

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
JULY 28, 2008**

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

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

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Olmeda, Assistant to City Manager Jackie Jansky, Public Works Director Carter Miska, Emergency Management Coordinator Jim Cooper, EMS Director John Kowalik, and City Attorney Paul Webb.

Visitors present were: David Schroeder with Wharton Economic Development Corporation, Monica Hartland, Guillermo Gomez, and Mark Wakefield.

The second item on the agenda was Roll Call and Excuses Absences. All Councilmember were present. No action was taken.

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. No comments were given. 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 June 2008. Finance Director Joyce Vasut presented the financial report for the month of June 2008 and stated that the fiscal year was at 72%. Mrs. Vasut stated that the general fund revenues were at 75.63% and the expenditures were at 71.68%. The total ad valorem taxes collected were \$1,855,094. The sales tax for the month of May 2008 was \$152,602 with \$101,735 to the City and \$50,867 to WEDC. The Franklin bank balance for June 2008 was \$1,411,914.14 with an average monthly yield of 2.0%. TexPool balance for June 2008 was \$315,884.89 with an average monthly yield of 2.2635%. After some discussion, Councilmember Ken Freese made a motion to approve the City of Wharton Financial Report for the month of June 2008. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the request by Mr. Mark Wakefield for a 7' 7" variance from the 10' side property line setback for placement of a sign located at Brod Acres, Block 17H-2; 1521 East Boling Highway. Assistant to City Manager Jackie Jansky presented a copy of the memorandum dated July 23, 2008 providing the request by Mr. Mark Wakefield for a 7' 7" variance from the 10' side property line setback for placement of a sign. She also presented photographs of the sign. Mr. Wakefield addressed the City Council and stated the lodge would provide space for community events with 100-180 attendees. He stated that the lodge would also be utilized by the Boy Scouts and Girl Scouts. He stated that the sign was placed over the existing poles. He stated that that if the sign would be moved, it would be in the middle of the parking lot. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Mr. Mark Wakefield for a 7' 7" variance from the 10' side property line setback for placement of a sign located at Brod Acres, Block 17H-2; 1521 East Boling Highway. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider the Disaster Debris Clearance and Removal Services for the City of Wharton.

- A. **Resolution:** A resolution of the Wharton City Council approving a contract between the City of Wharton and Ashbritt, Inc. for primary Disaster Debris Clearance and Removal Services and authorizing the Mayor of the City of Wharton to execute the agreement.
- B. **Resolution:** A resolution of the Wharton City Council approving a contract between the City of Wharton and Ceres Environmental Services, Inc. for secondary Disaster Debris Clearance and Removal Services and authorizing the Mayor of the City of Wharton to execute the agreement.

Emergency Management Coordinator Jim Cooper stated that the Houston-Galveston Area Council (H-GAC) through the Cooperative Purchasing Program posted a Request for Proposals (RFP) for Disaster Debris Clearance and Removal Services. He said that companies were required to score 70% or higher to be considered and nine companies submitted RFP's that met the scoring criteria. He said he completed an End User Application, which seven companies responded in the form of a sealed bid. He said that a selection committee was formed to review the bids, which consisted of Finance Director Joyce Vasut, Public Works Director Carter Miska, City Manager Andres Garza, Jr., and himself. City Manager Andres Garza, Jr. said that the City Council Public Safety Committee met July 22, 2008 and reviewed the contracts, which the Selection Committee recommended that the contract be awarded to Ashbritt Environmental as primary and CERES Environmental Services, Inc. as secondary. He said that no cost was associated with the contract unless it was activated. He said that since the contracts were lengthy, the first and last pages of the contract and the Scope of Work, which was the same for both contracts was presented. He said that City Attorney Paul Webb had reviewed the contracts and had approved them as written. He said that the Public Safety Committee was recommending the City Council consider approving both contracts with Ashbritt Environmental as primary and CERES Environmental Services, Inc. as secondary for Disaster Debris Clearance and Removal Services for the City of Wharton. Mr. Cooper stated that with a major event, there would be 200-300 cubic yards of debris to be removed, which would take 3-4 months to complete. Councilmember Domingo Montalvo, Jr. requested that a Hazardous Materials contract be in place prior to a disaster. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2008-48 and Resolution No. 2008-49, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2008 - 48**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A CONTRACT BETWEEN THE CITY OF WHAROTN AND ASHBRIIT, INC. FOR PRIMARY DISASTER DEBRIS CLEARANCE AND REMOVAL SERVICES AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO THE AGREEMENT ON BEHALF OF THE CITY OF WHARTON.**

