

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
FEBRUARY 23, 2004**

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:02 p.m. Reverend Eddie Brinkley 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, Domingo Montalvo, Jr., and Ray Linseisen.

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, Police Chief Tim Guin, Public Works Director Phillip Bush, Building Official Ronnie Bollom, EMS Director John Kowalik, Community Services Director Jo Knezek, Fire Inspector Scott Stewart, Fire Chief David Copeland and City Attorney Paul Webb.

Visitors present were: Ron Sanders with Wharton Journal-Spectator, David Schroeder with WEDCo, Carlos Cotton, Anthony Rachunek, Lewis Fortenberry, Suzette Wells-Young, Bobby Barnett, Paul Shannon, Johnnie Roberts, Brian Van Horn, Jo Ann Van Horn, Sherman Miller, A. J. Rath, Jan Rath, Steven Jones, Ricky Guzman, Larry Hollingsworth, Clement Kovar, Scott Chambers, Yie Desai, Vic Desai, Shelly Desai, Abby Schubach, Eddie Brinkley, Dr. Larry Lipscomb, and Raymond Fisher.

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

The fourth item on the agenda was the Wharton Moment. City Manager Andres Garza, Jr. expressed his condolences to the family of City of Wharton Utilities Worker Victor Becerra that passed away at Herman Hospital with an Aneurysm earlier that day. He stated that he had been employed with the City of Wharton since June 11, 1984. No action was taken.

The fifth item on the agenda was Proclamations:

A. Shanghai Days Cowboy Gathering.

Mayor Bryce D. Kocian presented the proclamation to Abby Schubach, which read as follows:

Whereas, Abel Head “Shanghai” Pierce (1834-1900) came to Texas from Rhode Island at the age of nineteen and through hard work and rugged determination, he became an authority on cattle; and

Whereas, in the 1870’s, he began to buy land in Wharton and Matagorda Counties, built a railroad station in Pierce, Texas, and established the 32,000 acre Pierce Ranch which is still under the ownership and management of Shanghai’s descendants; and

Whereas, the Shanghai Days Cowboy Gathering was named after Shanghai Pierce, the legendary cattle baron, and was begun in an effort to better recreate the Old West by placing an emphasis on historic reenactments, demonstrations, storytelling, music and other entertainment; and

Whereas, Shanghai Days Cowboy Gathering promotes the revitalization of Wharton’s Historic Downtown Square by bringing visitors to the downtown merchants. The festival promotes cultural tourism through music and reenactments, by giving visitors a historical representation of the area’s cowboy heritage; and

Whereas, the Festival promotes greater awareness of musical and theatrical arts by performers from across the nation who otherwise would not have the opportunity to perform before such a diverse audience.

Now, Therefore Be It Proclaimed, that I, Bryce D. Kocian, by the authority vested in me as Mayor of the City of Wharton, Texas, do hereby proclaim March 21-26, 2004 as “*Shanghai Days*” *Week* and extend the City of Wharton’s deep appreciation to the Chamber of Commerce & Agriculture, Doc Blakely, and the group of supporters who have made the festival an annual, time-honored event in the City of Wharton, Texas.

In Witness Whereof, I have set my hand and caused the seal of the City of Wharton to be affixed this 23rd day of February in the year of our Lord two thousand four A.D.

B. Salute to Black History Month.

Mayor Bryce D. Kocian presented the Certificates of Recognition to Diondre Brown, Ethel Davis, Julius Romalo-Childress, and Charlotte Allen. Mayor Bryce D. Kocian then presented proclamation to Ms. Ethel Davis, which read as follows:

WHEREAS, February has been designated as Black History Month, and will be observed in our community with a series of special presentations and exhibits; and,

WHEREAS, this observance affords the special opportunity to become more knowledgeable about the black heritage, and to honor the many black leaders who have contributed to the progress of our nation; and,

WHEREAS, such knowledge can strengthen the insight of all our citizens regarding the issues of human rights, the great strides that have been made in the crusade to eliminate the barriers of equality for minority groups, and the continuing struggle against racial discrimination and poverty; and,

WHEREAS, Special Recognition should be extended to citizens of the City of Wharton who have dedicated their time and efforts to promote Black History Month include Julius Romalo Childress, Ethel Davis, Diondre Brown, and Charlotte Allen.

NOW, THEREFORE BE IT RESOLVED, I, Bryce D. Kocian, by the authority vested in me as Mayor of the City of Wharton, Texas do hereby proclaim February 2004 as Black History Month and urge all residents to join together in making this a period of rededication to the principles of justice and equality for all people.

IN WITNESS THEREOF, I have set my hand and caused the seal of the City of Wharton to be affixed this 23rd day of February, in the year of our Lord two thousand four A.D.

The sixth item on the agenda was to review and consider the Wharton Volunteer Fire Department:

A. Recognition Awards.

City Manager Andres Garza, Jr. stated that the Wharton Volunteer Fire Department would recognize firemen that have retired. Fire Chief David Copeland presented Certificates of Appreciation to Brian Van Horn for serving 24 years; Larry Hollingsworth for serving 31 years; A. J. Rath for serving 33 years; and Sherman Miller for serving 35 years. He then presented Paul Shannon a Certificate of Recognition for Fire Fighter of the 2003 Year. No action was taken.

B. Annual Report for 2003.

Fire Chief David Copeland presented the Wharton Fire Department's Annual Report for 2003. Fire Chief David Copeland stated that for the Fire Department received 455 calls in 2003 year. The total loss estimated was \$255,200 with \$91,200 within the City of Wharton, and \$164,000 in Wharton County. He stated that there were no deaths of civilian or fire fighter. He stated that the Department had 3,075 of training hours for 39 active fire fighters, 23 certified fire fighters: 11 basic, 3 intermediate, 9 advanced and 5 certified by the Texas Commission on Fire Protection. He stated there were 6 level II instructors. He stated that in June 2004, the Pumper would be paid off. Mr. Copeland stated that the department would begin plans to replace the existing rescue track due to the increase in number of calls.

C. Appointment of Fire Chief - David Copeland.

City Manager Andres Garza, Jr. stated that Chief David Copeland had been re-elected Fire Chief by the Fire Department and that the City Council should ratify the appointment. After some discussion, Councilmember Darryl Darnell made a motion to approve the appointment of Fire Chief David Copeland. Councilmember Ken Freese seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider the City of Wharton Financial Report for the month of January 2004. Finance Director Joyce Vasut presented the financial report for the month of January 2004, which was at 33% or four months into the fiscal year. Mrs. Vasut stated that the general fund revenues were at 40.81% and the expenditures were at 33.16%. The total ad valorem taxes collected were \$1,208,992.00. The sales tax for the month of

December 2003 was \$146,259 with \$97,506 to the City and \$48,753 to WEDCo. The TexPool balance for December 2003 was \$491,246.31 with an average monthly yield of 1.0355%. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the financial report for the month of January 2004. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider the request by Mr. Clement J. Kovar to re-plat and for a variance for a minimal lot size located at 215 West Alabama Street, Hawes, Block D, Lots 1 and 2. City Manager Andres Garza, Jr. presented a copy of the memorandum dated February 17, 2004 from Planning Commission Chairman A. J. Rath recommending the City Council approve the request by Mr. Clement J. Kovar to re-plat and for a variance for a minimal lot size located at 215 West Alabama Street, Hawes, Block D, Lots 1 and 2. He then presented a copy of the Planning Commission Communications from the meeting held February 16, 2004. Mr. Clement Kovar addressed the City Council and requested to re-plat 215 West Alabama for the lots to run in the East-West direction allowing more room. City Manager Andres Garza, Jr. stated that the City Subdivision Ordinance required 60' width and 120' length lots, totaling 7200 square feet. He stated that the change in the direction of the lots would be 75' X 100' lots, totaling 7500 square feet. Mr. Clement Kovar presented pictures of the house to be placed on the lot. Councilmember Ray Linseisen asked if the house would be remodeled. Mr. Kovar stated that the house would be replaced with vinyl siding. Councilmember Darryl Darnell asked if the meter box would be moved. After some discussion, Councilmember Ray Linseisen made a motion to approve the request by Mr. Clement J. Kovar to re-plat and for a variance for a minimal lot size located at 215 West Alabama Street, Hawes, Block D, Lots 1 and 2 and for the house to be placed on the Lots meet the standards of the neighborhood. Councilmember Ken Freese seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider Hazard Mitigation Action Plan:

