

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
NOVEMBER 24, 2008**

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

Councilmember's present was: 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, City Secretary Lisa Olmeda, Assistant to City Manager Jackie Jansky, Public Works Director Carter Miska, Community Services Director Jo Knezek, Emergency Management Coordinator Jim Cooper, and City Attorney Paul Webb.

Visitors present were: Barry Halvorson with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Carlos Cotton with Jones & Carter, Dan Wimberly, and Bradley Loehr.

The second item on the agenda was Roll Call and Excuses Absences. Councilmember Lewis Fortenberry, Jr. made a motion to excuse the absence of Councilmember V. L. Wiley, Jr. from the Regular City Council meeting held November 24, 2008. Councilmember Ken Freese seconded the motion. All voted in favor.

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. Mayor David W. Samuelson stated that Councilmember Domingo Montalvo, Jr. was selected for the LCRA Regional Council and publicly commended the appointment. Councilmember Domingo Montalvo, Jr. said that it was an honor and publicly thanked the LCRA Board for the vote of confidence. 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 October 2008. Finance Director Joyce Vasut presented the financial report for the month of October 2008 which was at 8% or one month into the fiscal year. Mrs. Vasut stated that the general fund revenues were at 4.33% and the expenditures were at 9.33%. The total ad

valorem taxes collected were \$0. She said the sales tax for the month of September was \$181,087 with \$120,724 going to the City and \$60,362 to WEDC. The bank balance for October was \$809,992.79 with an average monthly yield of 2.000%. The TexPool balance for October was \$754,746.55 with an average monthly yield of 1.9762%. After some discussion, Councilmember Ken Freese made a motion to approve the City of Wharton Financial Report for the month of October 2008. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the City of Wharton Tax Anticipation Notes, Series 2008:

- A. Resolution: A resolution of the Wharton City Council expressing intent to finance expenditures incurred for the City of Wharton's Water Well System. Finance Director Joyce Vasut stated that no action would be needed since a Resolution was not necessary.
- B. Ordinance: An ordinance authorizing the issuance of City of Wharton, Texas, Tax Anticipation Notes, Series 2008.

Finance Director Joyce Vasut stated that the City had incurred a large cost to repair the Vahalla Water Well and the total costs (construction and engineering) exceeded \$250,000.00. She said that the funds allocated for this project would put a strain in the City's cash flow. City Manager Andres Garza, Jr. stated that he was recommending the City Council allow the City Staff to borrow \$300,000.00 from Houston Community Bank for a period not to exceed the end of the City's fiscal year September 30, 2009. He said that this would allow the City to meet the obligations of the project and spread the cost over the fiscal year and reduce impact on the City's cash flow. Mrs. Vasut stated that the interest rate would be 5%. After some discussion, Councilmember Don Mueller made a motion to approve Ordinance No. 2008-17, which read as follows:

CITY OF WHARTON  
ORDINANCE NO. 2008-17

ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF WHARTON,  
TEXAS, TAX ANTICIPATION NOTES, SERIES 2008

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

WHEREAS, the City of Wharton, Texas (the "City") is authorized to issue notes payable from ad valorem taxes pursuant to Chapter 1431, Texas Government Code, as amended; Now, Therefore

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

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

"Act" means Chapter 1431, Texas Government Code, as amended.

“Business Day” means any day which is not a Saturday, Sunday, a day on which banking institutions in Houston, Texas, are required or authorized by law or executive order to remain closed.

“City” means the City of Wharton, Texas.

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

“Commitment Letter” means the letter agreement described in Section 16 of this Ordinance.

“Debt Service Fund” means the Debt Service fund established by the City pursuant to Section 14 of this Ordinance.

“Issuance Date” means the date on which the Notes are delivered to and paid for by the Purchaser.

“Note” or “Notes” means any note or all notes, as the case may be, of the City of Wharton, Texas, Tax Anticipation Notes, Series 2008 authorized in this Ordinance, unless the context clearly indicates otherwise.

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

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

“Purchaser” means Houston Community Bank, N.A..

