

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
JANUARY 12, 2009**

Mayor David W. Samuelson declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Mayor David W. Samuelson led the opening devotion and then led the pledge of allegiance.

Councilmembers present were: Mayor David W. Samuelson, Councilmembers Lewis Fortenberry, Jr., Ken Freese, Don Mueller, Domingo Montalvo, Jr. and Jeff Gubbels.

Councilmember absent was: V. L. Wiley, Jr.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, Deputy City Secretary Theresa Wittig, Assistant to City Manager Jackie Jansky, Public Works Director Carter Miska, Community Services Director Jo Knezek, and Assistant City Attorney Amy Rod.

Visitors present were: Barry Halvorson with Wharton Journal Spectator, David Schroder with Wharton Economic Development Corporation, Carlos Cotton with Jones & Carter, Henry Thiele, Bruce Williams, Sherly Philip, Svrech Philip, and Carlos Jackson, Jr.

The second item on the agenda was Roll Call and Excuses Absences. Councilmember Domingo Montalvo, Jr. made a motion to excuse the absence of Councilmember V. L. Wiley, Jr. from the Regular City Council meeting held January 12, 2009. Councilmember Don Mueller seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. Mr. I. O. Coleman, Jr. addressed the City Council regarding Kansas City Southern Railroad proposed crossing closure at Spanish Camp Road. He stated that he was concerned for the churches and the City needed enhanced control crossings. No action was taken.

The fourth item on the agenda was Wharton Moment. Mayor David W. Samuelson stated that Councilmember V. L. Wiley, Jr. was in rehab and was requesting Mr. Wiley be lifted up in prayers.

Councilmember Lewis Fortenberry, Jr. stated that a fundraiser was held for the Bright Minds Scholarship, which was presented to area schools. He said that the fundraiser was a success.

City Manager Andres Garza, Jr. stated that the Chamber of Commerce, Wharton Economic Development Corporation and the City of Wharton helped sponsor the Chamber Winter Luncheon, where a presentation regarding providing Excellent Customer Service using Common Sense. He stated that there were over 250 attendees signed-up and City Hall personnel would attend. No action was taken.

The fifth item on the agenda was to review and consider the reading of the minutes from the regular meeting held December 8, 2008. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve the Wharton City Council minutes of the regular meeting held December 8, 2008 as presented. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the City of Wharton Financial Report for the month of November 2008. Finance Director Joyce Vasut presented the financial report for the month of November 2008 which was at 17% or two months into the fiscal year. Mrs. Vasut stated that the general fund revenues were at 9.50% and the expenditures were at 16.65%. The total ad valorem taxes collected were \$38,677. She said the sales tax for the month of October was \$144,104 with \$96,070 going to the City and \$48,034 to WEDC. The bank balance for October was \$666,095.28 with an average monthly yield of 2.00% for the period November 1 – 3, 2008 and 1.00% for the period November 4 – 30, 2008. She said that TexPool balance for November was \$74,575.59 with an average monthly yield of 1.8207%. After some discussion, Councilmember Don Mueller made a motion to approve the City of Wharton Financial Report for the month of October 2008. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider a resolution of the Wharton City Council approving a Contingency Fee Contract between the City of Wharton and Lam, Lyn & Philip, PC for collection services for delinquent City of Wharton Emergency Medical Service (EMS) accounts and to authorize the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. stated that on December 11, 2008, Finance Director Joyce Vasut and himself met with Attorney Sherly Thomas-Philip of Lam, Lyn & Philip, PC to discuss the City's EMS delinquent account collections. He said that every year the EMS Department writes off a large amount of accounts and the City Staff was informed that the South Texas Medical Center used the firm for its collections and had good success. He said that currently, the City used Prudentia to conduct the EMS billing and after a certain amount of time, the uncollected bills are sent to Frost-Arnett Company for further collections. He said that the EMS Department, as it conducts its runs, transferred data to Prudentia, which saved time in billing procedures; however, during collections, the process could be lengthy when the billing was through Medicare and Medicaid. He said that Medicare and Medicaid denied certain charges and claims that were sent through numerous times before collections were made. He said that the EMS Department billed approximately \$1.5 million per year and during fiscal year 2007-2008 approximately \$750,000 was collected through Prudentia. He said that Frost Arnett only collected approximately \$8,000 last year, which was less than \$1,000 per month. He said at the beginning of the current fiscal year approximately \$500,000 were written off for fiscal year 2007-2008. He then said that by utilizing the new law firm and by taking a more aggressive collection effort, the City would be able to

choose who to pursue for further collection activities, which would consist of the larger accounts, recurring accounts and insurance companies. He said that the firm would be paid a percentage of the amount collected. He said that on December 18, 2008, the City Council Finance Committee voted to recommend the City Council consider approving the contract with Lam, Lyn & Philip, PC for collection services for delinquent City of Wharton Emergency Medical Service (EMS) accounts. He then presented a draft resolution and contract. He said that the contract was sent to City Attorney Paul Webb for his review and that he stated the contract was fine. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2008-01, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2009 – 01**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A CONTINGENCY FEE CONTRACT BETWEEN THE CITY OF WHARTON AND LAM, LYN & PHILIP, PC FOR COLLECTION EFFORT SERVICES FOR DELINQUENT CITY OF WHARTON EMERGENCY MEDICAL SERVICES (EMS) ACCOUNTS AND TO AUTHORIZE THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, The Wharton City Council wishes to pursue additional collection efforts for the City of Wharton Emergency Medical Service (EMS) accounts; and

