

MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
APRIL 25, 2005

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:04 P.M. Councilmember V. L. Wiley, Jr. 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., David Samuelson, 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, City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Community Services Director Jo Knezek, EMS Director John Kowalik, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, Louis Edwards, Chester Houston, Eddie Brinkley, David Schroder, Carlos Cotton, Wayne Sherman, Wayne Neal, and Amy Aaronson.

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

The fourth item on the agenda was Wharton Moment. Councilmember Ken Freese publicly commended the success of the Hidden Garden Tour. He stated that the weather was wonderful and a lot of out of town visitors came to Wharton. No action was taken.

The fifth item on the agenda was to review and consider the City of Wharton Financial Report for the month of March 2005. Finance Director Joyce Vasut presented the financial report for the month of March 2005 and stated that the fiscal year was at 50%. Mrs. Vasut stated that the general fund revenues were at 67.92% and the expenditures were at 51.42%. She said the total ad valorem taxes collected were \$1,724,611 and the sales tax for the month of February 2005 was \$114,481 with \$76,321 to the City and \$38,160 to WEDCo. She further stated the TexPool balance for March was \$3,105,812.46 with an average monthly yield of 2.5708%. After some discussion, Councilmember Don Mueller made a motion to approve the City of Wharton Financial Report for the month of March 2005. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the City of Wharton Budget Calendar for Fiscal Year 2005-2006. City Manager Andres Garza, Jr. presented a copy of the City of

Wharton Budget Calendar for Fiscal Year 2005-2006. Finance Director Joyce Vasut stated the Budget Calendar was tentatively scheduled; however, dates could be modified. After some discussion, no action was taken.

The seventh item on the agenda was to review and consider a resolution of Wharton, Texas, consenting to a transfer of the Charter Communications VI, LLC Cable Franchise to Texas Mid-Gulf Cablevision, LP. City Manager Andres Garza, Jr. presented a copy of a memorandum dated April 19, 2005 from Mr. Clarence A. West, Esq. to the City of Wharton regarding a transfer of the cable franchise request from of Charter Communications to Texas Mid-Gulf Cablevision. He then presented a draft resolution consenting to the transfer of the Charter Communications VI, LLC Cable Franchise to Texas Mid-Gulf Cablevision, LP. Councilmember David Samuelson asked if the City could control the type of programming offered by the cable company. Mr. Garza stated that the federal law allowed for broadcasting categories, which were not very specific. Mr. Wayne Sherman with Texas Mid-Gulf Cablevision, LP addressed the City Council and stated that there was freedom to choose the programs to be delivered to the customers. He stated that TExas Mid-Gulf would continue providing the same channels that Charter Communications VI, LLC provided. Councilmember V. L. Wiley, Jr. asked if an additional western channel were available. Mr. Wayne Neil with Texas Mid-Gulf Cablevision, LP addressed the City Council and stated that the western channel was not currently available; however, they would be reviewing the channel line-up offered. Mr. Garza asked if additional channels would be added. Mr. Sherman stated that digital channels would be added over time. He also stated that HTV would be also added and then they would evaluate the internet service. Councilmember Ken Freese asked if a local telephone number for customer service would be made available. Mr. Neil stated that there would be a Wharton number and the El Campo office would receive any overflow calls and the after hours call center would be in Victoria. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2005-17, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005-17**

RESOLUTION OF WHARTON, TEXAS, CONSENTING TO A TRANSFER OF THE CHARTER COMMUNICATIONS VI, LLC CABLE FRANCHISE TO TEXAS MID-GULF CABLEVISION, LP.

WHEREAS, as the cable franchise holder, Charter Communications VI, LLC ("Franchisee") in Wharton, Texas ("Franchise Authority") intends to transfer the Franchise (Ord. 2001-16 and Ord. . 2004-17) pursuant to the terms of an Asset Purchase Agreement ("Agreement") between Franchisee and McDonald Investment Company, Inc., an Alabama corporation, ("MIC") to an affiliate of MIC, Texas Mid-Gulf Cablevision, LP, an Alabama limited partnership, ("Mid-Gulf"); and

WHEREAS, Franchisee and Mid-Gulf have requested that Franchise Authority consent to the Transfer in accordance with the requirements of the cable franchise and have filed an FCC Form 394 ("Transfer Application") with the Franchise Authority requesting such consent to the transfer from Franchisee to Mid-Gulf (the "Transfer") and

WHEREAS, the Franchise Authority has reviewed the Transfer Application, examined the legal, financial and technical qualifications of Mid-Gulf and found it to be a suitable transferee, followed all required procedures in order to consider and act upon the Transfer Application, and considered

the comments of all interested parties.

WHEREAS, the Franchise Authority is willing to consent to the Transfer.

