

MINUTES OF SPECIAL MEETING OF THE CITY COMMISSION OF THE CITY OF LUFKIN, TEXAS, HELD ON THE 29TH DAY OF OCTOBER 1985, AT 12:00 NOON

On the 29th day of October, 1985, the City Commission of the City of Lufkin, Texas, convened in special meeting in the Council Chambers of City Hall with the following members thereof, to-wit:

Pitser H. Garrison	Mayor
Percy Simonds, Jr.	Commissioner, Ward No. 1
Don Boyd	Commissioner, Ward No. 2
Lynn Malone	Commissioner, Ward No. 3
Pat Foley	Commissioner, Ward No. 4
Jack Gorden, Jr.	Commissioner, Ward No. 5
Louis Bronaugh	Commissioner, Ward No. 6
Harvey Westerholm	City Manager
Brian Boudreaux	Asst. City Manager
Robert Flournoy	City Attorney
Atha Stokes	Acting City Secretary

being present when the following business was transacted.

1. Meeting was opened by Mayor Garrison.

2. AUTHORIZATION OF CERTIFICATES OF OBLIGATION

Mayor Garrison stated that the first order of business was the authorization of Certificates of Obligation in the amount of \$4,000,000 for the new City Hall building and renovation of the existing building.

In response to question by Mayor Garrison, City Attorney Bob Flournoy stated that he had reviewed the Ordinance and everything was in order.

Motion was made by Commissioner Don Boyd and seconded by Commissioner Pat Foley that Ordinance authorizing the issuance of the Certificates of Obligation in the amount of \$4,000,000 be approved as presented. A unanimous affirmative vote was recorded.

3. CONTRACT - NEW CITY HALL - TRIBBLE & STEPHENS

Mayor Garrison stated that the Commission now had for consideration a Resolution approving the low bidder and authorizing the execution of the agreement.

City Attorney Flournoy stated that the one question that had come up regarding the Contract was about liquidated damages and as it was bid there was no provision for liquidated damages. City Attorney Flournoy stated that that does not mean that the Contractor is not still liable for damages that occur as a result of going over the contract days. City Attorney Flournoy stated that he had talked today with Jack Weiner, general counsel for the architect, to get their feelings about it and they feel that in the Contract liquidated damages must be reasonable. City Attorney Flournoy stated that if the liquidated damages are too high and not reasonable in the eyes of the Court, they would be considered as a penalty and not enforceable. City Attorney Flournoy stated that in his opinion the City was not giving up anything by not having liquidated damages specified in the document. City Attorney Flournoy stated that if the City wanted to put in a liquidated damages clause in the Contract and the Contractor did not agree then the City would have to go for a rebid.

City Attorney Flournoy stated that in his opinion it was not necessarily fatal or in bad judgment to be handled this way because (1) if they go over their time all their funds are held up until the job is completed, and (2) the City still has whatever rights we had at law and equity or damages.

City Attorney Flourney stated that several years ago when the City had a problem with the water tower there was a liquidated damages provision in that Contract and the City was locked into the liquidated damages provision which was not nearly adequate to cover the actual damages the City suffered. City Attorney Flourney stated that there is a good side and bad side to the liquidated damages provision.

City Attorney Flourney stated that otherwise the Resolution is in order awarding the Contract. City Attorney Flourney stated that the changes handed to him at the beginning of the meeting by Jerry Hill are in regard to payment being made to the Contractor with the Certificates and not in cash. City Attorney Flourney stated that on the original Contract there was an asterisk and a note saying that part of the payments are being paid with Certificates of Obligation and Tor Wolf's people felt they should be more specific in regard to how the payment was to be done and they spelled it out in a full paragraph.

Commissioner Percy Simond stated that he felt the Mayor did a good job of articulating the feeling of the Council at the last meeting. Commissioner Simond stated that his impression was that City Attorney Flourney was going to come back with a liquidated damage provision in the Contract. City Attorney Flourney stated that he had misunderstood and thought that he was to find out if it was illegal to put in a liquidated damage provision in the Contract and if they did that they could also have a repository type provision where if they went under the number of Contract days they could have some kind of bonus.

City Attorney Flourney stated that the Contract submitted to Tribble & Stephens stated that if they did not complete the work in 450 days all work completed after that point in time would not be paid for until all the work was completed.

In response to question by Commissioner Lynn Malone, City Attorney Flourney stated that the good thing about having the liquidated damage provision is that if the damages we suffer by going over the time limit is greater than the amount that we agree on as liquidated damages is you are obviously leaving something on the table. City Attorney Flourney stated that if the City agrees on \$100 a day as liquidated damages and it turns out that damages are \$1,000 a day, we would be limited to the \$100 a day that we agreed on.

Mayor Garrison stated that in his opinion the City was helpless in this situation and wished that these things had been pointed out before they were actually included in the bid Contract.

Mayor Garrison stated that he was very disappointed in the Contract and felt that the City was "locked in".

Jerry Hill stated that his firm had not used a Contract with the liquidated damages provision in the last five years.

Mayor Garrison stated that he was disappointed that the City's attorneys did not have any input or were allowed to be involved in the writing of the Contract.

Jerry Hill stated that the Contractor would provide him with a graph showing their progress and he would personally keep the Commission informed as to whether the Contractor was behind schedule. Mr. Hill stated that the City was dealing with a qualified contractor and that he did not have any reservations about the situation. Mr. Hill stated that the City would have a 5% retainage that could be withheld until the job was complete.

Mayor Garrison stated that in his opinion it would be in the best interest of the City to have a liquidated damages clause in the Contract.

Commissioner Simond stated that he was well pleased with the plans for the new City Hall and he appreciated the fact that Mr. Hill had

taken the time to personally go over the plans with him. Commissioner Simond stated that he was not pleased at all with the completion clause in the Contract and he agreed with the Mayor that it was a disgrace that the City has to be put in a "take it or leave it" position.

Motion was made by Commissioner Pat Foley and seconded by Commissioner Don Boyd that Contract of Tribble & Stephens be accepted as the low bidder for the construction of the new City hall and enlargement of the old City hall. A unanimous affirmative vote was recorded.

Commissioner Simond stated that he was voting for the Contract with deep reservations about it. Mayor Carrison stated that he would also like to record his own deep reluctance in approving the Contract without the liquidated damages provision.

4. There being no further business for consideration, meeting adjourned at 12:45 p.m.



Pitser H. Garrison - Mayor

ATTEST:



Atha Stokes - City Secretary