

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
JUNE 23, 2003**

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:00 p.m. Councilmember Don Mueller led the opening devotion and then Mayor Bryce D. Kocian led the pledge of allegiance.

Councilmembers present were: Mayor Bryce D. Kocian, Councilmembers V. L. Wiley, Jr., Darryl Darnell, Ken Freese, Don Mueller, and Domingo Montalvo, Jr.

Councilmember absent was: None.

Staff members present were: City Manager, Andres Garza, Jr., Finance Director Joyce Vasut, Deputy City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Building Official Ronnie Bollom, EMS Director John Kowalik, Public Works Director Phil Bush, Community Services Director Jo Knezek, Code Enforcement Officer Jimmy Nickolyn, Fire Chief David Copeland, and City Attorney Paul Webb.

Visitors present were: Ron Sanders Wharton Journal-Spectator, David Schroeder with WEDCo, Lewis Fortenberry, Wayne Adam, Johnnie Roberts, Carlos Cotton, Andy Kirkland, Anthony Rachunek, Magadlena Rodriguez, Marshal Francis, Ray Linsinen, Eugene Gray, Walter Garrett, Wortham Smith, Damon Parker, Bud Love, Eunice Jackson and Anopawuia Spinks .

The third item on the agenda was Public Comments. Mr. Johnnie Roberts addressed the City Council and publicly thanked the City Manager and City Staff for working with CenterPoint for electrical services at the courthouse square for the Juneteenth Celebration. He then publicly thanked the City officials for their participation in the parade.

Mr. Eugene Gray addressed the City Council and stated that it bothers him that he resides in Wharton, four blocks from the courthouse and has to vote in El Campo for Wharton County elections.

Mayor Bryce D. Kocian presented a Certificate of Recognition to Mr. Eugene Gray to honor him on his 98<sup>th</sup> Birthday.

Mr. Lewis Fortenberry addressed the City Council and invited everyone to the Wharton County Freedom Festival to be held on June 27-28, 2003. He stated that the Bar-B-Que Cook Off would be held on Friday, June 27, 2003.

Mr. I.O. Coleman, Jr. addressed the City Council and publicly congratulated the new Mayor Bryce D. Kocian and stated that to keep in mind the staff and employees. He then stated that he was informed that the Utility Company would not charge for the installation of the street lights, only a monthly service fee. Councilmember Darryl Darnell requested that Street Lights be placed on the Regular City Council Meeting to be held on July 14, 2003. Mr. Coleman also requested the City Council consider Rivers Glover to fill the vacant Council position, since he had shown an interest at the May 2003 election. No action was taken.

The fourth item on the agenda was the Wharton Moment. Councilmember Ken Freese publicly commended the Wharton Police Department, City of El Campo Police Department, and Wharton County Sheriff's Department on the successful drug raid that recently took place as stated in the Wharton Journal Spectator.

Mayor Bryce D. Kocian publicly commended Police Chief Tim Guin from graduating from the FBI Academy.

Councilmember V. L. Wiley, Jr. publicly commended Garland S. Novosad for his time served as the City of Wharton Mayor. No action was taken.

The fifth item on the agenda was to review and consider a letter of resignation dated June 9, 2003 from Mayor Garland S. Novosad. City Manager Andres Garza, Jr. presented a copy of the letter of resignation dated June 9, 2003 from Mayor Garland S. Novosad. Councilmember Don Mueller publicly commended Garland S. Novosad for the good deeds he had completed for the City of Wharton. After some discussion, Councilmember Don Mueller made a motion to accept the resignation as Mayor from Garland S. Novosad. Councilmember Domingo Montalvo, Jr. seconded the motion. Councilmembers Ken Freese, Don Mueller, and Domingo Montalvo, Jr. voted for the motion. Councilmembers Darryl Darnell and V. L. Wiley, Jr. voted against the motion. The motion carried.

The sixth item on the agenda was to review and consider City of Wharton City Council:

A. Appointment of Mayor Pro-Tem.

City Manager Andres Garza, Jr. presented a copy of the letter dated June 17, 2003 from City Attorney Paul Webb, which was mailed to the City Council on June 17, 2003. After some discussion, Councilmember Ken Freese made a motion to appoint Councilmember Don Mueller as Mayor Pro-Tem. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

B. Appointment to vacant City Council position.

City Manager Andres Garza, Jr. presented a copy of the letter dated June 17, 2003 from City Attorney Paul Webb, which was mailed to the City Council on June 17, 2003. Councilmember Don Mueller stated that the City Council should seek who would be available and willing to serve as Councilmember. Councilmember V. L. Wiley, Jr. recommended Rivers Glover. Mayor Bryce D. Kocian informed the City Council to submit the names for consideration in writing to City Manager Andres Garza, Jr. or himself. No action was taken.