NOW, THEREFORE, BE IT RESOLVED that in consideration of the foregoing:

The Franchising Authority consents to the Transfer, effective immediately upon the Closing on the Agreement, subject to:

Strict compliance with the conditions set out in the acceptance form attached as Exhibit "A" to this Resolution.

Written Acceptance of the Resolution by the Franchisee and Mid-Gulf as follows:

Within either thirty (30) days after passage of this Resolution by the City Council or thirty (30) days after the Closing, whichever is later, Mid-Gulf and Franchisee shall file their written acceptance of this Resolution with the City Manager. The acceptance shall be in the form attached hereto as Exhibit "A".

Mid-Gulf and Franchisee's acceptances shall be contingent only upon the final Closing of the Agreement, as provided in Subsection (d) below. Such acceptance shall be otherwise unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Resolution.

Mid-Gulf or Franchisee's failure, refusal or neglect to file such written acceptance within such time shall constitute an abandonment and rejection of the rights and privileges conferred hereby. Denial of Consent to Transaction. If for any reason Mid-Gulf or Franchisee fails, refuses or neglects to file the written acceptance as provided in Subsection (b), the City denies Charter's request for the Transfer and/or consent to the Transaction.

Automatic Nullification in Event of Failure to Close the Agreement or Closure on Materially Different Terms. In the event the Transfer which is the subject of this Resolution is not consummated or does not reach final closure for any reason, or in the event such closure is reached on terms substantially and materially different to the terms described in the FCC Form 394 and subsequent information provided by Mid-Gulf and relied upon by the City, then this Resolution, together with the written acceptance provided hereunder, shall be null and void. If the closure is upon terms which are substantially and materially different, Mid-Gulf shall resubmit its request for a change of control of the Franchisee.

The Franchising Authority confirms (a) that the Franchise held by the Franchisee and any governing ordinance are valid and in full force and effect, and (b) that the Franchisee is materially in compliance with the Franchise and there exists no fact or circumstance known to the Franchise Authority which constitutes or which, with the passage of time or the giving of notice or both would constitute a material default or breach under the Franchise or would allow the Franchise Authority to cancel or terminate the Franchisee's rights thereunder, and (c) the Franchise supersedes all other agreements between Franchisee and the Franchise Authority and represents the entire understandings of the parties and Franchisee has and Mid-Gulf will have no obligations to the Franchise Authority other than those specifically stated in the Franchise and in the letter dated March 9, 2005 from Mr. Wayne Sherman, Operations Manager of Mid-Gulf to the City Manager of Wharton, Mr. Andres Garza, Jr. ("March 9, 2005 Letter").

The Franchise Authority hereby consents to and approves the assignment, mortgage, pledge or other encumbrance, if any, of the Franchise, System or assets relating thereto, or of the interests in the permitted holder thereof, as collateral for a loan.

This Resolution shall become effective on the date of the Closing of the Transaction.

PASSED, ADOPTED AND APPROVED on this the 25th day of April 2005.

CITY OF WHARTON

By: _____

Bryce D. Kocian
Mayor

ATTEST:

LISA STAVENA

City Secretary

EXHIBIT "A"

Written Acceptance of Consent to Change of Control of Resolution No. 2005-17

TO: City of Wharton, Texas
Andres Garza, Jr., City Manager
120 East Caney Street
Wharton, TX 77488

This is to advise the City of Wharton, Texas that Texas Mid-Gulf Cablevision, LP, an Alabama limited partnership, (the "Transferee") and Charter Communications VI, LLC or its successor entity (the "Franchisee"), hereby unqualifiedly accepts Resolution No. 2005-17, passed by the City Council on April 25, 2005, ("Resolution") regarding the change in control of the Franchise (Cable Franchise Ord. 2001-16, as amended by Ord. 2004-17) to the Transferee under the following terms and conditions:

1. Compliance with Franchise. Subject to Texas state law and federal law and in all respects and without exception, the Transferee shall comply with the requirements of the Franchise, including all applicable ordinances, orders, contracts, agreements, commitments, side letters, and regulatory actions taken pursuant thereto, including, but not limited to, compliance with the March 9, 2005 Letter, which is incorporated herein for all purposes.

The Transferee acknowledges that the change of control will not affect, diminish, impair or supercede the binding nature on Franchisee of the documents set forth in this paragraph.

In all instances, the Transferee will continue with all current obligations of the existing franchise and continue to provide the level of service provided for therein, except as to filing the two customer service report forms, those being Exhibit 3 and 6, as attached to the Customer Service Standards, Exhibit "B" of the Franchise.