A. **Public Hearing:** To receive comments from interested parties regarding the Hazard Mitigation Action Plan.

City Manager Andres Garza, Jr. stated that during the February 9, 2004 regular Wharton City Council meeting, a portion of the Hazard Mitigation Action Plan was presented to the City Council. He stated that a full copy of the Hazard Mitigation Action Plan was located in the City Secretary's office for review. He said comments from the public could be made regarding the plan that was developed by the City of Wharton and the Texas Colorado River Floodplain Coalition. He then presented a copy of the public notice regarding the public hearing.

Mayor Bryce D. Kocian opened the Public Hearing at 7:38:05 p.m. to receive public comments. No comments were given.

Mayor Bryce D. Kocian closed the Public Hearing at 7:38:20 p.m.

B. **Resolution:** A resolution of the Wharton City Council adopting the Hazard Mitigation Actin Plan.

City Manager Andres Garza, Jr. stated that in accordance with federal law and the rules governing the Pre-Disaster Mitigation Program (PDM) grant, official action approving the resolution adopting the Hazard Mitigation Action Plan was required by the City Council. He then presented a draft resolution adopting the plan. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2004-014, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2004-014**

**A RESOLUTION OF THE WHARTON CITY COUNCIL ADOPTING THE
HAZARD MITIGATION ACTION PLAN.**

WHEREAS, certain areas of the City of Wharton, Texas, are subject to periodic flooding and other natural and man-caused hazards with the potential to cause damages to people properties within the area; and

WHEREAS, the City of Wharton desires to prepare and mitigate for such circumstances; and

WHEREAS, under the Disaster Mitigation Act of 2000, the United States Federal Emergency Management Agency (FEMA) requires that local jurisdictions have in place a FEMA-approved Hazard Mitigation Action Plan as a condition of receipt of certain future Federal mitigation funding after November 1, 2004; and

WHEREAS, to assist cities and counties in meeting this requirement, the Texas Colorado River Floodplain Coalition, with the assistance of the Lower Colorado River Authority and its contractor, H2O Partners, Inc. of Austin, Texas, has initiated development of a basin-wide, multi-jurisdictional Hazard Mitigation Plan covering member jurisdictions of the Texas Colorado River Floodplain Coalition including the City of Wharton.

NOW, THEREFORE BE IT RESOLVED, that the Wharton City Council hereby:

Section 1. Adopts those portions of the Plan entitled, “Texas Colorado River Floodplain Coalition Hazard Mitigation Action Plan for the Lower Colorado River Basin, 2004-2009, Creating a Disaster – Resistant Lower Colorado River Basin” that pertains to the City of Wharton, Texas.

Section 2. Vests the Mayor of the City of Wharton with the responsibility, authority, and the means to:

- (a) Inform all concerned parties of this action.
- (b) Develop an Addendum to this Hazard Mitigation Action Plan if the town’s unique situation warrants such an addendum.

Section 3. Appoints the Mayor of the City of Wharton to assure that the Hazard Mitigation Action Plan be reviewed at least annually and that any needed adjustment to the City of Wharton’s addendum to the Hazard Mitigation Action Plan be developed and presented to the Wharton City Council for consideration.

Section 4. Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Hazard Mitigation Action Plan.

Passed, Approved and Adopted this 23rd day of February 2004.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

BY: _____
JOYCE VASUT
City Secretary

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

The tenth item on the agenda was to review and consider Jr's Texas Best Smokehouse and Bakery:

A. Public Hearing: To obtain input from interested persons as to whether or not the City of Wharton Reinvestment Zone No. 04-01 should be created.

City Manager Andres Garza, Jr. presented a copy of the Legal Notice that was published regarding the creation of a Reinvestment Zone for the Jr's Texas Best Smokehouse and Bakery Project.

Mayor Bryce D. Kocian opened the Public Hearing at 7:40 p.m.

Mr. Scott Chambers addressed the City Council and publicly thanked City Manager Andres Garza, Jr. and Wharton Economic Development Corporation Executive Director David Schroeder and the City Council for supporting the project. Councilmember Domingo Montalvo, Jr. stated that the City has worked hard to bring businesses to the community and with this project, the City had helped local citizens and hoped would continue to support local citizens. He stated that the project would generate approximately \$13,500 in sales tax the first year and create 24 full-time jobs.

Mayor Bryce D. Kocian closed the Public Hearing at 7:44 p.m.

B. Ordinance: An ordinance designating certain property as herein legally described, including certain lots and blocks as therein contained, a Reinvestment Zone and providing that said Reinvestment Zone shall hereinafter be referred to as City of Wharton Reinvestment Zone No. 04-01; said property being generally located on U.S. Highway 59 and County Road 467, Wharton, Texas, and making other findings and conclusions as required by law.

City Manager Andres Garza, Jr. informed the City Council that Mr. Ervin Herzik, Jr. and Mr. Scott Chambers of Jr's Smokehouse & Bakery had applied to the City of Wharton for tax abatement and stated that the application submitted had been administratively approved during the February 9, 2004 regular Wharton City Council meeting. He stated that a reinvestment zone must be created prior to the tax abatement agreement was granted. He then presented a copy of a draft ordinance creating a reinvestment zone for the property located at U.S. Highway 59 and

County Road 467. After some discussion, Councilmember Darryl Darnell made a motion to approve Ordinance No. 2004-05, which read as follows:

ORDINANCE NO. 2004-05

AN ORDINANCE DESIGNATING CERTAIN PROPERTY AS HEREIN LEGALLY DESCRIBED, INCLUDING CERTAIN LOTS AND BLOCKS AS THEREIN CONTAINED, A REINVESTMENT ZONE AND PROVIDING THAT SAID REINVESTMENT ZONE SHALL HERINAFTER BE REFERRED TO AS CITY OF WHARTON REINVESTMENT ZONE NO. 04-01 SAID PROPERTY BEING GENERALLY LOCATED ON U.S. HIGHWAY 59 AND COUNTY ROAD 467, WHARTON, TEXAS, AND MAKING OTHER FINDINGS AND CONCLUSIONS AS REQUIRED BY LAW.

WHEREAS, heretofore previously, a notice having been given to the presiding officer of all taxing entities levying and collecting taxes within the area encompassed in the property to be included in the reinvestment zone and said notice having stated the date and time of the required public hearing to create a reinvestment zone in a form as attached hereto and marked Exhibit "A"; and

WHEREAS, notice having been duly published in the official newspaper of the City of Wharton at least seven days prior to the start of the public hearing as to the date and time of said public hearing and intent to create the proposed reinvestment zone; and

WHEREAS, a public hearing was duly convened in accordance with the requirements of law by the Honorable Mayor of the City of Wharton during the meeting of the City Council of Wharton occurring on the 23rd day of February 2004 and all persons appearing there were given an opportunity to speak and all written documentation and/or exhibits were made available to the City Council of the City of Wharton; and

WHEREAS, the City Council of the City of Wharton finds and determines that the property as hereinafter described should be included in a reinvestment zone;

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

Section I. The City Council of the City of Wharton, for and on behalf of the City of Wharton makes the following findings of fact in accordance with a proposal to create a new reinvestment zone in the City of Wharton, being hereafter known as the City of Wharton Reinvestment Zone No. 04-01, and in this regard, the City Council of the City of Wharton finds and determines:

- a. That the certain tracts and parcels of property as herein legally described are properties within the city limits of the City of Wharton and are not now included in the boundaries of any reinvestment zone;
- b. That notice of a public hearing as required under the provisions of Chapter 312 of the Texas Tax Code was duly given to the presiding officer of all taxing entities levying taxes within the property to be included in the reinvestment zone; and
- c. That notice was duly published in the official newspaper of the City of Wharton to-wit, The Wharton Journal-Spectator. Said date of publication was the 4th day of February

2004, said publication having occurred at least seven (7) days prior to the date and time of the scheduled public hearing.