The seventh item on the agenda was to review and consider City of Wharton Financial Report for the month of May 2003. Finance Director Joyce Vasut presented the financial report for the month of May 2003, which was at 67% or eight months into the fiscal year. Mrs. Vasut stated that the general fund revenues were at 72.08% and the expenditures were at 64.66%. The total ad valorem taxes collected were \$1,693,813. The sales tax for the month of April 2003 was \$86,416 with \$57,611 to the City and \$28,805 to WEDCo. The TexPool balance for May 2003 was \$2,308,158.87 with an average monthly yield of 1.2734%. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the financial report for the month of May 2003 as presented. Councilmember Don Mueller seconded the motion. All voted in favor.

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

A. **Resolution:** A resolution authorizing signators on the City's bank depository contract with Prosperity Bank. City Manager Andres Garza, Jr. presented a copy of the resolution,

which would add Mayor Bryce D. Kocian as an authorized signator on the City's bank card with Prosperity Bank. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2003-55, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 55**

**Resolved** that the City Council of the City of Wharton, Texas hereby authorizes the following officers of the City of Wharton to the City's bank depository contract with Prosperity Bank:

1.     Andres Garza, Jr., City Manager  
\_\_\_\_\_  
Signature
  
2.     Joyce Vasut, Finance Director  
\_\_\_\_\_  
Signature
  
3.     Bryce D. Kocian, Mayor  
\_\_\_\_\_  
Signature

Each disbursement of funds from any City of Wharton account with Prosperity Bank shall require any two original signatures.

That effective June 23, 2003, the above listed City officials are the authorized signators to the City of Wharton's accounts.

That this resolution shall become effective June 23, 2003.

**PASSED AND APPROVED** by the City Council of the City of Wharton, Texas this 23rd day of June 2003.

**CITY OF WHARTON**

By: \_\_\_\_\_  
Bryce D. Kocian  
Mayor

**ATTEST:**

\_\_\_\_\_  
Joyce Vasut  
City Secretary

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

**B. Resolution:** A resolution authorizing signators on the City's Texas Local Government Investment Pool (TEXPOOL) accounts. City Manager Andres Garza, Jr. presented a copy of the resolution, which would add Mayor Bryce D. Kocian as an authorized signator on the accounts with TEXPOOL. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2003-56, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 56**

**WHEREAS**, the City Council of the City of Wharton, Texas (the "Participant") is a local government of the State of Texas and is empowered to delegate to a public funds investments pool the authority to invest funds, to act as a custodian of investments purchased with local investment funds; and

**WHEREAS**, it is in the best interest of the Participant to invest local funds in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

**WHEREAS**, the Texas Local Government Investment Pool ("TEXPOOL"), a public funds investment pool, was created on behalf of entities whose investment objective in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

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

Section I. That the individuals, whose signatures appear below, are authorized representative of the Participant and are each hereby authorized to transmit funds for investment in TexPool and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.

List of the authorized representatives of the Participant. These individuals will be issued P.I.N. numbers.

1. Name: **Bryce D. Kocian** Title: **Mayor**

Signature \_\_\_\_\_

2. Name: **Andres Garza, Jr.** Title: **City Manager**

Signature \_\_\_\_\_

3. Name: **Joyce Vasut** Title: **Finance Director**

Signature \_\_\_\_\_

List the name of the Authorized Representative listed above that will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

Name: **Joyce Vasut**

Section II. That this resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant, and until TexPool receives a copy of any such amendments or revocation.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of June 2003.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_

**BRYCE D. KOCIAN**

Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**

City Secretary

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

The ninth item on the agenda was to review and consider 701 Mattie Street, Property Owner – Ms. Anopawuia Spinks. City Manager Andres Garza, Jr. informed the City Council that during the June 9, 2003 regular City Council meeting, Ms. Anopawuia Spinks addressed the City Council during Public Comments regarding her property located at 701 Mattie Street. At the meeting, Ms. Spinks stated that she received an invoice for approximately \$2,000 from the City for mowing her lot in April 2003. She said that she could not pay the invoice and had requested the City to send her a fair invoice. Mr. Garza also stated that the City of Wharton Code Enforcement Department received a written complaint and two verbal complaints regarding the property. After an investigation of the property was conducted, Code Enforcement Officer Jimmy F. Nickolyn issued a certified letter to Ms. Spinks which included a Violation Notice, requesting that she bring her property into compliance with City Code within ten days of the receipt of the letter. Ms. Spinks did not respond to the request, therefore, the Public Works Department took the necessary measures to clear and maintain the lot. He then presented a copy of the detailed invoice indicating the cost of the equipment and labor used to clear the lot, and photographs taken of the lot prior to and after the clean-up had taken place. Councilmember V. L. Wiley, Jr. asked if the City followed the proper procedures. City Attorney Paul Webb stated that Mrs. Spinks was sent a letter regarding the violation. Code Enforcement Officer Jimmy Nickolyn informed the City Council that he sent Mrs. Spinks an itemized statement. He stated that the property had blood weeds and trees seven feet tall and snakes coming from the property. He stated that previously the property was mowed about forty-five to fifty feet away from the property line. Councilmember Darryl Darnell asked if it was standard procedure for the City to send one letter and remove the violation within ten days. Mr. Nickolyn stated that the procedure was to send a letter to give the property owner ten days to comply, however if the property owner would not respond then the City would remove the violation. Councilmember Darryl Darnell asked if the City waits until a complaint would be received. Mr. I.O. Coleman, Jr. asked when would the lien be placed on the property. City Manager Andres Garza, Jr. stated as soon as the City Staff filed the lien at the courthouse. Mr. Coleman requested the City to extend the time in order for money to be raised to pay the invoice for the cleaning of the property. Mrs. Spinks