“Registrar” means, initially, the Purchaser and thereafter any qualified commercial bank selected by the City.

2. Authorization. The Notes shall be issued pursuant to the Act in fully registered form, without coupons, in the aggregate principal amount of Three Hundred Thousand Dollars (\$300,000), for the purpose of providing operating funds for improvement costs for the City’s water well system and to pay the related costs of issuance for the Notes.

3. Designation and Date. The Notes shall be designated as the “CITY OF WHARTON, TEXAS, TAX ANTICIPATION NOTES, SERIES 2008”, and shall be dated the Issuance Date.

4. Initial Notes; Numbers and Denominations. The Notes 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 Notes shall mature on September 30, 2009 and bear interest at the rate of 5.00%.

5. Execution of Notes; Seal. (a) The Notes 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 Notes shall have the same effect as if each of the Notes had been signed manually and in person by each of said officers, and such facsimile seal on the Notes shall have the same effect as if the official seal of the City had been manually impressed upon each of the Notes.

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

6. Payment of Principal and Interest. The Registrar is hereby appointed as the paying agent and registrar for the Notes. The principal of the Notes 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 respectively become due and payable to the Registrar. The interest on each Note shall be payable on each Interest Payment Date, by check mailed by the Registrar on or before the Interest Payment Date to the Owner of record as of the Record Date, to the address of such Owner as shown on the Register, or by such other method, requested by the Owner, acceptable to the Registrar.

If the date for payment of the principal of or interest on any Note 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 date payment was originally due.

7. Successor Registrars. The City covenants that at all times while any Notes are outstanding it will provide a commercial bank, trust company, financial institution or other entity duly qualified and legally authorized to serve as and perform the duties and services of Registrar for the Notes. The City reserves the right to change the Registrar on not less than 30 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 Notes. 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.

8. Special Record Date. If interest on any Note 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.

9. Ownership; Unclaimed Principal and Interest. The City, the Registrar and any other person may treat the person in whose name any Note is registered as the absolute owner of such Note for the purpose of making and receiving payment of the principal of or interest on such Note, and for all other purposes, whether or not such Note 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 Note in accordance with this Section shall be valid and effectual and shall discharge the liability of the City and the Registrar upon such Note to the extent of the sums paid.

Amounts held by the Registrar which represent principal of and interest on the Notes 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.

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

Each Note shall be transferable only upon the presentation and surrender thereof at the principal payment office of the Registrar, 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 Note in proper form for transfer, the Registrar shall authenticate and deliver in exchange therefor, within three Business Days after such presentation, a new Note or Notes, 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 Note or Notes so presented.

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

The City or the Registrar may require the Owner of any Note 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 Note. Any fee or charge of the Registrar for such transfer or exchange shall be paid by the City.

11. Mutilated, Lost, or Stolen Notes. Upon the presentation and surrender to the Registrar of a mutilated Note, the Registrar shall authenticate and deliver in exchange therefor a replacement Note of like maturity, interest rate, and principal amount, bearing a number not contemporaneously outstanding. If any Note 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 Note has been acquired by a bona fide purchaser, shall authorize and the Registrar shall authenticate and deliver a replacement Note 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 Note 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 Note, before any replacement Note 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 Note;
- (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.

If, after the delivery of such replacement Note, a bona fide purchaser of the original Note in lieu of which such replacement Note was issued presents for payment such original Note, the City and the Registrar shall be entitled to recover such replacement Note from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Registrar in connection therewith.

If any such mutilated, lost, apparently destroyed or wrongfully taken Note has become or is about to become due and payable, the City in its discretion may, instead of issuing a replacement Note, authorize the Registrar to pay such Note.

Each replacement Note delivered in accordance with this Section shall be entitled to the benefits and security of this Ordinance to the same extent as the Note or Notes in lieu of which such replacement Note is delivered.

12. Cancellation of Notes. All Notes paid in accordance with this Ordinance, and all Notes in lieu of which exchange Notes or replacement Notes are authenticated and delivered in accordance herewith, shall be cancelled and destroyed upon the making of proper records

regarding such payment. The Registrar shall furnish the City with appropriate certificates of destruction of such Notes.