Further, neither the services currently provided nor the service area currently served by the Franchisee will be changed or altered in any significant manner by this transaction, although this does not prevent the Transferee from making changes to its service offerings in the normal course of business.

2. No City Waiver or Release for any Non-Compliance. Franchisee and Transferee agree that the City does not waive and expressly reserves all legal rights and authority in regard to any and all non-compliance under the Franchise that may now exist or may later be discovered to have existed during the term of the Franchise., even if prior to or after the closing of the Agreement and Transfer that is the subject of this acceptance, as those terms are defined in the Resolution.

Franchisee and Transferee acknowledge the City's reservation of rights as set forth above.

3. In the event the Agreement and Transfer, which is the subject of this Acceptance, is not consummated or does not reach final closure for any reason, or in the event such closure is reached on terms substantially and materially different to the terms described in the FCC Form 394 and which have a substantial and material negative impact on the Buyer's legal, economic and/or technical qualifications, then Transferee acknowledges that the City's Resolution, together with the written acceptance provided hereunder, shall be automatically null and void without further action by either party. If the closure is upon terms which are substantially and materially different, Transferee shall resubmit its request for a transfer in order to be in compliance with the Franchise.

4. Reimbursement of Costs. Franchisee shall within thirty (30) days of the Closing reimburse all direct, out-of-pocket costs of the City incurred in analyzing and acting upon Transferee's request to consent to the Transaction, in an amount up to \$5,000.00, based upon invoices.

CHARTER COMMUNICATIONS VI, LLC,
Or its Successor ("Franchisee")

By: _____

Name: _____

Title: _____

Date: _____

TEXAS MID-GULF CABLEVISION, LP
("Transferee")

By: _____

Name: _____

Title: _____

Date: _____

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

The eighth item on the agenda was to review and consider a resolution of the Wharton City Council approving the contract between the City of Wharton and the Texas Department of Transportation on behalf of the Youth Advisory Commission for the Adopt-A-Highway Program for the location beginning at the railroad tracks on FM102 and continuing North for two miles and authorizing the Mayor of the City of Wharton to execute all documents related to said contract. City Manager Andres Garza, Jr. stated that during the September 20, 2004 Youth Advisory Commission (YAC) meeting, the Commissioners voted to pursue the City of Wharton Adopt A Spot program through the Beautification Commission. He stated that the area that YAC was interested in adopting was along FM 102 from the Texas Department of Transportation (TxDOT) building to US Highway 59. He stated that during the March 9, 2005 Beautification Commission meeting, the Commissioners voted to approve the location sought by YAC. He stated that Assistant to City Manager Jackie Jansky then contacted TxDOT because

the area was located on the State right-of-way and was therefore subject to State requirements. He stated that Mrs. Jansky was informed that the State did require a contract to be executed by the City and that there were certain requirements involved with adopting the area. He then presented a copy of the proposed agreement and guidelines. He stated that under State requirements, the length of an area that could be adopted must be two (2) miles long; therefore, the area to be adopted by YAC would be from the railroad tracks on FM 102 two (2) miles North. He stated that the two (2) mile area would end approximately 0.2 miles passed Owens Road. He then presented a map indicating the location for adoption. He stated that City Council approval was required for the Mayor of the City of Wharton to execute the agreement on behalf of the Youth Advisory Commission. Miss Amy Aaronson, YAC Commissioner, addressed the City Council and stated that the YAC was recommending approval of the Adopt-A-Highway Program for the location beginning at the railroad tracks on FM102 and continuing North for two miles. After some discussion, Councilmember David Samuelson made a motion to approve Resolution No. 2005-18, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005-18**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE CONTRACT BETWEEN THE CITY OF WHARTON AND THE TEXAS DEPARTMENT OF TRANSPORTATION ON BEHALF OF THE YOUTH ADVISORY COMMISSION FOR THE ADOPT-A-HIGHWAY PROGRAM FOR THE LOCATION BEGINNING AT THE RAILROAD TRACKS ON FM 102 AND CONTINUING NORTH FOR TWO MILES AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.

WHEREAS, the Wharton Youth Advisory Commission wishes to Adopt-A-Highway at the location beginning at the railroad tracks on FM 102 and extending two (2) miles North; and

WHEREAS, the Wharton City Council wishes to authorize the Youth Advisory Commission to adopt the afore-mentioned location; and

WHEREAS, the Wharton City Council wishes to approve the contract between the Texas Department of Transportation and the City of Wharton on behalf of the Youth Advisory Commission; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents relating to said contract.

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

Section I. The Wharton City Council hereby approves the agreement between the City of Wharton and the Texas Department of Transportation on behalf of the Youth Advisory Commission to adopt a highway along FM 102 from a point beginning at the railroad tracks and extending two (2) miles North..