addressed the City Council and stated that no one had spoke to her and she had paid for mowing, however the forty-five to fifty feet was not mowed. She stated that she had paid someone to clean up the property, which had mattresses and other items that had to be removed. She stated that the property looked nice, but not nice enough for \$2,000. She stated the City needed to be fair, and she did not think justice had been done for her. City Manager Andres Garza, Jr. stated that City Staff was following the City ordinance. Councilmember Darryl Darnell stated that the City owned property also needs to be in compliance with the City ordinance. Mayor Bryce D. Kocian stated that Mrs. Spinks and I.O. Coleman, Jr. could meet with Mr. Garza to set up payment arrangements. After some discussion, no action was taken.

The tenth item on the agenda was to review and consider the Wharton Economic Development Corporation amendment to the 2002 – 2003 Budget. City Manager Andres Garza, Jr. presented a copy of the letter dated June 17, 2003 from Wharton Economic Development Corporation's (WEDCo) Executive Director David Schroeder regarding WEDCo's request for City Council consideration to amend its 2002 – 2003 Budget. He then presented a copy the amended budget which projects future projects and expenditures through year 2011. He stated if the City Council approved the budget amendment, WEDCo would hold a public hearing to discuss the budget amendment and projected project expenditures in a nine-year plan. Wharton Economic Development Corporation's (WEDCo) Executive Director David Schroeder informed the City Council that the Appropriations decreased from \$192,858 to \$179,358; Infrastructure increased from \$27,000 to \$31,000; Strategic Planning increased from \$12,000 to \$39,167; Marketing increased from \$39,900 to \$48,125; Municipal Facilities decreased from \$21,600 to \$17,100, and Business Development increased from \$248,916 to \$1,908,916. Mayor Bryce D. Kocian asked if WEDCo received an Attorney General Opinion for the budget to include nine year projections. Mr. Schroeder stated that the long range planning was conducted in order to be in compliance with the grandfather clause of House Bill 2912. He stated that the HB 2912 took effect on Friday, June 20, 2003 when it was signed, however WEDCo adopted the budget prior to the signing of the bill. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Wharton Economic Development Corporation amendment to the 2002 – 2003 Budget. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider Request for Variances by:

**A.** Mr. Marshall Francis, 815 North Richmond Road, Wharton, Block 40, Lot 6A for a 10-foot rear yard setback variance for the placement of a 24 x 56 modular building. City Manager Andres Garza, Jr. informed the City Council that the requirement for the rear yard setback was fifteen feet. He then presented a copy of Mr. Francis' application for variance. Mr. Marshall Francis addressed the City Council and stated that he was requesting a 10-foot rear yard setback variance for the placement of a 24 x 56 modular building to be in line with existing buildings on the property. After some discussion, Councilmember Darryl Darnell made a motion to approve the request by Mr. Marshall Francis, 815 North Richmond Road, Wharton, Block 40, Lot 6A for a 10-foot rear yard setback variance for the placement of a 24 x 56 modular building. Councilmember Don Mueller seconded the motion. All voted in favor.

**B.** Mr. Wortham Smith, The Villages of Wharton, County located at 7100 Highway 59, 32.486 acre tract of land in the A. Jackson Timber League, Abstract 34, Wharton County, Texas, for a 0-foot (zero) front yard setback variance for the placement of a house. City Manager Andres Garza, Jr. informed the City Council that Mr. Smith had placed the house

on the property in its location under the assumption that that portion of the property was in Wharton County and not the City's limits. He stated that the requirement for a front yard setback was twenty-five feet. He then presented a copy of Mr. Smith's application for variance. Mr. Wortham Smith addressed the City Council and stated that he was the developer of the Villages of Wharton County, which he had been working on the project for one year and was under the assumption that the property was in the county. He then presented copies of the City limit maps to the City Council for their review. He stated that he moved the Chamber of Commerce building on the property, which was placed on the property line. He stated that he was told that the building was in the City of Wharton after placement of the building. He requested City Council approve the variance for a 0-foot front yard setback variance since he had the building moved, setup and electrical services to the building. He stated that there was no adjacent property owners. Councilmember Don Mueller asked Mr. Smith if he had contacted Texas Department of Transportation. Mr. Smith stated that the building was in line with the electrical poles, which was inside the state right-of-way. He stated that front steps would not be constructed on the building, since the steps were on the side of the porch and a parking lot had been constructed. He stated that he would install a culvert when Texas Department of Transportation would approve the placement. After some discussion, Councilmember Don Mueller made a motion to table until Mr. Wortham Smith contacts Texas Department of Transportation for approval and then to submit a plat to the City of Wharton for consideration. Councilmember Darryl Darnell seconded the motion. All voted in favor.