Section II. The City Council of the City of Wharton, further finds that Jr's Texas Best Smokehouse & Bakery has filed an application for a tax abatement for certain improvements to be constructed upon properties, including investment in real and personal property, situated within the reinvestment zone, and the City Council of the City of Wharton finds and determines that the improvements sought are feasible and would be of benefit to the reinvestment zone after the expiration of a tax abatement agreement which is contemplated to be entered into by and between the City of Wharton and that Jr's Texas Best Smokehouse & Bakery.

Section III. In accordance with the requirements of law, the City Council of the City of Wharton finds and determines that one or more statutorily defined criteria exists for the designation of the property as herein described which necessitates the creation of said zone and, in this regard, the City Council of the City of Wharton finds and determines that the development of property within the zone is reasonably likely to contribute to the retention or expansion of primary employment or attract major investment in the zone and surrounding area. In addition, the City Council finds and determines that one or more other and additional criteria for the creation of the reinvestment zone as set out under Section 312.202 of the Texas Tax Code are applicable or may be applicable to the property as herein described.

Section IV. In this regard, based upon the above and foregoing findings of fact and conclusions, the City Council of the City of Wharton does hereby create City of Wharton Reinvestment Zone No. 04-01 with its area to include and contain the property as legally described in Exhibit "B" attached heretofore.

Passed, Approved and Adopted this 23rd day of February 2004.

CITY OF WHARTON, TEXAS

By: _____
Bryce D. Kocian
Mayor

ATTEST:

JOYCE VASUT
City Secretary

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

C. Ordinance: An ordinance approving and authorizing the Mayor of the City of Wharton to sign and execute for and on behalf of the City of Wharton a Tax Abatement Agreement with Mr. Ervin Herzik, Jr. and Mr. Scott Chambers for Jr's Texas Best Smokehouse & Bakery in a form as attached hereto and marked Exhibit "1" and making certain findings of fact in accordance with the requirements of law.

City Manager Andres Garza, Jr. stated that during the February 9, 2004 regular Wharton City Council meeting, the City Council administratively approved the tax abatement application

submitted by Mr. Ervin Herzik, Jr. and Mr. Scott Chambers for the Jr's Texas Best Smokehouse & Bakery project. He then presented a draft ordinance approving the tax abatement agreement and a copy of the proposed agreement. He stated that the Wharton City Council Finance Committee met February 16, 2004 and voted to recommend the City Council consider approving the ordinance approving the tax abatement agreement for five years at 100% abatement. After some discussion, Councilmember Ken Freese made a motion to approve Ordinance No. 2004-06, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2004 - 06**

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO SIGN AND EXECUTE FOR AND ON BEHALF OF THE CITY OF WHARTON A TAX ABATEMENT AGREEMENT WITH MR. ERVIN HERZIK, JR. AND MR. SCOTT CHAMBERS FOR JR'S TEXAS BEST SMOKEHOUSE & BAKERY IN A FORM AS ATTACHED HERETO AND MARKED EXHIBIT "1" AND MAKING CERTAIN FINDINGS OF FACT IN ACCORDANCE WITH THE REQUIREMENTS OF LAW.

WHEREAS, heretofore previously, the City Council of the City of Wharton by Ordinance No. 2004- did create Reinvestment Zone No. 2004-01 upon certain tracts and parcels of property as described in said ordinance on file; and

WHEREAS, an agreement has been reached by and between the City of Wharton and the applicant to enter into a tax abatement agreement; and

WHEREAS, said agreement provides for tax abatement in accordance with certain conditions, restrictions and limitations as therein set out; and

WHEREAS, the City Council of the City of Wharton finds and determines that the tax abatement agreement, as attached hereto and marked Exhibit "1" is in accordance with the requirements of law and, therefore, should be approved.

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

Section I. The Mayor, for and on behalf of the City of Wharton, is authorized to sign and execute a tax abatement agreement with Mr. Ervin Herzik, Jr. and Mr. Scott Chambers for Jr's Texas Best Smokehouse & Bakery for the purpose of providing tax abatement with certain conditions, limitations and restrictions as set out in said agreement and under the requirements of law as specifically set out in Chapter 312 of the Texas Tax Code.

Passed, Approved and Adopted this 23rd day of February 2004.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

BY: _____
JOYCE VASUT
City Secretary

**TAX ABATEMENT AGREEMENT FOR PROPERTY LOCATED
IN CITY OF WHARTON REINVESTMENT ZONE NO. 04-01**

This Tax Abatement Agreement (hereinafter referred to as “Agreement”) is executed by and between the City of Wharton, Texas (hereinafter referred to as “Wharton”), acting through an Ordinance duly adopted by the City Council of Wharton, and Jr.’s Texas Best, LLC (hereinafter referred to as “Company”), the owner of taxable property within the area and territory of the City of Wharton Reinvestment Zone No. 04-01 and the City of Wharton, Wharton County, Texas.

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

- a. The “Certified Appraised value” means the value certified as of January 1, 2005 of the property within the City of Wharton Reinvestment Zone No. 04-01 by the Wharton County Central Appraisal District as of that date.
- b. The “Improvements” means the buildings or portions thereof or other improvements, including fixed machinery, equipment and process units, used for commercial or industrial purposes that are erected by Company on the property on or after January 1, 2004.
- c. “Construction Phase” means a material and substantial improvement of the property which represents a separate and distinct construction operation undertaken for the purpose of erecting the improvements. The period of Construction Phase ends when the Company is able to operate in accordance with its operating plans.
- d. “Abatement” means the full or partial exemption from ad valorem taxes of certain property, including real and personal property, in the City of Wharton Reinvestment Zone No. 04-01 designated for economic development purposes.

- e. “Eligible Property” means the buildings, structures, fixed machinery, equipment, process units and site improvements necessary to the operation and administration of the facility.
- f. “New Eligible Property” means Eligible Property, the construction of which commences subsequent to January 1, 2004 and is completed prior to January 2005. A list of the New Eligible Property is set forth in Company’s Application for Tax Abatement in Wharton Texas, which is incorporated herein by reference and made a part hereof. During the Construction Phase of the New Eligible Property, the Company may make such change orders to the New Eligible Property as are reasonably necessary to accomplish its intended use.
- g. “Ineligible Property” means land, inventories, supplies, tools, furnishings, and other forms of movable personal property which are not integral to the operation of the facility and property.

The guidelines and other criteria for granting tax abatements in a Reinvestment Zone created in the City of Wharton, Wharton County, Texas, were adopted by Resolution No. 2003-102 enacted by the City Council of Wharton as finally passed and approved on the 10th day of December 2003, and the same are incorporated herein by reference, together with any applicable amendments.

SUBJECT PROPERTY

The City of Wharton Reinvestment Zone No. 04-01 is an area within the City of Wharton, Wharton County, Texas, being legally described in Exhibit “A” attached hereto and incorporated therein for all purposes.

The Wharton County Appraisal District has established the base year values for the subject property as of January 1, 2004, as reflected on the Wharton County Appraisal District rendition statement released on or about May 1, 2004.