Section II. The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to said contract.

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

Passed, Approved, and Adopted this 25th day of April 2005.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

Councilmember Ken Freese seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider a proposal for residential development incentive reimbursement submitted by Mr. Jonathan Kulak for a proposed subdivision to be located on FM 3012. City Manager Andres Garza, Jr. stated that during the regular Wharton City Council meeting held April 11, 2005, this item was deferred by the City Council because Mr. Jonathan Kulak, again, was unable to attend the meeting and the item needed to be deferred. No action was taken.

The tenth item on the agenda was to review and consider the request by Habitat for Humanity for the City of Wharton to donate property, being known as Lot 3 of the Little Mexico Subdivision in the City of Wharton, for the construction of a home under the Habitat for Humanity Program. City Manager Andres Garza, Jr. presented a copy of the letter dated April 21, 2005 from Mr. David Samuelson, President of Habitat for Humanity of East Wharton County, requesting the City of Wharton contribute to Habitat for Humanity by donating property to be used as home sites for the program. He stated that the property that Habitat for Humanity was interested in was known as Lot 3 of the Little Mexico Subdivision in the City of Wharton. He stated that this property would be donated for the construction of a new home under the Habitat for Humanity Program. He then presented a plat indicating the identified property. Councilmember David Samuelson stated that he was on the Board; therefore, he would be abstaining from any discussion or vote. Councilmember Ken Freese stated that he was also on the Board; therefore he would be abstaining from any discussion or vote. Mayor Bryce D. Kocian asked how the City acquired the property. Mr. Garza stated that Judge Daniel Sklar's family had donated the property to the City of Wharton. City Attorney Paul Webb stated that State Law allowed the City to donate property toward this program. Mr. Garza stated that through the HOME Program, the City had two homes reconstructed on Sheppard Street. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Habitat for Humanity transfer of the property, being known as Lot 3 of the Little Mexico Subdivision in the City of Wharton, for the construction of a home under the Habitat for Humanity Program and authorize Mayor Bryce D. Kocian to execute on behalf of the City of Wharton the necessary documents for the transfer. Councilmember Don Mueller seconded the motion. Councilmember V. L. Wiley, Jr., Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. Councilmembers Ken Freese and David Samuelson abstained. The motion carried.

The eleventh item on the agenda was to review and consider the acceptance of the \$10,000 grant award from the Gulf Coast Medical Foundation for the Santa Fe Trail Project. City Manager Andres Garza, Jr. stated that during the February 28, 2005 regular Wharton City Council meeting, the City Council accepted the grant award of \$10,000 of matching funds for the Santa Fe Trail Project and submitted the required acceptance forms to Gulf Coast Medical Foundation. He stated that prior to the Foundation remitting the \$10,000 funds to the City, the City was required to submit evidence of obtaining the matching \$10,000 funds. He then presented a copy of the letter dated March 29, 2005 from the City submitting the evidence. He stated that on April 13, 2005, the City received a check from the Foundation in the amount of \$10,000; however, City Council acceptance was required. He then presented a copy of the letter of acceptance dated April 12, 2005, which required the Mayor of the City Wharton's signature. After some discussion, Councilmember Ken Freese made a motion to accept the \$10,000 grant award from the Gulf Coast Medical Foundation for the Santa Fe Trail Project. Councilmember David Samuelson seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider the request by Wharton Training High School & Ex-Students Association for Temporary Permits for Possession/Consumption of Alcoholic Beverages in City Parks. City Manager Andres Garza, Jr. presented a copy of the Wharton Park Facilities Reservation Agreement and a copy of the Application for Temporary Permit for Possession/Consumption of Alcoholic Beverages in Certain Parks that was submitted by Mr. Chester Houston and Mr. Johnnie Roberts on behalf of the Wharton Training High School and Ex-Students Association on March 29, 2005. He then presented a copy of the memorandum dated April 14, 2005 from Police Chief Tim Guin, who indicated that the application appeared to comply with the City of Wharton Ordinance No. 2002-22. He stated that the Association wished to hold its annual reunion in River Front Park at the Central Pavilion on June 17 and 18, 2005 from 10:00 a.m. to 10:00 p.m. City Attorney Paul Webb stated that he reviewed the application and recommended City Council approval. After some discussion, Councilmember David Samuelson made a motion to approve the request by Wharton Training High School & Ex-Students Association for Temporary Permits for Possession/Consumption of Alcoholic Beverages in City Parks. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider the City of Wharton 2006 One Ton Ambulance Chassis:

A. Bid Tabulation.

B. **Resolution:** A resolution awarding the bid for One (1) – 2006 One Ton Ambulance Chassis. City Manager Andres Garza, Jr. stated that the bid opening for the City of Wharton One (1) 2006 One Tom Ambulance Chassis was held on Monday, April 25, 2005 and then presented EMS Director John Kowalik's recommendation. EMS Director John Kowalik addressed the City Council and stated that the City received three bids; however Columbus Country Ford did not submit the confirmation order that was required in the bid specifications. He recommended City Council award the bid to Von-Wil Ford for being the lowest qualified bidder as per the bid specifications. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2005-19, which read as follows:

CITY OF WHARTON

RESOLUTION NO. 2005-19

A RESOLUTION AWARDED A BID TO VON-WIL FORD FOR THE CITY OF WHARTON ONE 2006 ONE TON AMBULANCE CHASSIS AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACTS.

WHEREAS, competitive, sealed bids were received on April 25, 2005 for the City of Wharton One 2006 One Ton Ambulance Chassis; and

WHEREAS, Von-Wil Ford was deemed to be the best and lowest qualified bidder as per bid specifications in the amount of \$25,800.00; and

WHEREAS, the Wharton City Council wishes to award the bid to Von-Wil Ford for the One 2006 One Ton Ambulance Chassis.

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

- Section I. That Von-Wil Ford is hereby awarded the bid for the City of Wharton One 2006 One Ton Ambulance Chassis in the amount of \$25,800.00 in accordance with the bid specifications.
- Section II. That Bryce D. Kocian, Mayor of the City of Wharton is hereby authorized to sign any documents relating to the aforementioned contracts.
- Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 25th day of April 2005.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

Councilmember Ken Freese seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider the request for Payment No. 2 by rePipe, Texas, Inc. for the Richmond Road Sanitary Sewer Rehabilitation Project. City Manager Andres Garza, Jr. presented a copy of the letter dated April 5, 2005 from Mr. Carlos Cotton, P.E. of Jones & Carter, Inc. providing the Pay Request No. 2 for rePipe, Texas, Inc. for the City of

Wharton Richmond Road Sanitary Sewer Rehabilitation Project. Mr. Carlos Cotton stated that the project was currently 100% as of today and recommended approval for payment. After some discussion, Councilmember Don Mueller made a motion to approve the request for Payment No. 2 by rePipe, Texas, Inc. for Richmond Road Sanitary Sewer Rehabilitation Project in the amount of \$23,329.50. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The fifteenth item on the agenda was to review and consider a resolution of the Wharton City Council amending a lease agreement with Bagley Pecan House and setting an effective date. City Manager Andres Garza, Jr. presented a copy of the contract amendment between the City of Wharton and Bagley Pecan House. He stated that the amendment would allow the City to remove approximately 12,000 square feet from the Bagley Pecan House lease agreement for the Santa Fe Trail Project. He then presented a draft resolution approving the contract amendment. City Attorney Paul Webb stated that the lease amendment would be prorated for May 1, 2005 and the City of Wharton would receive a reduced payment next year. After some discussion, Councilmember David Samuelson made a motion to approve Resolution No. 2005-20, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2005-20**

A RESOLUTION OF THE WHARTON CITY COUNCIL AMENDING THE LEASE AGREEMENT BETWEEN THE CITY OF WHARTON AND BAGLEY PECAN HOUSE , SETTING AN EFFECTIVE DATE AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE CONTRACT AMENDMENT.

WHEREAS, the Wharton City Council wishes to amend the contract between the City of Wharton and Bagley Pecan Warehouse; and

WHEREAS, Bagley Pecan House also wishes to amend the contract with the City of Wharton; and

WHEREAS, the Wharton City Council wishes to set an effective date of May 1, 2005 for the amended contract; and

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

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

Section I. The Wharton City Council hereby approves the amendments to the contract between the City of Wharton and Bagley Pecan House.

Section II. The Wharton City Council approves the effective date of the contract amendments to be May 1, 2005.

Section III. The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to the contract.

Passed, Approved, and Adopted this 25th day of April 2005.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA
City Secretary
Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The sixteenth item discussed on the agenda was to review and consider the City Staff request to solicit bids for City of Wharton Surplus Personal Property. City Manager Andres Garza, Jr. stated that the City Staff was requesting City Council approval to solicit bids for the City of Wharton surplus personal property. After some discussion, Councilmember David Samuelson made a motion to authorize the City Staff to solicit bids for City of Wharton Surplus Personal Property. Councilmember Ken Freese seconded the motion. All voted in favor.

The seventeenth item discussed on the agenda was to review and consider City of Wharton Home Elevation Project.

- A. Bid Tabulation.
- B. Resolution: A resolution awarding contracts under the City of Wharton Home Elevation Project – FEMA and the State of Texas FEMA-DR-1257-TX Project UN50-3.2-04/Office of Rural Community Affairs (ORCA) Contract No. 722067 and authorizing the Mayor of the City of Wharton to execute all documents relating to the agreements.