C. Mr. and Mrs. John Wuthrich, 1803 Kelving Way Court, Kelving Way, Lot 1 for a 0-foot (zero) exterior side yard setback variance for the placement of a 26x27 carport. City Manager Andres Garza, Jr. informed the City Council that the requirement for a side yard setback variance was ten feet. He then presented a copy of Mr. and Mrs. Wuthrich's application for variance. Damon Parker with Parker Construction addressed the City Council and requested approval of a 0-foot exterior side yard setback for placement of a 26 x 27 carport for a Recreation Vehicle. He stated that on the northwest side of Hodges was an empty field. City Manager Andres Garza, Jr. asked if the water would drain onto the street or the property. Mr. Parker stated that water would drain into the property. Councilmember Darryl Darnell asked if there was a dedicated street behind the lot. City Manager Andres Garza, Jr. stated there was not a dedicated street. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Mr. and Mrs. John Wuthrich, 1803 Kelving Way Court, Kelving Way, Lot 1 for a 0-foot (zero) exterior side yard setback variance for the placement of a 26x27 carport. Councilmember Ken Freese seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider the City of Wharton Housing Programs:

- A. FEMA Disaster #1257
  - 1. Housing Trust Fund (HTF) Contract #55300.
  - 2. ORCA Contract #722057
- B. TDPS – Emergency Management Contract #UN50-3.2-04
- C. ORCA Contract #722067

City Manager Andres Garza, Jr. informed the City Council that Community Services Director Jo Knezek would provide an update regarding the afore-mentioned City of Wharton Housing

Programs. He stated that the City Staff had been working with the State agencies (Department of Emergency Management and the Office of Rural Community Affairs [ORCA]) to implement the housing programs. Community Services Director Jo Knezek informed the City Council that since the Flood of 1998, the City of Wharton had been working with Texas Department of Housing and Community Affairs and Texas Department of Public Safety Emergency Management Division for assistance, however the agencies no longer recommend rehabilitation as a means of improving the housing stock and recommended the City of Wharton amend the rehabilitation/reconstruction contract rehabilitating 50 homes to total reconstructing nine homes. She also stated that Texas Department of Public Safety Emergency Management agency recommended that the City proceed with the elevation grant with the understanding that the number of 50 units would be reduced since some of the 50 homes were going to be reconstructed under the grant mentioned or under the HOME program. Councilmember V. L. Wiley, Jr. publicly commended Community Services Director Jo Knezek for a good job. Councilmember Domingo Montalvo, Jr. stated that the Wharton Feasibility Study being conduct by the U.S. Army Corp. of Engineers was also looking at a Buy-Out Program. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to amend the rehabilitation/reconstruction contract from 50 units of rehabilitation to nine total reconstructs and to proceed with the elevation grant noting that the number of 50 units would be reduced by those homes covered under the other programs. Councilmember Don Mueller seconded the motion. All voted in favor.

D. Resolution: A resolution approving a contract with Mr. Bud Love of Love and Company and the City of Wharton for administrative services for the City's Housing Programs.

City Manager Andres Garza, Jr. informed the City Council that Mr. Bud Love of Love and Company had been assisting the City Staff with the City's Housing Programs. He requested approval of the contract for administrative management services with Mr. Love. Community Services Director Jo Knezek informed the City Council that Bud Love was providing administrative services for the City's Housing Programs. After some discussion, Councilmember Ken Freese made a motion to approve Resolution 2003-57, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 57**

**A RESOLUTION APPROVING A CONTRACT WITH MR. BUD LOVE OF LOVE AND COMPANY AND THE CITY OF WHARTON FOR ADMINISTRATIVE SERVICES FOR THE CITY'S HOUSING PROGRAMS.**

**WHEREAS**, the Wharton City Council wishes to authorize the Mayor of the City of Wharton, Texas to execute an agreement with Mr. Bud Love of Love and Company and the City of Wharton for Administrative services for the City's Housing Programs; and

**WHEREAS**, the City of Wharton and Love and Company wishes to be bound by the conditions as set forth in Attached "A".

**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, Texas to execute an agreement with Mr. Bud Love of Love and Company and the City of Wharton for Administrative services for the City's Housing Programs.

**Section II.** That Love and Company and the City of Wharton are hereby bound by the conditions as set forth in the Attached "A".

