

# *CITY OF WILLOW PARK*

ORDINANCE NO. 538-05

**AN ORDINANCE PROVIDING FOR AUTHORIZING AND CONSENTING TO THE EXERCISE OF EMINENT DOMAIN AS AUTHORIZED BY THE CITY COUNCIL OF THE CITY OF WILLOW PARK, TX. PURSUANT TO THE PROVISIONS OF CHAPTER 251, TEX. LOCAL GOV'T CODE; PROVIDING FOR THE ACQUISITION BY EMINENT DOMAIN OF THAT CERTAIN REAL PROPERTY, AND RELATED PERSONALTY, LEASES, PROPERTY AGREEMENTS TANGIBLES, EASEMENTS, AND ALL OTHER ANCILLARY INTERESTS OF DEER CREEK WATERWORKS, INC. (DEER CREEK) UTILIZED OR NECESSARY FOR THE PROVISION OF WATER AND UTILITY SERVICE WITHIN THE SERVICE AREAS DESCRIBED IN CERTIFICATES OF CONVENIENCE AND NECESSITY (CCN) NUMBERED 12027 (WATER) AND 20849 (SEWER) ISSUED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ); FINDING THAT THE PUBLIC WELFARE AND CONVENIENCE REQUIRES THE TAKING AND ACQUIRING OF THE INTERESTS HEREIN DESCRIBED FOR UTILITY PURPOSES AND THE PROVISION OF WATER AND SEWER UTILITY SERVICES; PROVIDING FOR AN OFFER TO PURCHASE THE PROPERTY FROM DEER CREEK WATERWORKS, INC. FOR JUST COMPENSATION AND IF SUCH OFFER IS REFUSED, AUTHORIZING ALL NECESSARY PROCEEDINGS IN CONDEMNATION TO ACQUIRE THE DESCRIBED PROPERTY FOR WATER AND SEWER UTILITY PURPOSES; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Willow Park, Tx. (City) is a municipal corporation organized under the laws of the State of Texas and Deer Creek Waterworks, Inc. is a Texas for Profit Public Utility Corporation (Deer Creek); and

**WHEREAS**, it is intent of the City of Willow Park to protect the health, safety and welfare and well being of its citizens and utility users; and

**WHEREAS**, it is hereby determined that a public necessity and need exists and public convenience requires the acquisition of certain property, real and business, for the purpose of providing a waterworks system, including water supply sources, water sheds, water storage, drainage treatment, distribution transmission, and emptying facilities; a sewage system, including sewage collection, drainage, treatment, disposal and emptying facilities, pursuant to §251.001(a)(1) TEX. LOCAL GOV'T CODE and as provided in §402.001 TEX. LOCAL GOV'T CODE or other statutory authorization for City utility customers; and

**WHEREAS**, a public necessity exists and a public benefit will be conveyed to said users by provision of water and sewer service through the acquisition of eminent domain to all the right, title, interests, in and to, the water and sewer systems in in the area permitted to Deer Creek or encompassed within the Split Rail Estates, Meadow Park Estates, Deer Creek Estates, Phases 1, 1A, 3, and Deer Creek Phase VII, Sections 1-4 and all other areas encompassed within CCN No. 12027 and 20849 as issued by TCEQ; and

**WHEREAS**, the City has filed an application with TCEQ for the sale, transfer, or merger (STM) of the Deer Creek Certificates of Convenience and Necessity, No. 12027 and 20849; assigned TCEQ Administrative Review No. A-025-5 and which application was declared Administratively Complete on March 22, 2005; and

**WHEREAS**, as part of the Application for STM of the Deer Creek Certificates of Convenience and Necessity, an "Agreement of Purchase and Sale of Public Water and Sewer Utilities in Parker

County" (Agreement) by and between Deer Creek and the City was included and incorporated therein, which sets forth and describes all of the right, title, and interest, in and to all assets-save and accept for excluded assets-under the Agreement, that would be acquired by the City through the exercise of authorized eminent domain, or other assets necessary, appropriate or ancillary to the provision of said service by Deer Creek to the certificated areas of Convenience and Necessity, described herein.

**NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILLOW PARK, TEXAS:**

**SECTION 1. AUTHORIZATION**

The Mayor, or his designees is hereby authorized and directed to implement the applicable provision of this Ordinance.

**SECTION 2. PUBLIC NECESSITY**

A public necessity exists, and public welfare and convenience requires and will be benefited from, the acquisition by the City for public use all of the right, title and interest in and to water and sewer systems, including all respective assets and rights owned, used or related thereto, by Deer Creek as more completely described in the Agreement filed in TCEQ Application A-025-5 by the City and any ancillary franchise, easements, rights of way, licenses, or other assets or interests owned or used by Deer Creek ancillary to the use of the real or personal property, for the utility purposes described herein.

**SECTION 3. FAIR MARKET VALUE**

The City Manger, or designee, is hereby authorized to make an offer for the property herein defined to the owner of said property in the amount of a fair market value determined by the City or agreed to by the parties.

**SECTION 4. CONDEMNATION PROCEEDINGS**

In the event the fair market value described in Section 3 herein is refused by the owner of the property, the City Attorney or counsel designated by the City Attorney, is hereby authorized and directed on behalf of the City to file the necessary condemnation proceedings or sue and to take whatever action may be necessary against the owners, and any other parties having interest in the property, to acquire the property herein defined with title or interest vesting in the City and acquire all other necessary, appropriate and ancillary rights necessary to the effective operation of the property acquired.

**SECTION 5. RECITALS**

The City Council hereby finds and declares all precatory language herein to be true and correct and approves and adopts the same herein as part of this Ordinance.

**SECTION 6. SEVERABILITY**

If for any reason any section, paragraph, subdivision, clause, phrase or provision of this Ordinance shall be held invalid, it shall not affect any valid provisions of this or any other Ordinance of the City of Willow Park to which these rules and regulations relate.

**SECTION 7. EFFECTIVE DATE**

This Ordinance shall take effect from and after the date of its passage.

**PASSED AND APPROVED** this 21<sup>st</sup> day of June, 2005.