C. Update on the Home Elevation Project.

City Manager Andres Garza, Jr. stated that the City received bids on the Home Elevation Project on Thursday, April 21, 2005. He then presented a copy of the bid tabulation. He stated that the City Staff had contacted various home elevation and house moving companies via internet or by telephone. He stated that most companies initially expressed interest in the project; however, they did not bid. He stated that the City received a bid from Village Foundation Repairs. He then presented a copy of the bid that was sent to Ms. Martha Juch, P.E., for her review. He also presented a copy of the draft resolution awarding the bid. He stated that the bid received included an approximately 50% increase from the prior bid submitted. After some discussion, Councilmember Ken Freese made a motion to authorize awarding of the bid to Village Foundation Repairs contingent upon approval for reimbursement from the granting agencies and approved Resolution No. 2005-21, which read as follows:

CITY OF WHARTON
RESOLUTION NO. 2005 - 21

A RESOLUTION AWARDDING CONTRACTS UNDER THE CITY OF WHARTON HOME ELEVATION PROJECT – FEMA AND THE STATE OF TEXAS FEMA-DR-1257-TX PROJECT UN50-3.2-04/OFFICE OF RURAL COMMUNITY AFFAIRS (ORCA) CONTRACT NO. 722067 AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO THE AGREEMENTS.

WHEREAS, competitive, sealed bids were received on April 21, 2005 for contractor service for the City of Wharton Home Elevation Project-FEMA and the State of Texas FEMA-DR-1257-TX Project UN50-3.2-04/ Office of Rural Community Affairs (ORCA) Contract No. 722067; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton, Texas, to award and execute any and all agreements for the City of Wharton Home Elevation Project- FEMA and the State of Texas FEMA-DR-1257-TX Project UN50-3.2-04/ Office of Rural Community Affairs (ORCA) Contract No. 722067; and

WHEREAS, the Wharton City Council recognizes that the amount needed to elevate all the homes could exceed the amount available for the program, and;

WHEREAS, the Wharton City Council hereby wishes to authorize the Mayor of the City of Wharton to award the funding in accordance with the prioritization of the homeowners in accordance with the City of Wharton Resolution 2004-87 establishing the program guidelines as amended.

WHEREAS, the Wharton City Council wishes to award the bids for said program to Village Foundation Repairs for being the lowest and best qualified bidder.

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 award and execute any and all agreements for the City of Wharton Home Elevation Project- FEMA and the State of Texas FEMA-DR-1257-TX Project UN50-3.2-04/ Office of Rural Community Affairs (ORCA) Contract No. 722067.

Section. II. That the City Council hereby authorizes the Mayor of the City of Wharton to award the funding to the homeowners in accordance with the prioritization of the homeowners in accordance with the City of Wharton Resolution 2004-87, as amended, establishing the program guidelines.

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

Passed, Approved, and Adopted this the 25th day of April 2005.

CITY OF WHARTON

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA STAVENA

City Secretary

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

The eighteenth item discussed on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Section 551.072 and Section 551.087 of the Government Code, Revised Civil Statutes of Texas. Final action, decision or vote, if any with regard to any matter considered in Executive Session shall be made in Open Meeting.

A. Discussion: Wharton Economic Development Corporation funding for infrastructure at the Tee Pee Lodge and RV/Park.

B. Discussion: Wharton Economic Development Corporation funding to purchase a tract of land from Union Pacific Railroad.

Mayor Bryce D. Kocian adjourned into Executive Session at 7:40 p.m.

Mayor Bryce D. Kocian returned to open session at 8:45 p.m.

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

A. Review & Consider: Wharton Economic Development Corporation funding for infrastructure at the Tee Pee Lodge and RV/Park.

Councilmember Domingo Montalvo, Jr. made a motion to approve Wharton Economic Development Corporation's request for funding the infrastructure at the Tee Pee Lodge and RV/Park for an amount not to exceed \$128,500. Councilmember V. L. Wiley, Jr. seconded the motion. Councilmembers V. L. Wiley, Jr., David Samuelson, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. Councilmembers Ken Freese, and Don Mueller voted against the motion. The motion carried.

B. Review & Consider: Wharton Economic Development Corporation funding to purchase a tract of land from Union Pacific Railroad.

Councilmember David Samuelson made a motion to authorize the Wharton Economic Development Corporation's request to purchase a tract of land from Union Pacific Railroad for the amount of \$60,000. Councilmember Ken Freese seconded the motion. All voted in favor.