VALUE AND TERM OF AGREEMENT

This Agreement shall be effective with the January 1st, 2005 valuation date. In each year that this Agreement is in effect, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the increase in marked value of the premises resulting from construction of the improvements over the market value of tax year 2004. The value of New Eligible Properties shall be abated in accordance with the following scale:

ax Year Abated	ercentage of Value Abated	ax. Value Abated
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2005	100%	\$1,095,620
2006	100%	1,095,620
2007	100%	1,095,620
2008	100%	1,095,620
2009	100%	1,095,620

In the event that the total assessed value of improvements subject to abatement are assessed at less than \$999,999 in tax year 2005, then the percentage and term of abatement shall be adjusted to the following:

\$100,000 - \$250,000	=	Max. 250%
\$250,001 - \$500,000	=	Max. 300%
\$500,001 - \$750,000	=	Max. 375%
\$750,001 - \$999,999	=	Max. 425%

In the event that the total assessed value of improvements subject to abatement are assessed at less than \$100,000 in tax year 2005, then this abatement shall be null and void, and no abatement shall be granted.

TAXABILITY

During the period that this tax abatement is effective, taxes shall be payable as follows:

1. The value of Ineligible Property shall be fully taxable;
2. The Certified Appraised Value of the existing Eligible Property as determined each year shall be fully taxable; and
3. The full value of New Eligible Property shall be abated as set forth above under the section entitled "VALUE AND TERM OF AGREEMENT."

CONTEMPLATED IMPROVEMENTS

As set forth in its Abatement Application, Company represents that it will make the following improvements to its property located in City of Wharton Enterprise Zone No. 04-01.

Building Improvements	\$642,300
Other Improvements	453,320

It is contemplated that this project will add 19 new jobs with a combined addition of approximately \$406,000 of additional annual payroll. The company further contemplates that construction of the improvements will be completed prior to January 1, 2005. All improvements shall be completed in accordance with applicable laws, ordinances, rules or regulations.

EVENT OF DEFAULT

During the abatement period covered by this Agreement, Wharton may declare a default hereunder by the Company if one or more of the following events occurs:

- a. Willful failure and neglect by the Company or any of its agents or representatives to comply with the terms and provisions of this Agreement.
- b. Any other act or conduct by the Company which is deemed by Wharton to be not in accord with the spirit and intent of this Agreement or be in violation of any law or ordinance, including but not limited to the Ordinances of the City of Wharton.
- c. If the Company allows its ad valorem taxes owed to Wharton or any taxing entity to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or if the Company violates any of the terms and conditions of this Agreement and fails to cure during the cure period, this Agreement may be terminated and all taxes previously abated by this Agreement will be recaptured and paid within sixty (60) days of the date of termination. In the event of recapture, Wharton and any other taxing entity shall be entitled to recover interest and penalty in accordance with the requirements of law if said taxes have not been timely paid.

Should the City Council of Wharton determine that the Company is in default of this Agreement, Wharton shall notify the Company in writing of such default and shall provide a period of sixty (60) days for the cure thereof ("cure period"), and if the same is not cured by the expiration of said period as shall be determined by the City Council of Wharton, the City Council may unilaterally terminate this Agreement.

However, in the case of default for causes beyond the Company's reasonable control which cannot with due diligence be cured within such sixty (60) day period, the cure period may be deemed extended if the Company shall immediately upon receipt of such notice advise the City Manager of Wharton of its intention to initiate all steps necessary to cure such defaults and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure such default.

SUBSEQUENT DEFAULT

In the event the Company completes the herein stated improvements, but subsequently discontinues producing product or services for any reason excepting, fire, explosion or other casualty, accident or natural disaster for a one-year period during the term of this abatement, this Agreement shall terminate. In the event of termination, the abatement of taxes for the calendar year during which the facility no longer produces shall terminate and all taxes previously abated

shall be fully recaptured and the Company shall pay the same within sixty (60) days or when demand for payment is made.

TERMINATION AND APPEAL

If Wharton terminates this Agreement, it shall provide the Company written notice of such termination. If the Company believes termination was improper, it may file suit in the Wharton County District Courts appealing such termination within ninety (90) days after receipt of a written notice of termination from Wharton. If an appeal suit is filed, the Company shall remit to recapture, within fifteen (15) days of filing, all taxes previously abated along with penalty and interest in accordance with the requirements of law. During the period of pendency of litigation tax abatement will be suspended, and the Company shall be liable for normal taxation of the subject property. If the final determination of appeal is in the Company's favor all recaptured taxes, interest, and penalties paid by the Company, along with taxes subject to abatement which were paid during the pendency of litigation shall be refunded to the Company within fifteen (15) days of a finding in the Company's favor, and the terms and application of this Agreement shall resume. A finding in Wharton's favor shall terminate this Agreement.

ADMINISTRATION AND INSPECTION

This Agreement shall be administered on behalf of Wharton by the City Manager or his designee. The Company shall allow employees or other representatives of Wharton who have been designated by the City Manager to have access to the reinvestment zone during the term of the Agreement to inspect the facility to determine compliance with the terms and conditions of this Agreement. All regular inspections shall be made only after twenty-four (24) hours prior notice and will be conducted in such a manner as not to unreasonably interfere with the construction and/or operation of the facility. A representative of the Company may accompany the inspector.

Upon completion of the contemplated construction, Wharton may annually evaluate the facility to ensure compliance with the terms and provisions of this Agreement. Any possible defaults shall be reported to the Company. Additionally, the Company shall make available such documentation as Wharton may deem necessary to evaluate changes in employment, payroll, sales tax, property and inventory tax occurring within the reinvestment zone.

The Chief Appraiser of the Wharton County Appraisal District shall annually determine (1) the taxable value under the terms of this abatement to the real and/or personal property subject to this Agreement and (2) the full taxable value without abatement of the real and/or personal property otherwise located at or about the company's premises. The Chief Appraiser shall record both abatement taxable value and full taxable value in the appraisal records. The full taxable value figure listed in the appraisal records shall be used to compute the amount of abated taxes that are due for recapture, should recapture become necessary.

The Company shall furnish the Chief Appraiser annually such information as provided for under Chapter 22 or the Texas Tax Code as may be necessary for the administration of the abatement. Such information shall also be provided to Wharton upon request when deemed

necessary for Wharton's evaluation of compliance with the terms and provisions of this Agreement.

It shall be the sole responsibility of the Company to annually file Comptroller of Public Accounts Form 50-116 with the Chief Appraiser's office. Such filing to take place between January 1st and April 30th of the tax year. Failure to do so can result in the company not receiving tax abatement for the subject tax year. Such failure to receive abatement does not impose upon Wharton any responsibility to grant additional abatement in lieu of abatement not received.

ASSIGNMENT

The Company may assign this Agreement to a new owner or lessee of the facility only with written consent of the City Council of Wharton as shall be contained in an ordinance approving such assignment. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in this Agreement. Any assignment of the Agreement shall be to an entity that contemplates the same improvements to the property and the same usage as contemplated in the application. No assignment shall be approved if the Company or the assignee is indebted to Wharton for ad valorem taxes or other obligations.

NOTICES

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the Company or Wharton at the mailing address as hereinafter set out. If mailed, any notice of communication shall be deemed to be received three (3) days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the Company or Wharton at the following addresses:

To the Company:

Mailing address: Jr.'s Texas Best, LLC
Rt. 3 Box 260
Wharton, TX 77488

Physical address: CR 467 and US Hwy. 59
Wharton, TX 77488

To the City of Wharton:

CITY OF WHARTON
Attention: City Manager
120 E. Caney
Wharton, TX 77488

Either party may designate a different address by giving the other party ten (10) days written notice thereof.