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

**Passed, Approved, and Adopted** this the 23<sup>rd</sup> day of June 2003.

**CITY OF WHARTON**

By: \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

E. **Resolution:** A resolution awarding a grant to a certain applicant under the Owner Occupied Assistance Program through the Texas Department of Housing and Community Affairs, 2001 HOME Program Contract No. 531067 Home Investment Partnerships Program. City Manager Andres Garza, Jr. informed the City Council that under the existing HOME Program, the City Council awarded four recipients housing assistance in Resolution No. 2003-30. Unfortunately, Ms. Annie Roberts passed away prior to any work commencing, therefore the State cancelled that contract. He stated that the City Staff was reviewing the applications and an alternate recipient would be submitted by Community Services Director Jo Knezek. Community Services Director Jo Knezek informed the City Council that she was recommending Ms. Eula Bryant, 613 Mattie Street. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2003-58, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 58**

**A RESOLUTION AWARDING A GRANT TO A CERTAIN APPLICANT UNDER THE OWNER OCCUPIED ASSISTANCE GRANT PROGRAM THROUGH THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, 2001 HOME PROGRAM CONTRACT NO. 531067 HOME INVESTMENT PARTNERSHIPS PROGRAM.**

**WHEREAS,** the City of Wharton was awarded the Texas Department of Housing Community Affairs 2001 HOME Program Contract No. 531067, Home Investment Partnerships Program; and,

**WHEREAS,** the City of Wharton is required to assist a minimum of nine (9) homeowners with the rehabilitation or reconstruction of their homes; and,

**WHEREAS,** on March 24, 2003, the City of Wharton adopted Resolution 2003-30 awarding grants to four (4) applicants which completed the requirement to assist nine (9) homeowners; and

**WHEREAS,** due to circumstances beyond the City's control, one property for reconstruction has lost its eligibility under the program; and

**WHEREAS,** the City Council wishes to award a grant to Ms. Eula Bryant, 613 Mattie Street for the rehabilitation of his/her home.

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

**Section I.** the City Council hereby awards a grant under the Texas Department of Housing and Community Affairs 2001 HOME Program Contract No. 531067 Home Investment Partnerships program to the following qualifying applicant for the rehabilitation of his/her home:

**Ms. Eula Bryant, 613 Mattie Street**

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

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of June 2003.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**

City Secretary

Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider a resolution authorizing the Mayor of the City of Wharton to execute the HIPAA Business Associate Contract with the City of Houston. City Manager Andres Garza, Jr. presented a copy of the letter dated May 27, 2003 from M. Des Vignes-Kendrick, MD, MPH, Director of the City of Houston Department of Health and Human Services. Dr. Kendrick stated that as part of the Houston Department of Health and

Human Services responsibilities for privacy protection of individually identifiable health care information pursuant to HIPAA, the contract was needed because the City of Wharton had executed the Laboratory Services Agreement with the City of Houston. He then presented a copy of the letter dated June 19, 2003 from City Attorney Paul Webb indicating his recommendation for approval, and a copy of the HIPAA Business Associate Contract and a draft resolution authorizing the Mayor of the City of Wharton to execute the contract. City Attorney Paul Webb informed the City Council that he reviewed and recommended approval. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2003-59, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 59**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE HIPAA BUSINESS ASSOCIATE CONTRACT WITH THE CITY OF HOUSTON.**

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the HIPAA Business Associate Contract with the City of Houston; and

**WHEREAS,** the City of Wharton and the City of Houston wish to be bound by the conditions as set forth in the attached "A" and is made part of this resolution.

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

**Section I.** The Wharton City Council hereby authorizes the Mayor Bryce D. Kocian to execute the HIPAA Business Associate Contract with the City of Houston.

**Section II.** The City of Wharton and the City of Houston are hereby bound by the conditions as set forth in the Attached "A".

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

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of June 2003.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary

Councilmember Darryl Darnell seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider acceptance of Utility Easement granted by Jimmy L. Woods, Jr. and Esperanza, wife, for the Hinze's Waterline Project – Phase III. City Manager Andres Garza, Jr. presented a copy the utility easement agreement executed by Mr. Jimmy L. Woods and his wife, Esperanza. He stated that the City Staff sought the utility easement agreement for the Hinze's Waterline Project – Phase III. City Council acceptance of the agreement was required prior to execution of the agreement by the Mayor of the City of Wharton. He stated that the City Staff would file the utility easement at the Wharton County Courthouse. After some discussion, Councilmember Darryl Darnell made a motion to accept the Utility Easement granted by Jimmy L. Woods, Jr. and Esperanza, wife, for the Hinze's Waterline Project – Phase III. Councilmember Don Mueller seconded the motion. All voted in favor.