**WHEREAS,** On May 28, 2008, the City of Wharton received sealed bids for Disaster Debris Clearance and Removal Services; and

**WHEREAS,** the Wharton City Council wishes to approve a contract between the City of Wharton and Ashbriit, Inc. for primary Disaster Debris Clearance and Removal Services; and

**WHEREAS,** the City of Wharton and Ahsbriit, Inc. 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 approves a contract between the City of Wharton and Ashbriit, Inc. for primary Disaster Debris Clearance and Removal Services.

**Section II.** That the Wharton City Council hereby approves to authorize the Mayor of the City of Wharton to execute the agreement.

**Section III.** That the City of Wharton and Ashbriit, Inc. are hereby bound by the conditions as set forth in the agreement.

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

**Passed, Approved, and Adopted** this the 28<sup>th</sup> day of July 2008.

**CITY OF WHARTON**

**By:** \_\_\_\_\_  
**DAVID W. SAMUELSON**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**LISA OLMEDA**  
City Secretary

**CITY OF WHARTON  
RESOLUTION NO. 2008 - 49**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A CONTRACT BETWEEN THE CITY OF WHAROTN AND CERES ENVIRONMENTAL SERVICES, INC. FOR SECONDARY DISASTER DEBRIS CLEARANCE AND REMOVAL SERVICES AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO THE AGREEMENT ON BEHALF OF THE CITY OF WHARTON.**

**WHEREAS,** On May 28, 2008, the City of Wharton received sealed bids for Disaster Debris Clearance and Removal Services; and

**WHEREAS,** the Wharton City Council wishes to approve a contract between the City of Wharton and CERES Environmental Services, Inc. for secondary Disaster Debris Clearance and Removal Services; and

**WHEREAS,** the City of Wharton and CERES Environmental Services, Inc. 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 approves a contract between the City of Wharton and CERES Environmental Services, Inc. for secondary Disaster Debris Clearance and Removal Services.

**Section II.** That the Wharton City Council hereby approves to authorize the Mayor of the City of Wharton to execute the agreement.

**Section III.** That the City of Wharton and CERES Environmental Services, Inc. are hereby bound by the conditions as set forth in the agreement.

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

**Passed, Approved, and Adopted** this the 28<sup>th</sup> day of July 2008.

**CITY OF WHARTON**

**By:** \_\_\_\_\_  
**DAVID W. SAMUELSON**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**LISA OLMEDA**  
City Secretary

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

The eighth item on the agenda was to review and consider the request by Emergency Management Coordinator Jim Cooper to implement a Community Emergency Response Team (CERT) Program in the City of Wharton. City Manager Andres Garza, Jr. stated that the City Council Public Safety Committee met July 22, 2008 and reviewed the Community Emergency Response Team (CERT) program and was recommending the City Council approve the implementation of the program in the City of Wharton. He said that on July 17, 2008, Emergency Management Coordinator Jim Cooper submitted a Citizen Corps Homeland Security Grant request for \$5,000.00, which the funds would be utilized to implement a City of Wharton CERT Program. Emergency Management Coordinator Jim Cooper stated that the funds would be used to purchase student manuals at a cost of \$20.00 each and a CERT kit backpack at a cost of \$40.00 each. He said that the goal of the program was to train 50 to 75 team members in 2009 – 2010 to respond to a variety of emergencies. He said that the team members would be trained in disaster preparedness, small fire suppression, medical operations, light search and rescue and terrorism awareness. He said that the program was open to all qualifying Wharton County residents and the program was based on the same qualifying guidance as the Citizen Police Academy. He also said that participants would not be first responders but would be trained in how to respond in a way that would assist the City during a disaster event. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve consider the request by Emergency Management Coordinator Jim Cooper to implement a Community Emergency Response Team (CERT) Program in the City of Wharton. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The ninth item on the agenda review and consider the request by Dr. Glen Dyer, President of East Wharton Habitat for Humanity for City Council consideration to waive the permit and utility tap fees for the construction of the 30' x 60' warehouse to be located at 701 Jefferson Street; Wharton Block 57, Lot 14. Mayor David W. Samuelson recused himself from the discussion and stated that Mayor Pro-Tem Don Mueller would lead the discussion. Then Mayor Don Mueller led the discussion. City Manager Andres Garza, Jr. stated that during the July 14, 2008 Wharton City Council meeting, the City Council approved to transfer the property located at 701 Jefferson Street, Wharton, Block 57, Lot 14 to East Wharton Habitat for Humanity for the construction of a warehouse facility for use by the organization. He then presented a copy of the letter dated July 23, 2008 from Dr. Glen Dyer, President of East Wharton County Habitat for Humanity requesting the City Council consider waiving the permit and utility tap fees for the warehouse. Mayor David W. Samuelson abstained from the discussion and voting. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the request by Dr. Glen Dyer, President of East Wharton Habitat for Humanity for City Council consideration to waive the permit and utility tap fees for the construction of the 30' x 60' warehouse to be located at 701 Jefferson Street; Wharton Block 57, Lot 14. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider the City of Wharton Valhalla Water Well Emergency Rework Project – Alsay Incorporated – Change Order No. 1. City Manager Andres Garza, Jr. presented a copy of the Change Order No. 1 to the agreement between the City