EXECUTION

The Company and Wharton jointly execute this Agreement as duly authorized in the case of the Company by a letter from the President of Jr.'s Texas Best, LLC designating and authorizing a Signatory, and in the case of Wharton by formal action of the City Council of Wharton through an ordinance duly passed and approved authorizing such action.

This Agreement is intended to be executed in multiple originals with each party hereof having a duly signed copy.

SIGNED and EXECUTED by the Mayor of the City of Wharton pursuant to the authority granted to him by Ordinance No.2004-06 duly passed, approved and adopted by the City Council of the City of Wharton on the 23rd day of February, 2004.

CITY OF WHARTON

By _____

Bryce D. Kocian
Mayor

ATTEST:

Joyce Vasut
City Secretary

SIGNED and EXECUTED by the Designee of the President of Jr.'s Texas Best, LLC. A copy of said letter is attached hereto, marked EXHIBIT "B" and incorporated herein for all purposes.

Jr.'s Texas Best, LLC

Date

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

The eleventh item on the agenda was to review and consider solicitation for Management Services for the Texas Capital Fund – Contract No. 723-92, Jr's Texas Best, LLC. City Manager Andres Garza, Jr. stated that on January 30, 2004, the City of Wharton executed the Texas Capital Fund Contract No. 723092 for Jr's Texas Best, LLC. He stated that the City Staff was requesting authorization to solicit the request for proposals for management services. He then presented a copy of the proposal for management services for the project. After some discussion,

Councilmember Domingo Montalvo, Jr. made a motion to approve the solicitation for Management Services for the Texas Capital Fund – Contract No. 723-92, Jr's Texas Best, LLC. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider an ordinance approving and authorizing the Mayor of the City of Wharton to sign and execute for an on behalf of the City of Wharton a Tax Abatement Agreement with Mr. Yic Desai, DVD Enterprises, LTD for the Holiday Inn Express in a form as attached hereto and marked Exhibit "1" and making certain findings of fact in accordance with the requirements of law. City Manager Andres Garza, Jr. stated that during the February 9, 2004 regular Wharton City Council meeting, the City Council administratively approved the tax abatement application submitted by Mr. Yic Desai of DVD Enterprises, LTD for the Holiday Inn Express Project. He stated that the location of the property was located within the Enterprise Zone, which automatically created the reinvestment zone that was required for a tax abatement agreement. He then presented a copy of the memorandum dated February 17, 2004 from the City Council Finance Committee recommending the City Council consider approving an abatement agreement for six years at 100% tax abatement and the seventh year at 50% tax abatement. Also, that the abatement be tied to the company's franchise agreement with Holiday Inn Express that if the franchise ceases then the tax abatement would terminate . City Attorney Paul Webb stated that language in the body of the agreement reflected contingent upon approval of the placement of the Holiday Inn Express. After some discussion, Councilmember Ken Freese made a motion to approve Ordinance No. 2004-07, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2004 - 07**

AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO SIGN AND EXECUTE FOR AND ON BEHALF OF THE CITY OF WHARTON A TAX ABATEMENT AGREEMENT WITH MR. YIC DESAI, DVD ENTERPRISES, LTD FOR THE HOLIDAY INN EXPRESS IN A FORM AS ATTACHED HERETO AND MARKED EXHIBIT "1" AND MAKING CERTAIN FINDINGS OF FACT IN ACCORDANCE WITH THE REQUIREMENTS OF LAW.

WHEREAS, heretofore previously, the City Council of the City of Wharton by Ordinance No. 2002-10 did create Enterprise Zone No. E360-091602-WWC upon certain tracts and parcels of property as described in said ordinance on file; and

WHEREAS, an agreement has been reached by and between the City of Wharton and the applicant to enter into a tax abatement agreement; and

WHEREAS, said agreement provides for tax abatement in accordance with certain conditions, restrictions and limitations as therein set out; and

WHEREAS, the City Council of the City of Wharton finds and determines that the tax abatement agreement, as attached hereto and marked Exhibit "1" is in accordance with the requirements of law and, therefore, should be approved.

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

Section I. The Mayor, for and on behalf of the City of Wharton, is authorized to sign and execute a tax abatement agreement with Mr. Yic Desai, DVD Enterprises, LTD for the Holiday Inn Express for the purpose of providing tax abatement with certain conditions, limitations and restrictions as set out in said agreement and under the requirements of law as specifically set out in Chapter 312 of the Texas Tax Code.

Passed, Approved and Adopted this 23rd day of February 2004.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

BY: _____
JOYCE VASUT
City Secretary

**TAX ABATEMENT AGREEMENT FOR PROPERTY LOCATED
IN CITY OF WHARTON ENTERPRISE ZONE No. EZ360-091602-WWC
ADOPTED BY THE CITY OF WHARTON ORDINANCE No. 2002-10**

This Tax Abatement Agreement (hereinafter referred to as "Agreement") is executed by and between the City of Wharton, Texas (hereinafter referred to as "Wharton"), acting through an ordinance duly adopted by the City Council of Wharton, and DVD Enterprises, LTD (hereinafter referred to as "Company"), the owner of taxable property within the area and territory of the City of Wharton Enterprise Zone No. EZ360-091602-WWC and the City of Wharton, Wharton County, Texas.

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

- a. The "Certified Appraised value" means the value certified as of January 1, 2005 of the property within the City of Wharton Enterprise Zone No. EZ360-091602-WWC by the Wharton County Central Appraisal District as of that date.

- b. The “Improvements” means the buildings or portions thereof or other improvements, including fixed machinery, equipment and process units, used for commercial or industrial purposes that are erected by Company on the property on or after January 1, 2005.
- c. “Construction Phase” means a material and substantial improvement of the property which represents a separate and distinct construction operation undertaken for the purpose of erecting the improvements. The period of Construction Phase ends when the Company is able to operate in accordance with its operating plans.
- d. “Abatement” means the full or partial exemption from ad valorem taxes of certain property, including real and personal property, in the City of Wharton Enterprise Zone No. EZ360-091602-WWC designated for economic development purposes.
- e. “Eligible Property” means the buildings, structures, fixed machinery, equipment, process units and site improvements necessary to the operation and administration of the facility.
- f. “New Eligible Property” means Eligible Property, the construction of which commences subsequent to January 1, 2004 and is completed prior to January 2006. A list of the New Eligible Property is set forth in Company’s Application for Tax Abatement in Wharton Texas, which is incorporated herein by reference and made a part hereof. During the Construction Phase of the New Eligible Property, the Company may make such change orders to the New Eligible Property as are reasonably necessary to accomplish its intended use.
- g. “Ineligible Property” means land, inventories, supplies, tools, furnishings, and other forms of movable personal property which are not integral to the operation of the facility and property.

The guidelines and other criteria for granting tax abatements in a Reinvestment Zone (an Enterprise Zone) created in the City of Wharton, Wharton County, Texas, were adopted by Resolution No. 2002-10 enacted by the City Council of Wharton as finally passed and approved on the 13th day of May, 2002, and the same are incorporated herein by reference, together with any applicable amendments.

SUBJECT PROPERTY

The City of Wharton Enterprise Zone No. EZ360-091602-WWC is an area within the City of Wharton, Wharton County, Texas, being legally described in Exhibit “A” attached hereto and incorporated therein for all purposes.

The Wharton County Appraisal District has established the base year values for the subject property as of January 1, 2004, as reflected on the Wharton County Appraisal District rendition statement released on or about May 1, 2004.