WHEREAS, The Wharton City Council wishes to engage the services of Lam, Lyn & Philip, PC for collection effort services for delinquent EMS accounts; and

WHEREAS, the City of Wharton and Lam, Lyn & Philip wishes to be bound by the conditions outlined in the Contingency Fee Contract; and

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

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

Section I. That the Wharton City Council hereby approves a Contingency Fee Contract between the City of Wharton and Lam, Lyn & Philip, PC for collection effort services for delinquent City of Wharton Emergency Medical Service (EMS) accounts.

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

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

Passed, Approved, and Adopted this 12th of January 2009.

CITY OF WHARTON, TEXAS

By: _____
DAVID W. SAMUELSON
Mayor

ATTEST:

THERESA WITTIG

Deputy City Secretary

Councilmember Don Mueller seconded the motion. Councilmembers Lewis Fortenberry, Jr., Ken Freese, Don Mueller, Domingo Montalvo, Jr. voted for the motion. Councilmember Jeff Gubbels abstained. The motion passed.

The eighth item on the agenda was to review and consider a resolution of the Wharton City Council approving the Preconstruction Engineering Design Agreement, Amendment No. 1 between the Lower Colorado River Authority and the City of Wharton for the Wharton Flood Damage Reduction Project with the U.S. Army Corps of Engineers and to authorize the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the proposed amended agreement between the City of Wharton and the Lower Colorado River Authority (LCRA) for the Preconstruction, Engineering and Design (PED) Wharton Flood Damage Reduction Project. He said that the total PED cost would be \$1,150,000. He said that 75% (\$862,500) would be the federal share and the remaining 25% (\$287,500) would be borne by the City of Wharton and LCRA. He said that the City of Wharton approved an agreement with LCRA for \$287,500. He said that the agreement amendment would incorporate the original agreement plus all additional costs associated with this phase of the project. He said that as of today, the total obligation allocated to date had been \$382,862.10 of which \$95,715.53 was the City's share. He then said that this agreement would allow the City to continue this phase of the project until its final design. He then presented a copy of a draft resolution. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Resolution. The motion died for lack of a second. After some discussion, Councilmember Jeff Gubbels made a motion to reconsider the resolution. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

City Manager Andres Garza, Jr. stated that the City Council Finance Committee could later discuss where the funds could be allocated in the budget. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2009-02, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2009 - 02**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN AGREEMENT BETWEEN THE CITY OF WHARTON AND THE LOWER COLORADO RIVER AUTHORITY FOR THE PRE-CONSTRUCTION, ENGINEERING AND DESIGN PHASE FOR THE WHARTON FLOOD REDUCTION PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENT.

WHEREAS, On August 27, 2007, the Wharton City Council approved the agreement between the City of Wharton and the Lower Colorado River Authority for the Preconstruction, Engineering and Design Phase for the Wharton Flood Reduction Project; and

WHEREAS, the Wharton City Council and the Lower Colorado River Authority wishes to amend by modifying the total cost of the City of Wharton component from \$267,000 to \$1,150,000, and accounts for \$65,000 of payments made by the City of Wharton under the original amount; and

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

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

Section I. That the Wharton City Council hereby approves the First Amendment to the agreement between the City of Wharton and the Lower Colorado River Authority for the Preconstruction, Engineering and Design Phase for the Wharton Flood Reduction Project.

Section II. That the Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents relating to said agreement.

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

Passed, Approved, and Adopted this 12th day of January 2008.

CITY OF WHARTON, TEXAS

By:

DAVID W. SAMUELSON
Mayor

ATTEST:

THERESA WITTIG

Deputy City Secretary

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

The ninth item on the agenda was to review and consider the City of Wharton Ahldag Addition Sanitary Sewer Improvement Project, Office of Rural Community Affairs, Texas Community Development Program Contract No. 728459:

A. **Resolution:** A resolution of the Wharton City Council appointing the Labor Standards Officer for the City of Wharton Ahldag Addition Sanitary Sewer Improvement Project, Office of Rural Community Affairs, Texas Community Development Program Contract No. 728459.

City Manager Andres Garza, Jr. stated that on July 14, 2008, the Wharton City Council approved the Office of Rural Community Affairs, Texas Community Development Program Contract No. 728459 for the City of Wharton Sanitary Sewer Improvement Project. He said that since that time, the City Staff had been moving forward with the project. He said that as a requirement of the contract the City Council must formally appoint a Labor Standards Officer for the contract. He then presented a copy of the memorandum dated January 5, 2009 from Ms. Jo Beth Knezek regarding the Labor Standards Officer. He then presented a draft copy of the resolution appointing the Labor Standards Officer. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2009-03, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2009 -03**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPOINTING THE LABOR STANDARDS OFFICER FOR THE CITY OF WHARTON AHLDAG ADDITION SANITARY SEWER IMPROVEMENT PROJECT, OFFICE OF RURAL COMMUNITY AFFAIRS, TEXAS COMMUNITY DEVELOPMENT PROGRAM CONTRACT NO. 728459.