The fifteenth item on the agenda was to review and consider the City of Wharton Elevated Water Storage Tank Rehabilitation Project Pay Request No. 5 – N.G. Painting, Inc. City Manager Andres Garza, Jr. presented a copy of the pay request No. 5 prepared by Mr. Jimmy Dunham, P.E. for N.G. Painting for the City of Wharton Elevated Water Storage Tank Rehabilitation Project. He presented copies of the letters from City Attorney Paul Webb. City Attorney Paul Webb informed the City Council that he recommended the City Council to not approve the Pay Request until the insurance settles the outstanding claims. He stated that he spoke to Mr. Gramatikakis and informed him of his recommendation. After some discussion, no action was taken. City Attorney Paul Webb stated that he would submit a letter to N.G. Painting, Inc. advising that the City of Wharton would not pay the Pay Request No. 5 until the claims are taken care of. No action was taken.

The sixteenth item on the agenda was to review and consider the City of Wharton Wastewater Treatment Plant No. 2 Improvements Project Pay Request No. 6 – JTR Constructors, Inc. City Manager Andres Garza, Jr. presented a copy of the pay request No. 6 prepared by Jones & Carter, Inc. for JTR Constructors, Inc. for the City of Wharton Wastewater Treatment Plant No. 2 Improvements Project in the amount of \$91,221.93. Mr. Carlos Cotton with Jones & Carter addressed the City Council and stated that the project was on time and recommended approval. Councilmember V. L. Wiley, Jr. asked if the engineering estimated cost was in line with the contract cost. Mr. Cotton stated that the bids were lower than the grant, therefore the City of Wharton had additional work conducted. After some discussion, Councilmember Ken Freese made a motion to approve the City of Wharton Wastewater Treatment Plant No. 2 Improvements Project Pay Request No. 6 – JTR Constructors, Inc. in the amount of \$91,221.93. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider the City of Wharton Caney Creek Outfall Ditch Project:

A. Bid Tabulation:

B. **Resolution:** A resolution awarding a contract for the City of Wharton Caney Creek Outfall Ditch Project.

City Manager Andres Garza, Jr. informed the City Council that the City of Wharton opened bids Tuesday, June 17, 2003 at 2:00 p.m. for the Caney Creek Outfall Ditch Project in support of the Walmart Supercenter Project. He then presented a copy of the bid tabulation and recommendation dated June 19, 2003 from Jones & Carter, Inc. to award the bid to Uticon, Inc. in the amount of \$558,515.30 and a resolution awarding the bid. Mr. Carlos Cotton with Jones & Carter addressed the City Council and stated that the City received three bids and was

recommending Uticon, Inc. Councilmember Darryl Darnell stated that the engineer estimate for the project was \$825,000 and the bid received was at \$558,515.30. He asked if the engineering fees was based on the engineering estimate or the bid received. Mr. Cotton stated that the engineering services fee was a lump sum fee for the plans. He also stated that the City bid a base bid and an alternate bid, which consisted of additional dirt work if needed. He stated that Walmart contractors began the dirt work, therefore the bid was lower than the original estimate. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2003-60, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 60**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDED THE BID TO UTICON, INC. FOR THE CITY OF WHARTON CANEY CREEK OUTFALL DITCH PROJECT; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.**

**WHEREAS**, competitive, sealed bids were received June 17, 2003 for the City of Wharton Caney Creek Outfall Ditch Project; and

**WHEREAS**, the City of Wharton City Council wishes to award the bid to Uticon, Inc., the lowest, best qualified bidder in the amount of \$558,515.30; and

**WHEREAS**, Uticon, Inc. wishes to accept a contract for the City of Wharton Caney Creek Outfall Ditch Project for the total construction cost of \$558,515.30; and

**WHEREAS**, the City of Wharton and Uticon, Inc. wish to be bound by the conditions as set forth in the contract for the project.

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

**Section I.** That the City Council of the City of Wharton hereby authorizes the Mayor of the City of Wharton to execute all contract documents with Uticon, Inc for the City of Wharton Caney Creek Outfall Ditch Project.

**Section II.** That the City of Wharton and Uticon, Inc are hereby bound by the conditions as set forth in the contract for the project.

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

**Passed, Approved, and Adopted** this 23<sup>rd</sup> of June 2003.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**BRYCE D. KOCHAN**  
Mayor

**ATTEST:**

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**JOYCE VASUT**

City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The eighteenth item on the agenda was to review and consider a resolution of the Wharton City Council designating a Consultant Selection Committee for the procurement of engineering services for the construction phase of the Texas Capital Fund Contract No. 722202 – Walmart Supercenter Project. City Manager Andres Garza, Jr. informed the City Council that the Walmart Supercenter Project continues to move forward and the City Staff was requesting City Council approval to seek requests for proposals for professional engineering services for the construction phase of the Caney Outfall Ditch for the Walmart Supercenter Project. He then presented a draft resolution designating a Consultant Selection Committee for the procurement of engineering services for the construction phase of the Caney Outfall Ditch for the Texas Capital Fund Contract No. 722202 – Walmart Supercenter Project. The Texas Capital Fund application included the construction phase engineering cost. Due to the bids received, the engineering construction phase would be able to be funded from the Texas Capital Fund. He stated that the City of Wharton needed to send out proposals for the Engineering Phase and recommended the City Council approve the same Consultant Selection Committee and the Committee would make a recommendation on the July 14, 2003 City Council Meeting. After some discussion, Councilmember made a motion to approve Resolution No. 2003-61, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 61**