VALUE AND TERM OF AGREEMENT

This Agreement shall be effective with the January 1st, 2005 valuation date. In each year that this Agreement is in effect, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the increase in marked value of the premises resulting from construction of the improvements over the market value of tax year 2004. The value of New Eligible Properties shall be abated in accordance with the following scale:

Max Year Abated	Percentage of Value Abated	Max. Value Abated
2005	100%	\$3,500,000
2006	100%	3,500,000
2007	100%	3,500,000
2008	100%	3,500,000
2009	100%	3,500,000
2010	100%	3,500,000
2011	50%	3,500,000

In the event that the total assessed value of improvements subject to abatement are assessed at less than \$999,999 in tax year 2005, then the percentage and term of abatement shall be adjusted to the following:

\$100,000 - \$250,000	=	Max. 250%
\$250,001 - \$500,000	=	Max. 300%
\$500,001 - \$750,000	=	Max. 375%
\$750,001 - \$999,999	=	Max. 425%

In the event that the total assessed value of improvements subject to abatement are assessed at less than \$100,000 in tax year 2005, then this abatement shall be null and void, and no abatement shall be granted.

TAXABILITY

During the period that this tax abatement is effective, taxes shall be payable as follows:

1. The value of Ineligible Property shall be fully taxable;
2. The Certified Appraised Value of the existing Eligible Property as determined each year shall be fully taxable; and

3. The full value of New Eligible Property shall be abated as set forth above under the section entitled "VALUE AND TERM OF AGREEMENT."

CONTEMPLATED IMPROVEMENTS

As set forth in its Abatement Application, Company represents that it will make the following improvements to its property located in City of Wharton Enterprise Zone No. EZ360-091602-WWC.

Construction of new three story Holiday Inn Express, containing approximately sixty units, a conference room, an exercise room, an exercise room and a swimming pool.

It is contemplated that this project will add 10 new jobs with a combined addition of approximately \$180,000 additional annual payroll. The company further contemplates that construction of the improvements will be completed prior to January 1, 2006. All improvements shall be completed in accordance with applicable laws, ordinances, rules or regulations.

EVENT OF DEFAULT

During the abatement period covered by this Agreement, Wharton may declare a default hereunder by the Company if one or more of the following events occurs:

- a. Willful failure and neglect by the Company or any of its agents or representatives to comply with the terms and provisions of this Agreement.
- b. Any other act or conduct by the Company which is deemed by Wharton to be not in accord with the spirit and intent of this Agreement or be in violation of any law or ordinance, including but not limited to the Ordinances of the City of Wharton.
- c. If the Company allows its ad valorem taxes owed to Wharton or any taxing entity to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or if the Company violates any of the terms and conditions of this Agreement and fails to cure during the cure period, this Agreement may be terminated and all taxes previously abated by this Agreement will be recaptured and paid within sixty (60) days of the date of termination. In the event of recapture, Wharton and any other taxing entity shall be entitled to recover interest and penalty in accordance with the requirements of law if said taxes have not been timely paid.
- d. If the Company does not receive a franchise agreement with Holiday Inn, this agreement shall be null and void.

- e. If the Company receives a Holiday Inn franchise and such franchise agreement is revoked for any reason by Holiday Inn or forfeited by the Company, in either event the above tax abatement will cease as of the date of loss or forfeiture of the Holiday Inn franchise and this agreement will be null and void.

Should the City Council of Wharton determine that the Company is in default of this Agreement, Wharton shall notify the Company in writing of such default and shall provide a period of sixty (60) days for the cure thereof (“cure period”), and if the same is not cured by the expiration of said period as shall be determined by the City Council of Wharton, the City Council may unilaterally terminate this Agreement.

However, in the case of default for causes beyond the Company’s reasonable control which cannot with due diligence be cured within such sixty (60) day period, the cure period may be deemed extended if the Company shall immediately upon receipt of such notice advise the City Manager of Wharton of its intention to initiate all steps necessary to cure such defaults and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure such default.

SUBSEQUENT DEFAULT

In the event the Company completes the herein stated improvements, but subsequently discontinues producing product or services for any reason excepting, fire, explosion or other casualty, accident or natural disaster for a one-year period during the term of this abatement, this Agreement shall terminate. In the event of termination, the abatement of taxes for the calendar year during which the facility no longer produces shall terminate and all taxes previously abated shall be fully recaptured and the Company shall pay the same within sixty (60) days or when demand for payment is made.

TERMINATION AND APPEAL

If Wharton terminates this Agreement, it shall provide the Company written notice of such termination. If the Company believes termination was improper, it may file suit in the Wharton County District Courts appealing such termination within ninety (90) days after receipt of a written notice of termination from Wharton. If an appeal suit is filed, the Company shall remit to recapture, within fifteen (15) days of filing, all taxes previously abated along with penalty and interest in accordance with the requirements of law. During the period of pendency of litigation tax abatement will be suspended, and the Company shall be liable for normal taxation of the subject property. If the final determination of appeal is in the Company’s favor all recaptured taxes, interest, and penalties paid by the Company, along with taxes subject to abatement which were paid during the pendency of litigation shall be refunded to the Company within fifteen (15) days of a finding in the Company’s favor, and the terms and application of this Agreement shall resume. A finding in Wharton’s favor shall terminate this Agreement.

ADMINISTRATION AND INSPECTION

This Agreement shall be administered on behalf of Wharton by the City Manager or his designee. The Company shall allow employees or other representatives of Wharton who have been designated by the City Manager to have access to the reinvestment zone during the term of the Agreement to inspect the facility to determine compliance with the terms and conditions of this Agreement. All regular inspections shall be made only after twenty-four (24) hours prior notice and will be conducted in such a manner as not to unreasonably interfere with the construction and/or operation of the facility. A representative of the Company may accompany the inspector.

Upon completion of the contemplated construction, Wharton may annually evaluate the facility to ensure compliance with the terms and provisions of this Agreement. Any possible defaults shall be reported to the Company. Additionally, the Company shall make available such documentation as Wharton may deem necessary to evaluate changes in employment, payroll, sales tax, property and inventory tax occurring within the reinvestment zone.

The Chief Appraiser of the Wharton County Appraisal District shall annually determine (1) the taxable value under the terms of this abatement to the real and/or personal property subject to this Agreement and (2) the full taxable value without abatement of the real and/or personal property otherwise located at or about the company's premises. The Chief Appraiser shall record both abatement taxable value and full taxable value in the appraisal records. The full taxable value figure listed in the appraisal records shall be used to compute the amount of abated taxes that are due for recapture, should recapture become necessary.

The Company shall furnish the Chief Appraiser annually such information as provided for under Chapter 22 or the Texas Tax Code as may be necessary for the administration of the abatement. Such information shall also be provided to Wharton upon request when deemed necessary for Wharton's evaluation of compliance with the terms and provisions of this Agreement.

It shall be the sole responsibility of the Company to annually file Comptroller of Public Accounts Form 50-116 with the Chief Appraiser's office. Such filing to take place between January 1st and April 30th of the tax year. Failure to do so can result in the company not receiving tax abatement for the subject tax year. Such failure to receive abatement does not impose upon Wharton any responsibility to grant additional abatement in lieu of abatement not received.

ASSIGNMENT

The Company may assign this Agreement to a new owner or lessee of the facility only with written consent of the City Council of Wharton as shall be contained in an ordinance approving such assignment. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in this Agreement. Any assignment of the Agreement shall be to an entity that contemplates the same improvements to the property and the same usage as contemplated in the application. No assignment shall be approved if the Company or the assignee is indebted to Wharton for ad valorem taxes or other obligations.

NOTICES

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the Company or Wharton at the mailing address as hereinafter set out. If mailed, any notice of communication shall be deemed to be received three (3) days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the Company or Wharton at the following addresses:

To the Company:

Mailing address: DVD Enterprises, LTD
Highway 59 Frontage and FM 102
Wharton, TX 77488

Physical address: US Hwy. Frontage and FM 102
Wharton, TX 77488

To the City of Wharton:

CITY OF WHARTON
Attention: City Manager
120 E. Caney
Wharton, TX 77488

Either party may designate a different address by giving the other party ten (10) days written notice thereof.