of Wharton and Alsay Incorporated for the City of Wharton Valhalla Water Well Emergency Rework Project. He said that the pumping equipment failure and present condition of the well was due to extreme bacterial growth found in the well. He said that based on laboratory recommendations, the addition of NW 400 with the original acidizing chemicals during agitation would improve the performance of the chemical cleaning process. He said that the recommended change was to agitate 383 gallons of NW 400 surfactant in addition to the original acidizing procedure, which would have an increase in the amount of \$1,725.00 to the original contract price of \$199,950.00. He said that the new contract amount would be \$201,675.00. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve the City of Wharton Valhalla Water Well Emergency Rework Project – Alsay Incorporated – Change Order No. 1 for the change in the contract price of \$1,725.00. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider the City of Wharton Handicapped Accessibility along the Public Sidewalks – Economic Construction, Inc. – Fourth and Final Pay Request. City Manager Andres Garza, Jr. presented a copy of the Fourth and Final Pay Request No. 4 for the City of Wharton Handicapped Accessibility along Public Sidewalk submitted by Economic Construction, Inc. in the amount of \$48,897.90. He stated that the inspection was conducted by AIA State Inspector Theresa Darr with Accessibility Check. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the City of Wharton Handicapped Accessibility along the Public Sidewalks – Economic Construction, Inc. – Fourth and Final Pay Request for the amount of \$48,897.90. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider the City of Wharton Solid Waste Collection and Disposal Service:

- A. Proposal Tabulations.
- B. City Council authorization for the City Staff to negotiate a franchise agreement for the City of Wharton Solid Waste Collection and Disposal Service Contract and Transfer Station Contract.
- C. **Resolution:** A resolution of the Wharton City Council approving a Solid Waste Collection and Disposal Services Contract and Transfer Station Operations Contract and authorizing the Mayor of the City of Wharton to execute the agreement.

City Manager Andres Garza, Jr. presented a copy of the analysis of the Solid Waste Collection and Disposal Services proposals that were submitted to the City on June 23, 2008. He said that the City received three proposals from the following companies:

- 1. Waste Management.
- 2. Waste Corporation of America
- 3. Allied Waste Services

He said that on July 24, 2008, Finance Director Joyce Vasut and himself met with representatives of Waste Management (WM) and Waste Corporation of America (WCA) to discuss their proposals. He said that Allied Waste Services had also submitted a proposal; however, their proposal was determined to be non-responsive to the City of Wharton's needs. He then presented a copy of the letter dated July 24, 2008 to Mr. Trevor Royal of Allied Services providing him the notification. He said that the City Staff was requesting City Council authorization to negotiate with the companies on a contract for the service as well as operations of the Transfer Station. He

then presented a copy of a draft resolution approving the agreements pending successful negotiations. After some discussion, Councilmember Ken Freese made a motion to include the following parameters:

1. Allow three residential routes instead of two.
2. If normal residential pick up fell on a recognized holiday, the pick up for that residential service would be made on the next regularly scheduled collection day.
3. Would us 100% of CPA for all urban consumers, garbage and trash annually beginning with the first contract anniversary date.
4. Contract termination would be 60 days for failure to perform service or failure to agree on new rate that exceeds CPI. If City does not find new contractor in 60 days, contract would continue but at new requested rate.
5. Grant exclusive roll off service.