The twentieth item discussed on the agenda was to review and consider the request by the Wharton Economic Development Corporation for the City of Wharton to approve amendments to the Wharton Economic Development Corporation 2004-2005 Budget. City Manager Andres Garza, Jr. presented a copy of the letter the City received April 14, 2005 from Wharton Economic Development Corporation (WEDC) Executive Director Mr. David Schroeder requesting the City Council consider amending the WEDC 2004 - 2005 budget. He then presented a copy of the proposed amended budget. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by the Wharton Economic Development Corporation for the City of Wharton to approve amendments to the Wharton

Economic Development Corporation 2004-2005 Budget. Councilmember Ray Linseisen seconded the motion. Councilmembers V. L. Wiley, Jr., David Samuelson, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. Councilmembers Ken Freese and Don Mueller voted against the motion. The motion carried.

The twenty-first item on the agenda was to review and consider Travel Reimbursement for City Manager. City Manager Andres Garza, Jr. presented the request for travel reimbursement for the period March 29, 2005 to April 22, 2005 in the amount of \$340.20. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the travel reimbursement for City Manager Andres Garza, Jr. for the period March 29, 2005 to April 22, 2005 in the amount of \$340.20. Councilmember David Samuelson seconded the motion. All voted in favor.

The twenty-second item on the agenda was to review and consider the City of Wharton Status of Projects. City Manager Andres Garza, Jr. presented a copy of his memorandum dated April 25, 2005 for an update on the City of Wharton projects, which read as follows:

FLOOD PLAIN MANAGEMENT

- A. Wharton Interim Feasibility Study. This project was on going. The Corps of Engineers report should complete the first phase of this project by June 2006. However, preparations had begun on the second phase, which was the pre-construction engineering and design. Also, by mid-summer of 2005, the City Council would need to make decisions on the final alternatives for the project.
- B. FEMA-Flood Maps. In early March 2005, the City Staff received the proposed new flood maps. The City would have 30 days to review the streets and sub-divisions shown within the mapping areas to determine if the locations are correct. After the 30 day comment period, the City would receive a letter from FEMA that would begin a 90-day public comment period. The City Council Public Works Committee would meet to discuss the mapping and the public input process.

DRAINAGE:

1. Sanitary Sewer Manhole Survey.

Jones & Carter, Inc. had completed the manhole report and would submit it to the City.

2. Ahldag Ditch Design.

The City Staff was continuing its efforts in working with the property owners to secure the needed property to complete this project.

3. Santa Fe Outfall Ditch.

Jones & Carter, Inc. had completed the preliminary design and cost estimates. Jones & Carter had completed the preliminary engineering report except for the final cost estimates that were

needed from Houston Pipeline, Inc. to lower the 24" line under the proposed ditch. Houston Pipeline was purchased by another company, which was causing a delay in receiving the needed cost estimates.

4. Crestmont / Kelving Way Drainage.

Jones & Carter, Inc. had completed their analysis of the capacities of the existing storm sewer system and at what points it was overloaded. They were currently reviewing the options to re-route some of the run-off to the ditch running from the end of Hodges Lane to Caney Creek.

5. Nan Ya Drainage Ditch.

The City Staff was working with Nan Ya Plastics and J&M Manufacturing on the alignment of the ditch to the necessary improvements the companies needed to make in order to provide adequate access to their properties.

WATER/SEWER IMPROVEMENTS:

1. Richmond Road Sanitary Sewer Rehabilitation.

RePipe-Texas, Inc. had completed the construction phase of this project. Jones & Carter would review the post construction tapes and conduct a final inspection in order to close the contract.

2. Richmond Road to Fulton Sewer Line Replacement.

The project had been completed with final inspection to be made on the week of April 25th.

3. Waterline Replacement Project.

Uticon, Inc. had completed laying the 100% of the waterlines. Uticon would complete the backfill and street cut repairs.

4. Murphy Road Sanitary Sewer Improvements.

Jones & Carter, Inc. had conducted the survey work for this project and were working on the preliminary plans, which should be completed next week.

5. Downtown Square Fire Hydrants.

Jones & Carter, Inc. would include the replacement of the four fire hydrants and the repair of the valve in front of the post office would be included with the Murphy Road Sanitary Project.

6. Tee Pee Courts.

Jones & Carter, Inc. had prepared the preliminary cost estimates for the sanitary and water service for this proposed project.

7. FM 3012 Proposed Subdivision – Jonathan Kulak.

Jones & Carter, Inc. had prepared the preliminary cost estimates for the proposed subdivision. Mr. Kulak would present his proposal to the City Council at the April 25th City Council meeting.

8. Water Plant Tank Inspections.

Jones & Carter, Inc. was coordinating with the City's Public Works Department to take the tanks off line for inspection. Inspection should occur during April and May.