EXECUTION

The Company and Wharton jointly execute this Agreement as duly authorized in the case of the Company by a letter from the President of DVD Enterprises, LTD designating and authorizing a Signatory and in the case of Wharton by formal action of the City Council of Wharton through an ordinance duly passed and approved authorizing such action.

This Agreement is intended to be executed in multiple originals with each party hereof having a duly signed copy.

SIGNED and EXECUTED by the Mayor of the City of Wharton pursuant to the authority granted to him by Ordinance No.2004-07 duly passed, approved and adopted by the City Council of the City of Wharton on the 23rd day of February, 2004.

CITY OF WHARTON

By: _____
Bryce D. Kocian
Mayor

ATTEST:

Joyce Vasut
City Secretary

SIGNED and EXECUTED by the Designee of the President of DVD Enterprises, LTD. A copy of said letter is attached hereto, marked EXHIBIT "B" and incorporated herein for all purposes.

DVD Enterprises, LTD

Date

Councilmember Ray Linseisen seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider the Wharton Economic Development Corporation Fiscal Year 2004-2005 budget to be allocated toward the Wharton County Courthouse Lighting Project. City Manager Andres Garza, Jr. presented a copy of the memorandum dated February 19, 2004 from Wharton Economic Development Corporation's (WEDCo) Executive Director David Schroeder regarding WEDCo's request to allocate \$15,000 of WEDCo's 2004-2005 budget toward the Wharton Courthouse lighting project. Wharton Economic Development Corporation Executive Director David Schroeder addressed the City Council and stated that Wharton County had requesting funds for the Courthouse Lighting Project. He stated that the project was totaled at \$52,000, and the WEDCo Board approved \$15,000 for the project. He stated that he had contacted the State Comptroller, and that WEDCo funds were allowed to be used for the project. After some discussion, Councilmember Don Mueller made a motion to approve the Wharton Economic Development Corporation's request to allocate the funds towards the Wharton County Courthouse Lighting Project in the amount of \$15,000. Councilmember Darryl Darnell seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider an ordinance establishing procedures for the City of Wharton to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses. City Manager Andres Garza, Jr. stated that on February 2, 2004, the City Council Finance Committee recommended the City Council consider approving an ordinance that would establish an ad valorem tax freeze on residence homestead of the disabled and elderly. He stated that he had told the Finance Committee Members that last year, State Law changed in that taxing entities could freeze property taxes for people over age 65 and disabled and that the school district had been freezing the property taxes for years. He then presented a draft ordinance approving the tax freeze for the elderly and disabled. City Attorney Paul Webb informed the City Council that the ordinance was obtained from Pasadena; however the statute allows the tax freeze for the 2004 year. Councilmember Ken Freese suggested the City Council change the proposed ordinance tax

freeze for the 2004 year instead of the 2003 as listed in the ordinance. He stated that if the City Council would adopt the 2004, then Wharton Central Appraisal District could start the process; however if the 2003 year would be used then the process would be delayed. After some discussion, Councilmember Darryl Darnell made a motion to approve Ordinance No. 2004-08, which read as follows:

ORDINANCE NO. 2004 - 08

AN ORDINANCE ESTABLISHING PROCEDURES FOR THE CITY OF WHARTON TO ESTABLISH AN AD VALOREM TAX FREEZE ON RESIDENCE HOMESTEADS OF THE DISABLED AND OF THE ELDERLY AND THEIR SPOUSES.

WHEREAS, a joint resolution of the Texas Legislature was passed proposing a constitutional amendment (Proposition 13) to authorize a county, a city or town, or a junior college district to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses; and

WHEREAS, such Proposition 13 reads as follows: “The constitutional amendment to permit counties, cities and towns, and junior college districts to establish an ad valorem tax freeze on residence homesteads of the disabled and of the elderly and their spouses”; and

WHEREAS, effective January 1, 2004, Section 11.261 of the Texas Tax Code governs the procedure under which a municipality or other taxing entity may adopt an ad valorem tax freeze; and

WHEREAS, the City Council believes it would be in the best interest of the citizens of the City of Wharton to provide for a tax freeze on the amount of property taxes on the homesteads of disabled individuals or individuals age sixty-five or older.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHARTON that:

SECTION 1. That the City Council hereby establishes the ad valorem tax freeze on the residence homesteads of the disabled and of the elderly as authorized by the aforesaid constitutional amendment.

SECTION 2. The Tax Assessor-Collector of the City of Wharton, Texas is hereby authorized to implement the necessary procedures to freeze the taxes to the 2003 Wharton County Appraisal District Records, if it is legal to freeze at the year 2003.

SECTION 3. The wording of the above Section 2 stating “to freeze the taxes to the 2003 Wharton County Appraisal District Records, if it is legal to freeze at the year 2003” is contingent on a requested ruling by the Texas Attorney General as to whether the wording is legal or whether Section 2 should state “based upon the 2004 Wharton County Appraisal District Records”. Upon receipt of such opinion and attachment to this ordinance, this ordinance shall automatically reflect without further amendment the correct years as determined by such Attorney General ruling.

SECTION 4. That the City Council officially determines that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further confirms such written notice and the contents and posting thereof.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Wharton, Texas in regular meeting in the City Hall this the 23rd day of February 2004.

CITY OF WHARTON

BRYCE D. KOCIAN, Mayor

ATTEST:

APPROVED:

JOYCE VASUT, City Secretary

PAUL WEBB, City Attorney

Councilmember V. L. Wiley, Jr. seconded the motion. Councilmembers Darryl Darnell V. L. Wiley, Jr., Don Mueller, and Mayor Bryce D. Kocian voted for the motion. Councilmembers Ken Freese, Domingo Montalvo, Jr., and Ray Linseisen voted against the motion. The motion carried.

The fifteenth item on the agenda was to review and consider a resolution authorizing the Mayor of the City of Wharton to execute an agreement with Dr. Larry Lipscomb, M.D., FAAFP for Medical Director Services for the City of Wharton Emergency Medical Services (EMS) Program. City Manager Andres Garza, Jr. presented a copy of the current contract for Medical Director Services between the City of Wharton and Dr. Larry Lipscomb, M.D., FAAFP which would expire February 25, 2004. He then presented a draft resolution authorizing the Mayor of the City of Wharton to execute an extension to the contract with Mr. Lipscomb until March 31, 2005. He stated that the extension would allow for the Medical Director's service agreement to run concurrent with the City's licenses to operate an Emergency Medical Service (EMS). Dr. Lipscomb addressed the City Council and stated that his duties include the Emergency Room. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2004-015, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2004 -015**

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE AN AGREEMENT WITH DR. LARRY LIPSCOMB, M.D., FAAFP FOR MEDICAL DIRECTOR SERVICES FOR

**THE CITY OF WHARTON EMERGENCY MEDIAL SERVICES (EMS)
PROGRAM.**

WHEREAS, the City of Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute on behalf of the City of Wharton an agreement with Dr. Larry Lipscomb, M.D., FAAFP for medical director services for the City of Wharton Emergency Medical Services (EMS) program; and

WHEREAS, the City of Wharton and Dr. Larry Lipscomb, M.D., FAAFP wish to be bound by the conditions as set forth in the agreement.

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

Section I. That the City Council of the City of Wharton hereby authorizes the Mayor of the City of Wharton to execute on behalf of the City of Wharton an agreement with Dr. Larry Lipscomb, M.D., FAAFP for medical director services for the City of Wharton Emergency Medical Services (EMS) program

Section II. That the City of Wharton and Dr. Larry Lipscomb, M.D., FAAFP are hereby bound by the conditions as set forth in the agreement.

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

Passed, Approved, and Adopted this 23rd day of February 2004.

