City experienced a major storm event such as a hurricane or tropical storm, the spillways would greatly reduce the risk of flooding in those neighborhoods. The Public Works Department and the County would continue to excavate the remainder of the channel weather permitting.

WATER/SEWER IMPROVEMENTS:

1. Ahldag Addition Sanitary Sewer Project - TxCDBG Contract No. 728459.

The Texas Department of Rural Affairs had approved the contract amendment. The City Staff was awaiting on the contracts for execution.

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

The Wharton City Council would consider the professional engineering services contract with Jones & Carter, Inc. in the amount of \$60,000 for the work described in the City of Wharton contract performance statement. Also, the City Staff had submitted the required environmental assessment to the appropriate agencies in accordance with the contract.

3. Vahalla Water Well.

The Public Works Department placed the Vahalla water well back on line the week of April 27, 2009. Polyphosphates were currently being injected into the water system to control red or discolored water. As of this date, no red water had been reported. The Public Works Department would continue to monitor and test the water to ensure quality. If the readings continued to be at or below levels recommended by TCEQ over the next few months, the Public Works Department would discontinue the injection of polyphosphates.

4. Water Storage Tank Maintenance Program.

On January 25, 2010, the City Council will consider approving the City Staff to request qualifications for the water storage tank maintenance program and to designate a consultant selection committee.

STREET IMPROVEMENTS

1. Road Extension Project between FM 1301 and County Road 235/FM102.

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City Staff, Jones & Carter, Inc., and The Ruiz Companies had completed and submitted a grant application to the U.S. Department of Transportation under the Tiger Discretionary Grant Program. The U.S. Department of Transportation would evaluate all applications and announce projects they had selected no later than February 17, 2010.

OTHER PROJECTS:

1. Fire Station Improvements.

Some minor changes were being made to the handicap access areas. This project was nearing completion.

2. Ahldag Drainage Outfall Channel Bridge Project.

A meeting had been scheduled with the Hawes Family to determine the location of the proposed bridge on January 25th. The City had received the executed construction contracts from Wakefield Bridge and was awaiting the return of the engineering services contract from Wilson Engineering Services, Inc.

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

The fourteenth item on the agenda was to review and consider the City Council Committees, Boards and Commission's Reports:

- A. Wharton Economic Development Corporation meeting held December 21, 2009.
- B. Planning Commission meeting held January 19, 2010.
- C. Consultant Selection Committee meeting held January 20, 2010.
- D. City Council Public Works Committee meeting held January 20, 2010.

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

The fifteenth item on the agenda was to review and consider the City Manager's Reports:

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

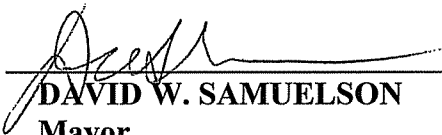
City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

The sixteenth item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made a motion to adjourn. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

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The meeting adjourned at 7:52 p.m.

CITY OF WHARTON, TEXAS

By: 
DAVID W. SAMUELSON
Mayor

ATTEST:



LISA OLMEDA
City Secretary