**A RESOLUTION OF THE WHARTON CITY COUNCIL DESIGNATING A CONSULTANT SELECTION COMMITTEE FOR THE PROCUREMENT OF ENGINEERING SERVICES FOR THE CONSTRUCTION PHASE OF THE TEXAS CAPITAL FUND CONTRACT NO. 722202 – WALMART SUPERCENTER PROJECT.**

**WHEREAS,** the City of Wharton has been awarded grant funds from the Texas Capital Fund for the Walmart Supercenter Project; and

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

**WHEREAS,** the City Council wishes to designate a consultant selection committee (Attached A) for the procurement of engineering services for the construction phase of the Walmart Supercenter Project; and

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

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

- a. Procurement Provisions for Professional Services,
- b. The Texas Engineering Practice Act,
- c. Procurement Standards, Uniform Grant and Contract Management Standards,
- d. Texas Government Code - Chapter 2254 Professional and Consulting Services, Subchapter A. Professional Services,
- e. Proposal Rating Sheet for Architectural 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 engineering services for the construction phase of the Walmart Supercenter Project.

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

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

**Passed, Approved and Adopted this 23<sup>rd</sup> day of June 2003.**

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor Pro-Tem

**Attest:**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary

**CITY OF WHARTON**

**DESIGNATION OF SPONSOR'S  
CONSULTANT SELECTION COMMITTEE  
FOR PROCUREMENT OF ENGINEERING SERVICES  
WALMART SUPERCENTER PROJECT – CONSTRUCTION PHASE**

**ATTACHMENT "A"**

The Wharton City Council hereby designates the following named individuals as the Consultant Selection Committee, for the procurement of professional engineering services for the Walmart Supercenter 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 contract, based on a consensus ranking by the committee members. The decision of the selection committee will be final unless some discrepancy is determined to have occurred in the selection process.

Name	Title (if appropriate):
<u>Bryce D. Kocian</u>	<u>Mayor</u>
<u>Don Mueller</u>	<u>Councilmember</u>
<u>Andres Garza, Jr.</u>	<u>City Manager</u>
<u>Phil Bush</u>	<u>Public Works Director</u>

The City of Wharton has caused this to be duly executed in its name, this 23<sup>rd</sup> day of June 2003.

City of Wharton, Texas

By: \_\_\_\_\_  
BRYCE D. KOCIAN  
Mayor

Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The nineteenth item on the agenda was to review and consider the City of Wharton Highway 60 & Tex-Mex Railroad Waterline Bore Project First and Final Pay Request – Mercer Construction Company. City Manager Andres Garza, Jr. presented a copy of the first and final pay request for the City of Wharton Highway 60 & Texas-Mex Railroad Waterline Bore Project prepared by Mr. Anthony Rachunek, P.E., for Mercer Construction Company in the amount of \$18,100.00. Anthony Rachunek, P.E. with Anthony Rachunek & Associates addressed the City Council and stated the City received the permit to bore under Highway 60 & Texas-Mex Railroad for the water line for the Hinze's Waterline Phase III Project. After some discussion, Councilmember Ken Freese made a motion to approve the City of Wharton Highway 60 & Tex-Mex Railroad Waterline Bore Project First and Final Pay Request – Mercer Construction Company in the amount of \$18,100.00. Councilmember Don Mueller seconded the motion. All voted in favor.

The twentieth item on the agenda was to review and consider appointments to the City of Wharton Beautification Commission:

A. Appointment of Mr. A. C. Shelton.

City Manager Andres Garza, Jr. informed the City Council that since the regular City Council meeting held May 27, 2003, Mr. A. C. Shelton of the Beautification Commission had indicated that he would like to continue as a Commissioner. City Council approval to renew Mr. Shelton's term as a Beautification Commissioner was required. After some discussion, Councilmember Ken Freese made a motion to appoint A. C. Shelton to the Beautification Commission for the term ending June 30, 2005. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

B. Recommendations to fill two vacant positions.

City Manager Andres Garza, Jr. informed the City Council that there were two vacant positions on the Beautification Commission which need to be filled. Recommendations by the City

Council can be made to fill the positions. Councilmember V. L. Wiley, Jr. stated that he would contact Ms. Gilda Ross for her interest in serving on the Beautification Commission. After some discussion, no action was taken.