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 sixteenth item on the agenda was to review and consider a resolution of the Wharton City Council approving an extension to the Agreement for Emergency Medical Services between the City of Wharton and Wharton County and Authorizing the Mayor of the City of Wharton to execute all documents related to said contract. City Manager Andres Garza, Jr. stated that on February 16, 2004, the City of Wharton and the City of El Campo's Intergovernmental Relations Committees met with Wharton County Judge John Murrile and other County representatives to discuss the Emergency Medical Services (EMS) contract between the City of Wharton, El Campo, and County. He stated that Wharton County had agreed to extend the current contract

which would expire December 31, 2004. He then presented a copy of a draft resolution approving the extension of the contract and a copy of the draft contract. Mr. Garza stated that the contract would automatically renew for year. Councilmember Domingo Montalvo, Jr. publicly commended Mayor Bryce D. Kocian, Councilmember Ken Freese for working with Wharton County in order to find a fair and equitable solution. Councilmember Darryl Darnell asked if the formula would remain as the present formula. City Manager Garza stated that Wharton County had agreed with the current formula for an additional year. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution No. 2004-016, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2004 - 016**

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF WHARTON, TEXAS TO EXECUTE ON BEHALF OF THE CITY OF WHARTON AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF WHARTON AND WHARTON COUNTY FOR EMS SERVICES.

WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton, Texas to execute an Interlocal Agreement between the City of Wharton and Wharton County for EMS Services; and

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

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

Section I. That the Wharton City Council hereby authorizes the Mayor of the City of Wharton, Texas to execute an interlocal agreement between the City of Wharton and Wharton County for EMS Services.

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

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

Passed, Approved, and Adopted this the 23rd day of February 2004.

CITY OF WHARTON

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

JOYCE VASUT

City Secretary

Councilmember seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider a pay request by Anthony Rachunek & Associates for engineering services for the City of Wharton 24" Sewer Line Repair Project at Wastewater Treatment Plant No. 2. City Manager Andres Garza, Jr. presented a copy of the invoice dated February 12, 2004 from Mr. Anthony Rachunek, P.E., Anthony Rachunek & Associates, Inc. for the 24" Sewer Line Repair Project at Wastewater Treatment Plant No. 2 project. After some discussion, Councilmember made a motion to approve the pay request by Anthony Rachunek & Associates for engineering services for the City of Wharton 24" Sewer Line Repair Project at Wastewater Treatment Plant No. 2 in the amount of \$10,000.00. Councilmember Don Mueller seconded the motion. All voted in favor.

The eighteenth item on the agenda was to review and consider the request by Councilmember Darryl Darnell to discuss invoice procedures and records submitted by the City Attorney's Office. City Manager Andres Garza, Jr. presented a copy of email dated February 18, 2004 from Councilmember Darryl Darnell requesting a discussion regarding invoice procedures and records submitted by the City Attorney's Office. Councilmember Darryl Darnell stated that the bill submitted from City Attorney Paul Webb was not clear on the charges provided. He stated that the bill did not indicate who provided services and requested a more detail billing statement. He stated that the City Council should decide what attorney to use for Municipal Court. He also questioned a charge of \$99 for a seminar that was never approved by the City Council. He stated that if other professions had to submit detailed invoices, then the City Attorney should abide by the same standards. After some discussion, Councilmember Darryl Darnell made a motion for the item to be presented to the Finance Committee. Councilmember V. L. Wiley, Jr. seconded the motion. Councilmembers Darryl Darnell, V. L. Wiley, Jr. voted for the motion. Councilmembers Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted against the motion. The motion failed.

Councilmember Domingo Montalvo, Jr. stated that the invoice system looked fine and knew of times when the City Attorney had conducted work for the City and the City had not been charged. He stated that maybe the City Council needed to look at who was running up the totals. City Attorney Paul Webb stated that he was sending Amy Rodd to a seminar in order to do more for the City at a less rate but he would pay the \$99.00. Councilmember Darryl Darnell stated that he did not think the City should pay the \$99.00, since it was not approved by the City Council. No action was taken.

The nineteenth item on the agenda was to review and consider Construction Contracts:

- A. Pay Request No. 3 – Nunn Constructors, Ltd. - Water Plants/Wastewater Treatment Plant No. 1 – Hazard Mitigation.

City Manager Andres Garza, Jr. presented the pay request to the City Council. Mr. Carlos Cotton with Jones & Carter, Inc. addressed the City Council and stated that the project was complete. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Pay Request No. 3 – Nunn Constructors, Ltd. - Water Plants/Wastewater Treatment Plant No. 1 –

Hazard Mitigation in the amount of \$34,439.40. Councilmember Ray Linseisen seconded the motion. All voted in favor.

B. Pay Request No. 5 and No. 6 – Uticon, Inc. - Caney Creek Outfall Ditch.

City Manager Andres Garza, Jr. presented the pay request to the City Council. Mr. Carlos Cotton with Jones & Carter, Inc. addressed the City Council and stated that the project was going as scheduled. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to Pay Request No. 5 and No. 6 – Uticon, Inc. - Caney Creek Outfall Ditch in the amount of \$38,223.03 for Pay Request No. 5 and in the amount of \$24,907.61 for Pay Request No. 6. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

C. 2003 Sewer Rehabilitation Project:

1. Change Order No. 1 – Mercer Construction Company.

City Manager Andres Garza, Jr. presented the change order to the City Council. Anthony Rachunek with Anthony Rachunek & Associates addressed the City Council and requested approval for Change Order No. 1 for the 2003 Sewer Rehabilitation Project. After some discussion, Councilmember made a motion to approve Change Order No. 1 – Mercer Construction Company - 2003 Sewer Rehabilitation Project in the amount of \$3,335.00. Councilmember seconded the motion. All voted in favor.

2. Fourth and Final Pay Request – Mercer Construction Company.

City Manager Andres Garza, Jr. presented the pay request to the City Council. Anthony Rachunek with Anthony Rachunek & Associates addressed the City Council and stated that the project was complete. After some discussion, Councilmember Darryl Darnell made a motion to approve Fourth and Final Pay Request – Mercer Construction Company - 2003 Sewer Rehabilitation Project in the amount of \$37,413.10. Councilmember Don Mueller seconded the motion. All voted in favor.

D. Civic Center Improvement Project:

1. Change Order No. 3 – Cob’s Carpet.

City Manager Andres Garza, Jr. presented the change order to the City Council. He stated that the included carpet in the EMS facility. After some discussion, Councilmember made a motion to approve Change Order No. 3 – Cob’s Carpet - Civic Center Improvement Project in the amount of \$5,764.10. Councilmember seconded the motion. All voted in favor.

2. Pay Request No. 3 – Cob’s Carpet.

City Manager Andres Garza, Jr. presented the pay request to the City Council. After some discussion, Councilmember Ray Linseisen made a motion to approve Pay Request No. 3 – Cob’s Carpet - Civic Center Improvement Project in the amount of \$5,764.10. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The twentieth item discussed on the agenda was to review and consider Boards, Commissions, and City Council Reports:

- A. Beautification Commission meeting held February 11, 2004.
- B. Intergovernmental Relations Committee meeting held February 16, 2004.
- C. City Council Finance Committee Meeting held February 16, 2004.
- D. Wharton Economic Development Corporation meeting held February 16, 2004.

E. Planning Commission meeting held February 16, 2004.
City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

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

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| A. Police Department. | I. Engineer/Planning Department. |
| B. City Secretary/Personnel. | J. Facilities Maintenance Department. |
| C. Municipal Court. | K. Community Services Department/
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-second 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 8:18 p.m.

CITY OF WHARTON, TEXAS

By:

BRYCE D. KOCIAN
Mayor

ATTEST:

JOYCE VASUT
City Secretary