

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
OCTOBER 23, 2006**

Mayor Bryce D. Kocian 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 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, Police Chief Tim Guin, Building Official Ronnie Bollom, Planning Director Prudencio Arriaga, Sr., Building Official Assistant Lori Jaquez, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Jim Gilley, Tom Sage, Erinn Lindberg, Austin Wozniak, Jeremy Schulz, Melanie Carlson, and Louis Edwards.

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

The fourth item on the agenda was Wharton Moment. Councilmember Ken Freese stated that Wharton High School Students were observing the City Council meeting for a government project. Then, Austin Wozniak, Melanie Carson, Erinn Lindberg, and Jeremy Schulz introduced themselves to the City Council. 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 September 2006. Finance Director Joyce Vasut presented the financial report for the month of September 2006 to the City Council and stated that the auditors would be reviewing the year-end financials. Mrs. Vasut stated that the total ad valorem taxes collected were \$1,792,451 and the sales tax for the month of August 2005 was \$165,821 with \$110,547 to the City and \$55,274 to WEDC. She further stated the TexPool balance for September was \$1,227,615.64 with an average monthly yield of 5.2648%. After some discussion, Councilmember David Samuelson made a motion to approve the City of Wharton Financial Report for the month of September 2006. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider an ordinance authorizing the issuance of City of Wharton, Texas, Tax and Revenue Certificates of Obligation, Series 2006. City Manager Andres Garza, Jr. presented a draft ordinance authorizing the issuance of the City of Wharton, Texas, Tax and Revenue Certificates of Obligation, Series 2006. Mr. Garza then introduced Jim Gilley with Coastal Securities and Tom Sage with Vinson & Elkins LLP. Mr. Jim Gilley informed the City Council that eight bids were received via internet for \$2,965,000. He then presented the Summary of Sale for the Tax & Revenue Certificates of Obligation Series 2006. He stated that the best bid was with Stifel Nicolaus & Company, Inc. with an interest rate of 4.155199%. He then stated that the insured rating with CIFG Services, Inc was "Aaa" and "AAA", with the underlying rating of Moody's "Baa1", and Standard & Poor's "BBB+". He stated that the principal would be paid December 1, 2007 – December 1, 2026, with a par on December 1, 2014. He stated that Mr. Tom Sage with Vinson & Elkins LLP would submit the bonds to the Attorney General; therefore, the bond sale would close the latter part of November 2006. He stated that Stifel Nicolaus & Company, Inc. had obtained the bond insurance policy; therefore, the premium would not be funded from the proceeds. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Ordinance No. 2006-19, which read as follows:

**CITY OF WHARTON
ORDINANCE NO.: 2006-19**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF WHARTON,
TEXAS, TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2006.**

**THE STATE OF TEXAS §
COUNTY OF WHARTON §
CITY OF WHARTON §**

WHEREAS, the City Council of the City of Wharton, Texas (the "City"), authorized the publication of a notice of intention to issue certificates of obligation to the effect that the City Council would meet on October 23, 2006, to adopt an ordinance and take such other action as may be deemed necessary to authorize the issuance of certificates of obligation (the "Certificates") payable from City ad valorem taxes and from a limited pledge of a subordinate lien on the net revenues of the City's waterworks and sanitary sewer system, for the purpose of evidencing the indebtedness of the City for all or any part of the cost of constructing drainage improvements, the acquisition of equipment, the acquisition of land at 1407 N. Richmond Road, Wharton, Texas, for a new police facility, renovations and improvements of City facilities, park and sidewalk improvements, water and sewer system improvements, airport improvements, and the cost of professional services incurred in connection therewith; and

WHEREAS, such notice was published at the times and in the manner required by the Constitution and laws of the State of Texas and of the United States of America, respectively, particularly Subchapter C of Chapter 271, Texas Local Government Code as amended; and

WHEREAS, no petition or other request has been filed with or presented to any official of the City requesting that any of the proceedings authorizing the Certificates be submitted to a referendum or other election; therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHARTON:

1. Recitals. It is hereby found and determined that the matters and facts set out in the preamble to this Ordinance are true and correct.