WHEREAS, On July 14, 2008, the Wharton City Council approved Resolution No. 2008-46 approving City of Wharton Ahldag Addition Sanitary Sewer Improvement Project, Office of Rural Community Affairs, Texas Community Development Program Contract No. 728459; and

WHEREAS, In accordance with the contract requirements, the Wharton City Council wishes to appoint a Labor Standards Officer for the Ahldag Addition Sanitary Sewer Improvement Project; and

WHEREAS, The Wharton City Council wishes to appoint Community Services Director Jo Beth Knezek as the Labor Standards Officer for the afore-mentioned project; and

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

Section I. The Wharton City Council wishes to appoint Community Services Director Jo Beth Knezek as the Labor Standards Officer for the City of Wharton Ahldag Addition Sanitary Sewer Improvement Project, Office of Rural Community Affairs, Texas Community Development Program Contract No. 728459.

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

PASSED, APPROVED, AND ADOPTED this the 28th day of July 2003.

CITY OF WHARTON, TEXAS

**By: _____
DAVID W. SAMUELSON**

Mayor

ATTEST:

THERESA WITTIG

Deputy City Secretary

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

B. Resolution: A resolution of the Wharton City Council City Council appointing the Depository/Authorized Signatories for the City of Wharton Ahldag Addition Sanitary Sewer Improvement Project, Office of Rural Community Affairs, Texas Community Development Program Contract No. 728459.

City Manager Andres Garza, Jr. stated as a requirement of the contract the City Council must formally appoint Depository/Authorized Signatories for the contract. He then presented a copy of the memorandum dated January 5, 2009 from Ms. Jo Beth Knezek regarding the Authorized Signatories. He then presented a draft copy of the resolution appointing Authorized Signatories. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2009-04, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2009 -04**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPOINTING THE DEPOSITORY/AUTHORIZED SIGNATORIES FOR THE CITY OF WHARTON AHLDAG ADDITION SANITARY SEWER IMPROVEMENT PROJECT, OFFICE OF RURAL COMMUNITY AFFAIRS, TEXAS COMMUNITY DEVELOPMENT PROGRAM CONTRACT NO. 728459.

WHEREAS, the Office of Rural Community Affairs, Texas Community Development Program requires that the recipient organization shall provide authorized signatories for the Depository/Authorized Signatories Designation Form; and

WHEREAS, the recipient organization being the City of Wharton, Texas, has met this requirement by the City Council passing a Resolution delegating the persons listed below with the authority to sign the Depository/Authorized Form for City of Wharton Ahldag Addition Sanitary Sewer Improvement Project, Office of Rural Community Affairs, Texas Community Development Program Contract No. 728459.

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

Section I. The City Council of the City of Wharton, Texas, hereby authorizes the following signatories:

David W. Samuelson
Mayor

Signature

Andres Garza, Jr.
City Manager

Signature

Joyce Vasut
Finance Director

Signature

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

PASSED, APPROVED, AND ADOPTED this the 12th day of January 2009.

CITY OF WHARTON, TEXAS

By: _____
DAVID W. SAMUELSON
Mayor

ATTEST:

THERESA WITTIG
Deputy City Secretary

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

The tenth item on the agenda was to review and consider the Proposed Emergency Services District No. 3:

A. **Resolution:** A joint resolution of the Cities of El Campo and Wharton, Texas, agreeing to petition the Wharton County Commissioner's Court to call an election for the Creation of the proposed Emergency Services District No. 3.

B. **Ordinance:** An ordinance of the City Council of the City of Wharton, Texas, consenting to the Creation of the Wharton County Emergency Services District No. 3 and to include certain territory within the Municipal and Extraterritorial Jurisdiction of the City of Wharton; Creating a Savings Clause and Providing for an Effective Date.

C. **Resolution:** A resolution of the City Council of the City of Wharton, Texas, agreeing to reduce it property tax rate to fund the proposed Wharton County Emergency Services District No. 3.

City Manager Andres Garza, Jr. stated that discussions regarding the proposed Emergency Services District No. 3 had been on-going. He said that on December 2, 2008, Mayor David W. Samuelson and himself met with representative of the City of El Campo to discuss the proposed district for EMS services and on January 7, 2009, Mayor David Samuelson, Finance Director Joyce Vasut and himself met with the El Campo City Council to discuss the proposed district. He said that the City of El Campo City Council would consider the aforementioned resolutions and ordinance during their regular January 12, 2009 City Council meeting. He said that El Campo City Manager John Steelman informed him that during the meeting, the El Campo City Council voted not to approve the Resolutions and Ordinance regarding the proposed emergency services district. He said that the City of Wharton could consider creating their own district and the information would be presented to the City Council Finance Committee. After some discussion, no action was taken.