STREET IMPROVEMENTS

1. U.S. 59/FM 102 Intersection Upgrade.

Jones & Carter, Inc. had completed the schematic drawings and had submitted them to the Texas Department of Transportation (TxDOT) for authorization. The City Staff would meet with Nan Ya Plastics and J & M Manufacturing regarding the proposed option for an entrance road for routing the companies trucks.

2. 2005 Street Improvement Program.

The Public Works Department was preparing a list of streets to be included in the 2005 street improvement program.

WHARTON REGIONAL AIRPORT – 2005 RAMP PROGRAM

The City had received a contract amendment from the State to include the paving and entrance sign costs in the 2005 RAMP program. The paving had been completed by Faltisek Paving, Inc. and the entrance sign was currently being replaced by Mr. Larry Sitka.

NON-PRIMARY ENTITLEMENT (NPE) FUNDS

The City submitted a letter to the Texas Department of Transportation – Aviation Division requesting additional time to determine projects that could be funded by this program. The City was informed that the 2003 funds must be used by September 2006; however, the projects to be completed should be submitted as soon as possible. The Airport Board and the City Council Finance Committee would meet to discuss the project.

AIRPORT TERMINAL PROJECT

The City submitted a Letter of Interest to the Texas Department of Transportation Aviation Division on February 15, 2005 for the Airport Terminal Program. On March 17, 2005, the State responded with the necessary documents to initiate the project for the airport. The Airport Board and the City Council Finance Committee would be meeting to discuss the project.

AIRPORT DEVELOPMENT PLAN

O'Malley Engineers was working with the Airport Board in looking at different layouts for the airport development plan. This project was ongoing.

HOME PROJECTS

1. 2004 HOME Program.

The City Staff had received notification that the City was approved for this grant which would enable the City to build 7 new low to moderate income homes. The City Staff was waiting on the contracts to be submitted for execution. This was a special needs grant.

2. 2003 HOME Program.

The City Staff was currently accepting applications now and should have completed the application process. Once this process had been completed, the City Staff would advertise, submit the information to the State for approval. The nine applicants had been identified and their names had been submitted to the State for approval. The State has 21 days to review the applicants. The City Staff anticipates beginning to build homes the first of June 2005.

3. Home Elevation Project.

The City Staff issued the notice to bidders to solicit bids from contractors a fifth time for the Home Elevation project. The bid opening date was held April 21, 2005 at 2:30 p.m., which the City received one bid from Village Foundation Repair. The bid was currently being reviewed and a recommendation would be made during the April 25, 2005 regular Wharton City Council meeting.

OTHER PROJECTS:

1. Tropical Storm Fay – Buy-Out Project:

The City and Mr. and Mrs. Edward Guajardo completed the closing on the property located at 2821 Texas Street and the property was being scheduled for demolition. The City Staff received a telephone call from Mr. Lowe Frietag, Jr. who indicated that Mr. Lowe Frietag, Sr. was considering withdrawing from the program. The City Staff was awaiting a formal letter from Mr. Frietag.

2. Hazard Mitigation Grant Program – Pre-Disaster Mitigation Grant Program.

The City's application had been accepted by the State of Texas Governor's Division of Emergency Management and had been included in the State's application to the Federal Office. The City should receive a response in June 2005.

3. Santa Fe Trail Park Project.

The City Public Works Department was continuing the trail work efforts. Also, plans were being prepared for the construction of the water fountain using a consultant.

4. Southern Pacific Railroad Depot Restoration Project.

The City Staff had published the notice to bidders for the construction phase of this project. The bid opening date had been scheduled for May 18, 2005.

After some discussion, no action was taken.

The twenty-third item on the agenda was the City Council Committees, Boards and Commission's Reports:

A. Mayor's Committee on People with Disabilities meeting held March 13 and April 21, 2005.

B. Youth Advisory Commission meeting held April 12, 2005.

C. Beautification Commission meeting held April 13, 2005.

D. Wharton Economic Development Corporation meeting held April 14, 2005.

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

The twenty-fourth item on the agenda was to review and consider the 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/
Civic Center.

D. E.M.S. Department.

E. Fire Department Incidents/Inspections. L. Wharton Municipal Pool.

F. Code Enforcement Department.

M. Wharton Regional Airport.

G. Water & Sewer Department.

N. Legal.

H. Public Works Department.

O. Weedy Lots/Sign Ordinance.

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

The twenty-fifth 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 adjourned at 8:52 p.m.

CITY OF WHARTON, TEXAS

By: _____

BRYCE D. KOCIAN

Mayor

ATTEST:

City of Wharton
Regular City Council Meeting
April 25, 2005

LISA STAVENA
City Secretary