The twenty-first item on the agenda was to review and consider a resolution designating the month of July 2003 as Fair Housing Month and supporting Fair Housing activities within the City. City Manager Andres Garza, Jr. presented a draft resolution designating the month of July 2003 as Fair Housing Month and supporting Fair Housing activities in the City. The fair housing activity was a requirement of the City's contract with the Texas Department of Agriculture – Texas Capital Fund program in support of the Walmart Supercenter project. He stated that the City Staff would publish the Resolution in the Wharton Journal Spectator. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2003-62, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 62**

**A RESOLUTION DESIGNATING THE MONTH OF JULY 2003,  
AS FAIR HOUSING MONTH AND SUPPORTING FAIR HOUSING  
ACTIVITIES WITHIN THE CITY.**

**Whereas**, Title VIII of the Civil Rights Act of 1968, as amended, prohibits discrimination in housing and declares it a national policy to provide, within constitutional limits, for fair housing in the United States; and

**Whereas**, the principle of Fair Housing is not only national law and national policy, but a fundamental human concept and entitlement for all Americans; and

**Whereas**, this proclamation, during the month of July, provides an opportunity for all Americans to recognize that complete success in the goal of equal housing opportunity can only be accomplished with the help and cooperation of all Americans.

**NOW THEREFORE, WE**, the City Council of the City of Wharton, do proclaim July as Fair Housing Month in the City of Wharton and do hereby urge all the citizens of this locality to become aware of and support the Fair Housing law.

**IN WITNESS WHEREOF** we have affixed our signatures and seal on this the 23<sup>rd</sup> day of June 2003.

**CITY OF WHARTON**

\_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The twenty-second item on the agenda was to review and consider requesting from the City of Houston for the Houston Fire Department Pipe and Drum Corps to perform at the Wharton County Freedom Festival. The Wharton County Freedom Festival Committee was requesting City Council approval for Mayor Bryce D. Kocian to submit a letter of request to City of Houston Mayor Lee P. Brown to approve the Houston Fire Department Pipe and Drum Band to play at the Wharton County Freedom Festival. Councilmember Domingo Montalvo, Jr. informed the City Council that the Houston Fire Department Pipe and Drums Corps contacted him; however proper procedures should be followed for approval. He stated that the cost would be borne by the Freedom Fest. After some discussion, Councilmember Ken Freese made a motion to approve requesting from the City of Houston for the Houston Fire Department Pipe and Drum Corps to perform at the Wharton County Freedom Festival. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The twenty-third item on the agenda was to review and consider a resolution authorizing the submittal of projects under the Texas Department of Transportation – Aviation Division, 2003 Routine Airport Maintenance Program (RAMP). City Manager Andres Garza, Jr. informed the City Council that during the special meeting of the Wharton Regional Airport Board held June 21, 2003, the Board Members voted to recommend the City Council consider approving the submittal of projects under the Texas Department of Transportation – Aviation Division Routine Airport Maintenance Program (RAMP). He then presented a copy of the letter of recommendation dated June 18, 2003 from Chairman Garland Mann, and a copy of the draft resolution authorizing the submittal and outlining the projects to be funded under the RAMP Program. He stated that the Wharton Regional Airport Board met Thursday, June 12, 2003, and was recommending the City Council proceed with the preparation of a grant application for the Routine Airport Maintenance Program (RAMP). He stated that the Airport Board prioritized the following improvements and recommended that the City Staff perform a cost analysis to determine which project could be included in the grant application totaling \$60,000:

1. Improving the entrance to the Airport,
2. Installing the electrical and telephone services for the AWOS system, and
3. Extending the road at the Airport.

After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve Resolution No. 2003-63, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 63**

**A RESOLUTION AUTHORIZING THE SUBMITTAL OF PROJECTS UNDER THE TEXAS DEPARTMENT OF TRANSPORTATION – AVIATION DIVISION, 2003 ROUTINE AIRPORT MAINTENANCE PROGRAM (RAMP).**

**WHEREAS,** the City of Wharton wishes to participate in the Texas Department of Transportation – 2003 Routine Airport Maintenance Program; and

**WHEREAS,** the City of Wharton wishes to submit the following projects for funding under the Texas Department of Transportation Routine Airport Maintenance Grant Program:

1. Improving the Wharton Regional Airport Entrance.
2. Installation of the AWOS system electrical service.
3. Extension of the Wharton Regional Airport road.; and

**WHEREAS,** this resolution is passed in accordance with the Texas Department of Transportation – Routine Airport Maintenance Program.

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

Section I: That the City Council authorizes the submittal of the afore-mentioned projects under the Texas Department of Transportation – Aviation Division – 2003 Routine Airport Maintenance Program (RAMP).

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

**Passed, Approved and Adopted this 23<sup>rd</sup> day of June 2003.**

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

Attest:

\_\_\_\_\_  
**JOYCE VASUT**

City Secretary

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

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

- A. Wharton Economic Development Corporation meeting held June 9, 2003.
- B. Beautification Commission meeting held June 11, 2003.
- C. Wharton Regional Airport Board meeting held June 12, 2003.

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

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

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

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

The twenty-sixth item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made a motion to adjourn. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The meeting was adjourned at 8:28 P.M.

**CITY OF WHARTON, TEXAS**

**By:**

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**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

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**JOYCE VASUT**  
City Secretary