2. Definitions. Throughout this ordinance the following terms and expressions as used herein shall have the meanings set forth below:

“Act” means Chapter 271, Texas Local Government Code, as amended.

“Business Day” means any day which is not a Saturday, Sunday, a day on which Registrar is authorized by law or executive order to close, or a legal holiday.

“Certificate” or “Certificates” means the City of Wharton, Texas, Tax and Revenue Certificates of Obligation, Series 2006 authorized in this Ordinance, unless the context clearly indicates otherwise.

“City” means the City of Wharton, Texas.

“Closing Date” means the date of the initial delivery of and payment for the Certificates.

“Code” means the Internal Revenue Code of 1986, as amended.

“Comptroller” means the Comptroller of Public Accounts of the State of Texas.

“DTC” means The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“Interest and Sinking Fund” means the interest and sinking fund for payment of the Certificates established by the City in Section 20 of this Ordinance.

“Interest Payment Date”, when used in connection with any Certificate, means June 1, 2007, and each December 1 and June 1 thereafter until maturity or earlier redemption.

“Initial Certificate” means the Initial Certificate authorized by Section 6(d).

“MSRB” means the Municipal Securities Rulemaking Board.

“NRMSIR” means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

“Ordinance” as used herein and in the Certificates means this ordinance authorizing the Certificates.

“Owner” means any person who shall be the registered owner of any outstanding Certificate.

“Record Date” means, for any Interest Payment Date, the close of business on the 15th calendar day of the month next preceding such Interest Payment Date.

“Register” means the books of registration kept by the Registrar in which are maintained the names and addresses of and the principal amounts registered to each Owner.

“Registrar” means Wells Fargo Bank, N.A., and its successors in that capacity.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“SID” means the Municipal Advisory Council of Texas, which has been designated by the State of Texas as, and determined by the SEC staff to be, a state information depository within the meaning of the Rule.

“Underwriter” means the firm or syndicate that is the initial purchaser of a series of the Bonds, as specified in Section 24.

3. Authorization. The Certificates shall be issued pursuant to the Act in fully registered form, without coupons, in the total authorized principal amount of Two Million Nine Hundred Sixty-Five Thousand Dollars (\$2,965,000) for the purpose of evidencing the indebtedness of the City for all or any part of the cost of constructing drainage improvements, the acquisition of equipment, the acquisition of land at 1407 N. Richmond Road, Wharton, Texas, for a new police facility, renovations and improvements of City facilities, park and sidewalk improvements, water and sewer system improvements, airport improvements, and the cost of professional services incurred in connection therewith.

4. Designation, Date, and Interest Payment Dates. The Certificates shall be designated as the “CITY OF WHARTON, TEXAS, TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2006”, and shall be dated December 1, 2006. The Certificates shall bear interest at the rates set forth in Section 5 of this Ordinance from the later of December 1, 2006, or the most recent Interest Payment Date to which such interest has been paid or duly provided for, calculated on the basis of a 360 day year of twelve 30 day months, interest payable

on June 1, 2007, and semiannually thereafter on December 1 and June 1 of each year until maturity or earlier redemption.

5. Initial Certificates; Numbers and Denominations. The Certificates shall be initially issued bearing the numbers, in the principal amounts, and bearing interest at the rates set forth in the following schedule, and may be transferred and exchanged as set out in this Ordinance. The Certificates shall mature on December 1 in each of the years and in the amounts set out in such schedule. The Initial Certificate shall be numbered I-1 and all other Certificates shall be numbered in sequence beginning with R-1. Certificates delivered on transfer of or in exchange for other Certificates shall be numbered in order of their authentication by the Registrar, shall be in the denomination of \$5,000 or integral multiples thereof, and shall mature on the same date and bear interest at the same rate as the Certificate or Certificates in lieu of which they are delivered.