13. Form of Note. The form of the Note shall be substantially as follows, with such additions, deletions and variations as may be necessary or desirable and not prohibited by this Ordinance:

UNITED STATES OF AMERICA  
STATE OF TEXAS  
COUNTY OF WHARTON

NUMBER	DENOMINATION
I-1	\$300,000
REGISTERED	REGISTERED

CITY OF WHARTON, TEXAS  
TAX ANTICIPATION NOTE  
SERIES 2008

INTEREST RATE:	MATURITY DATE:	ISSUANCE DATE:
5.000%	September 30, 2009	_____, 2008

REGISTERED OWNER: HOUSTON COMMUNITY BANK, N.A.

PRINCIPAL AMOUNT: THREE HUNDRED THOUSAND DOLLARS

The City of Wharton, Texas (the "City") promises to pay to the registered owner identified above, or registered assigns, on the maturity date specified above, upon presentation and surrender of this Note at Houston Community Bank, N.A., the principal amount identified above, payable 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, and to pay interest thereon at the rate shown above, calculated on the basis of a 360 day year of twelve 30 day months, from the later of Issuance Date, or the most recent interest payment date to which interest has been paid or duly provided for.

THIS NOTE is one of a duly authorized issue of Notes, aggregating \$300,000 (the "Notes"), issued for the purpose of providing operating funds for improvement costs for the City's water well system, under and in strict conformity with the Constitution and laws of the State of Texas, including Chapter 1431, Texas Government Code, as amended, and pursuant to an ordinance adopted by the City (the "Ordinance"), which Ordinance is of record in the official minutes of the City Council.

IT IS HEREBY certified, recited and covenanted that this Note has been duly and validly issued and delivered; that all acts, conditions and things required or proper to be performed, to exist and to be done precedent to or in the issuance and delivery of this Note have been performed, exist and have been done in accordance with law; and that annual ad valorem taxes

sufficient to provide for the payment of the interest on and principal of this Note, as such interest comes due and such principal matures, have been levied and ordered to be levied, within the limits prescribed by law, against all taxable property in the City and have been pledged irrevocably for such payment.

IN WITNESS WHEREOF, this Note has been signed with the manual or facsimile signature of the Mayor of the City and countersigned with the manual or facsimile signature of the City Secretary of the City, and the official seal of the City has been duly impressed, or placed in facsimile, on this Note.

(AUTHENTICATION  
CERTIFICATE)

(SEAL)

CITY OF WHARTON, TEXAS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Secretary

14. Debt Service Fund; Tax Levy. The proceeds from all taxes levied, assessed and collected for and on account of the Notes authorized by this Ordinance shall be deposited, as collected, in a special fund to be designated "City of Wharton, Texas, Tax Anticipation Notes, Series 2008, Debt Service Fund". While the Notes or any part of the principal thereof or interest thereon remain outstanding and unpaid, there is hereby levied and there shall be annually levied, assessed and collected in due time, form and manner and at the same time other City taxes are levied, assessed and collected, in each year, a continuing direct annual ad valorem tax, within the limits prescribed by law, upon all taxable property in the City sufficient to pay the current interest on said Notes as the same becomes due, and to provide and maintain a sinking fund sufficient to pay the principal of the Notes as such principal matures but never less than two percent (2%) of the original principal amount of the Notes each year, full allowance being made for delinquencies and costs of collection, and said taxes when collected shall be applied to the payment of the interest on and principal of the Notes and to no other purpose.

To pay the debt service coming due on the Notes prior to receipt of the taxes levied to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.

15. Application of Chapter 1208, Government Code. Chapter 1208, Government Code, applies to the issuance of the Notes and the pledge of the taxes granted by the City under Section 16 of this Ordinance, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Notes are outstanding and unpaid such that the pledge of the taxes granted by the City under Section 16 of this Ordinance is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the registered owners of the Notes the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to