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

The thirteenth item on the agenda was to review and consider the City Council approval of the Wharton Economic Development Corporation 2008 – 2009 Fiscal Year Budget. City Manager Andres Garza, Jr. presented a copy of the letter dated July 23, 2008 from Mr. David L. Schroeder, Executive Director of the Wharton Economic Development Corporation (WEDC) requesting City Council approval of the WEDC 2008 – 2009 fiscal year budget. He also presented a copy of WEDC Statement of Revenues and Expenditures as of June 30, 2008. Mr. Schroeder addressed the City Council and stated that the Public Hearing was conducted at 12:00 noon. Councilmember Ken Freese asked if the line item for the personnel included bonuses and membership dues to the Wharton Country Club and Lions Club. David Schroeder said the line item did include those items. He said that Entertainment Center Project for \$1,000,000 was in the budget since the prospect still had a desire to come; however, there was not a written binding contract on the project. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Wharton Economic Development Corporation 2008 – 2009 Fiscal Year Budget as presented. Councilmember V. L. Wiley, Jr. seconded the motion. Councilmembers V. L. Wiley, Jr., Lewis Fortenberry, Jr., Don Mueller, Domingo Montalvo, Jr., and Jeff Gubbels voted for the motion. Councilmember Ken Freese voted against the motion. The motion carried.

The fourteenth item on the agenda was to review and consider the Appointments to the City of Wharton Boards, Commissions, and Committees:

- A. Wharton Regional Airport Board.
- B. Beautification Commission.
- C. Holiday Light Decorating Chairperson.
- D. Youth Advisory Commission.
- E. Wharton Economic Development Corporation.

City Manager Andres Garza, Jr. presented a copy of the list of the City of Wharton Boards, Commissions and Committees. He stated that vacancies remain on the Wharton Regional Airport Board, Beautification Commission, Holiday Light Decorating Chairperson, and Youth Advisory Commission. He said that the City Council may make recommendations to fill the vacant positions on the respective boards. He said that a discussion may be held regarding the Wharton Economic Development Corporation (WEDC) Board and appointments. He then presented a list of the Board Members that had served since the creation of WEDC. Mayor David W. Samuelson stated

that the history of the appointment of WEDC Boardmembers was conducted by one Councilmember since the conception of the Board; however, according to the Articles of Incorporation, each Councilmember could nominate a member. He stated that the Articles of Incorporation would be reviewed at the next regular City Council meeting. Councilmember Ken Freese stated that during the July 21, 2008, meeting there was a reference to the By-Laws; however, the appointments was in the Articles of Incorporation. After some discussion, no action was taken.

The fifteenth item on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Sections 551.071 and 551.074 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:** Consultation with Attorney regarding pending litigation concerning the City of San Antonio, Texas, on behalf of itself and all other similarly situated Texas Cities v. Hotels.com, et al., Case No. SA06CA3810G.
- B. **Discussion:** City Manager Performance Evaluation.

Mayor David W. Samuelson adjourned into Executive Session at 7:55 p.m.  
Mayor David W. Samuelson returned to Open Session at 8:16 p.m.

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

- A. **Review & Consider:** Pending litigation concerning the City of San Antonio, Texas, on behalf of itself and all other similarly situated Texas Cities v. Hotels.com, et al., Case No. SA06CA3810G.

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

- B. **Review & Consider:** City Manager Performance Evaluation.

Mayor David W. Samuelson stated that the City Manager was evaluated by the Councilmembers and publicly thanked Andres Garza, Jr. for the contributions to the City of Wharton for the past 15 years. No action was taken.

The seventeenth item on the agenda was to review and consider an update on the City of Wharton on-going projects. City Manager Andres Garza, Jr. presented a copy of the memorandum dated July 28, 2008 providing an update regarding the City of Wharton on-going projects, which read as follows:

#### **FLOOD REDUCTION (LEVEE) PROJECT**

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

The project was continuing to move forward. In regards to the pre-construction, engineering and design (PED) aspect of the project, the LCRA Board had approved their continuing as sponsor of the PED. The Corp had approved the necessary agreements to continue the work. The agreement with LCRA for the