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2007	\$ 10,000	_____ %
2008	10,000	_____ %
2009	10,000	_____ %
2010	10,000	_____ %
2011	125,000	_____ %
2012	130,000	_____ %
2013	140,000	_____ %
2014	145,000	_____ %
2015	150,000	_____ %
2016	160,000	_____ %
2017	165,000	_____ %
2018	175,000	_____ %
2019	185,000	_____ %
2020	190,000	_____ %
2021	200,000	_____ %
2022	210,000	_____ %
2023	220,000	_____ %
2024	230,000	_____ %
2025	245,000	_____ %
2026	255,000	_____ %

6. Execution of Certificates; Seal. (a) The Certificates shall be signed on behalf of the City by the Mayor and countersigned by the City Secretary, by their manual, lithographed, or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Certificates shall have the same effect as if each of the Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the Certificates shall have the same effect as if the official seal of the City had been manually impressed upon each of the Certificates.

(b) If any officer of the City whose manual or facsimile signature shall appear on the Certificates shall cease to be such officer before the authentication of such Certificates or before the delivery of such Certificates, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Certificate shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Registrar's Authentication Certificate substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Registrar. In lieu of the executed Registrar's Authentication Certificate described above, the Initial Certificate delivered at the Closing Date shall have attached hereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller, or by his duly authorized agent, which certificate shall be evidence that the Initial Certificate has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller.

(d) On the Closing Date, the Initial Certificate, being a single certificate representing the entire principal amount of the Certificates, payable in stated installments to the Underwriter or its designee, executed by manual or facsimile signature of the Mayor and City Secretary of the City, approved by the Attorney General, and registered and manually signed by the Comptroller, shall be delivered to the Underwriter or its designee. Upon payment for the Initial Certificate, the Registrar shall cancel the Initial Certificate and deliver definitive Certificates to DTC.

7. Payment of Principal and Interest. The Registrar is hereby appointed as the paying agent for the Certificates. The principal of the Certificates shall be payable, without exchange or collection charges, in any coin or currency of the United States of America which, on the date of payment, is legal tender for the payment of debts due the United States of America, upon their presentation and surrender as they become due and payable at the operations office of the Registrar in Minneapolis, Minnesota. The interest on each Certificate shall be payable by check payable on the Interest Payment Date, mailed by the Registrar on or before each Interest Payment Date to the Owner of record as of the Record Date, to the address of such Owner as shown on the Register.

If the date for payment of the principal of or interest on any Certificate is not a Business Day, then the date for such payment shall be the next succeeding Business Day, with the same force and effect as if made on the original date payment was due.

8. Successor Registrars. The City covenants that at all times while any Certificates are outstanding it will provide a commercial bank or trust company organized under the laws of the United States or any state and duly qualified and legally authorized to serve as Registrar for the Certificates. The City reserves the right to change the Registrar on not less than 60 days written notice to the Registrar, so long as any such notice is effective not less than 60 days prior to the next succeeding principal or interest payment date on the Certificates. Promptly upon the appointment of any successor Registrar, the previous Registrar shall deliver the Register or copies thereof to the new Registrar, and the new Registrar shall notify each Owner, by United States

mail, first class postage prepaid, of such change and of the address of the new Registrar. Each Registrar hereunder, by acting in that capacity, shall be deemed to have agreed to the provisions of this Section.

9. Special Record Date. If interest on any Certificate is not paid on any Interest Payment Date and continues unpaid for thirty (30) days thereafter, the Registrar shall establish a new record date for the payment of such interest, to be known as a Special Record Date. The Registrar shall establish a Special Record Date when funds to make such interest payment are received from or on behalf of the City. Such Special Record Date shall be fifteen (15) days prior to the date fixed for payment of such past due interest, and notice of the date of payment and the Special Record Date shall be sent by United States mail, first class postage prepaid, not later than five (5) days prior to the Special Record Date, to each affected Owner of record as of the close of business on the day prior to the mailing of such notice.

