

CITY OF WILLOW PARK

ORDINANCE NO. 609-10

AN ORDINANCE RATIFYING AND CONFIRMING THE SIGNATURE AND EXECUTION OF THAT CERTAIN SETTLEMENT AGREEMENT AND RELEASE; CONTRACT FOR THE SALE AND PURCHASE OF DEER CREEK WATER SYSTEM; CONTRACT FOR THE SALE AND PURCHASE OF DYEGARD WATER SYSTEM; AND, PROVIDING 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

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

WHEREAS, pursuant to Chapter 402 and Chapter 552, TEXAS LOCAL GOV'T CODE, a municipality may purchase and operate a utility system either inside or outside the municipal boundaries in a manner that protects the interests of the municipality;

WHEREAS, on or about August 17, 2005, the City acquired the assets of Deer Creek Waterworks, Inc. ("Deer Creek") as a municipal utility and water and sewer system; and

WHEREAS, the City acquired the assets of Dyegard Utility System ("Dyegard") on or about April 21, 2005 as a municipal utility and water system; and

WHEREAS, the City, subsequent to the purchase of the Deer Creek and Dyegard systems, operated them as part of the municipal utility system; and

WHEREAS, an application was made with the Texas Commission on Environmental Quality (TCEQ) to approve the sale, transfer and merger of Deer Creek to the City and said application was objected to and resulted as a contested case SOAH Docket No. 582-06-0947; TCEQ Docket No. 2005-1531-UCR: *Application of the City of Willow Park to transfer CCN No. 12027 from Deer Creek Waterworks, Inc. to Willow Park and to amend Willow Park CCN No. 11814 and to transfer CCN No. 20849 from Deer Creek Waterworks, Inc. to Willow Park and to amend Willow Park's CCN No. 20773*; and

WHEREAS, subsequent to the purchase of Dyegard by the City and the approval of the sale, transfer and merger to the City by TCEQ, the City did duly and legally uniformly modify and amend the tariff and water rates of the combined municipal utility system, including the pre-existing Municipal Waterworks, Deer Creek and Dyegard. Certain rate payers of the utility system receiving service outside the municipal limits protested their utility rate increases and said protest is a contested case SOAH Docket No. 582-06-1735 and TCEQ Docket No. 2006-0188-UCR, which is currently pending; and

WHEREAS, the City, in an attempt to enforce its contractual rights pursuant to a Memorandum of Understanding executed between the parties, in 2006 filed a cause of action in Parker County, Texas, No. CV07-2129, CITY OF WILLOW PARK, TEXAS v. CITY OF ALEDO, TEXAS; TOWN OF ANNETTA, TEXAS; TOWN OF ANNETTA SOUTH, TEXAS; CITY OF HUDSON OAKS, TEXAS AND PARKER COUNTY UTILITY DISTRICT NO. 1, which case is pending in the 43rd Judicial District Court of Parker County, Texas; and

WHEREAS, on September 18, 2009, the 43rd Judicial District Court ordered the above-described cause to mediation which was conducted on November 13, 2009 with representatives of all parties present and wherein all parties reached an agreement and executed a document entitled "*The Business Terms of the Settlement Between the Parties*"; and

WHEREAS, the Willow Park City Council, meeting in a duly and legally noticed and posted Special City Council meeting, at 1315 Calhoun Street, Fort Worth, Texas, did convene on November 13, 2009, and on motion made and seconded approved the mediated settlement in the above-styled and numbered cause and further approved the sale and transfer of ownership from the City to the purchasers of Deer Creek and Dyegard

systems as set forth in "The Business Terms of the Settlement Between the Parties" finally disposing of all the above contested matters and litigation and authorized the Mayor and City Attorney to execute said documents; and

WHEREAS, on January 15, 2010, consistent with the authorizations adopted and voted by the City Council on November 13, 2009, the Settlement Agreement and Release and Contract for the Sale and Purchase of both the Deer Creek and Dyegard systems were duly and legally signed and executed by representatives of the City, consistent with prior authorization; and

WHEREAS, the City does now deem it appropriate and prudent to ratify and confirm the execution of the Settlement Agreement and Release ("Agreement"); Contract for the Sale and Purchase of Dyegard Water System; and the Contract for the Sale and Purchase of Deer Creek Water System (collectively "Contracts").

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

SECTION 1. RATIFICATION

The signature and execution of the Settlement Agreement and Release; Contract for the Sale and Purchase of Deer Creek Water System; Contract for the Sale and Purchase of Dyegard Water System, signed on January 15, 2010, is hereby ratified, confirmed and approved in all respects. Said Agreement and Contracts shall be and are hereby adopted and ratified as an act approved by the City Council as if this action and authorization had been adopted and approved prior to the said documents' signature and execution.

SECTION 2. PUBLIC MEETING

It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the

time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, TEX. LOCAL GOV'T CODE, as amended.

SECTION 4. 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 5. 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 6. EFFECTIVE DATE

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

PASSED AND ADOPTED this 18th day of January, 2010.

/s/ Mayor

ATTEST:

/s/ City Secretary/Clerk

APPROVED AS TO FORM:

/s/ City Attorney

The Willow Park City Council in acting on Ordinance No. 609-10 did on the 18th day of January, 2010, vote as follows:

	<u>FOR</u>	<u>AGAINST</u>
Kenneth Hawkins, Mayor	_____	_____
Barry K. Tatum, Place 1	_____	_____
Gene Martin, Place 2	_____/_____/_____	_____
Barry Brown, Place 3	_____/_____/_____	_____
Mark Hickerson, Place 4	_____/_____/_____	_____
Hale Alderman, Mayor Pro Tem, Place 5	_____/_____/_____	_____