10. Ownership; Unclaimed Principal and Interest. The City, the Registrar and any other person may treat the person in whose name any Certificate is registered as the absolute Owner of such Certificate for the purpose of making payment of principal or interest on such Certificate, and for all other purposes, whether or not such Certificate is overdue, and neither the City nor the Registrar shall be bound by any notice or knowledge to the contrary. All payments made to the person deemed to be the Owner of any Certificate in accordance with this Section shall be valid and effectual and shall discharge the liability of the City and the Registrar upon such Certificate to the extent of the sums paid.

Amounts held by the Registrar which represent principal of and interest on the Certificates remaining unclaimed by the Owner after the expiration of three years from the date such amounts have become due and payable shall be reported and disposed of by the Registrar in accordance with the applicable provisions of Texas law including, to the extent applicable, Title 6 of the Texas Property Code, as amended.

11. Registration, Transfer, and Exchange. So long as any Certificates remain outstanding, the Registrar shall keep the Register at its operations office in Minneapolis, Minnesota, and, subject to such reasonable regulations as it may prescribe, the Registrar shall provide for the registration and transfer of Certificates in accordance with the terms of this Ordinance.

Each Certificate shall be transferable only upon the presentation and surrender thereof at the operations office of the Registrar in Minneapolis, Minnesota, duly endorsed for transfer, or accompanied by an assignment duly executed by the registered Owner or his authorized representative in form satisfactory to the Registrar. Upon due presentation of any Certificate in proper form for transfer, the Registrar shall authenticate and deliver in exchange therefor, within three Business Days after such presentation, a new Certificate or Certificates, registered in the name of the transferee or transferees, in authorized denominations and of the same maturity and aggregate principal amount and bearing interest at the same rate as the Certificate or Certificates so presented.

All Certificates shall be exchangeable upon presentation and surrender at the operations office of the Registrar in Minneapolis, Minnesota, for a Certificate or Certificates of like maturity and interest rate and in any authorized denomination, in an aggregate amount equal to the unpaid principal amount of the Certificate or Certificates presented for exchange. The Registrar shall be and is hereby authorized to authenticate and deliver exchange Certificates in accordance with the provisions of this Section. Each Certificate delivered in accordance with this Section shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such Certificate is delivered.

The City or the Registrar may require the Owner of any Certificate to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the transfer or exchange of such Certificate. Any fee or charge of the Registrar for such transfer or exchange shall be paid by the City.

12. Mutilated, Lost, or Stolen Certificates. Upon the presentation and surrender to the Registrar of a mutilated Certificate, the Registrar shall authenticate and deliver in exchange therefor a replacement Certificate of like maturity, interest rate, and principal amount, bearing a number not contemporaneously outstanding. If any Certificate is lost, apparently destroyed, or wrongfully taken, the City, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Certificate has been acquired by a bona fide purchaser, shall authorize and the Registrar shall authenticate and deliver a replacement Certificate of like maturity, interest rate and principal amount, bearing a number not contemporaneously outstanding.

The City or the Registrar may require the Owner of a mutilated Certificate to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith and any other expenses connected therewith, including the fees and expenses of the Registrar.

The City or the Registrar may require the Owner of a lost, apparently destroyed or wrongfully taken Certificate, before any replacement Certificate is issued, to:

- (1) furnish to the City and the Registrar satisfactory evidence of the ownership of and the circumstances of the loss, destruction or theft of such Certificate;
- (2) furnish such security or indemnity as may be required by the Registrar and the City to save them harmless;
- (3) pay all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Registrar and any tax or other governmental charge that may be imposed; and
- (4) meet any other reasonable requirements of the City and the Registrar.

