



Control Number: 43733



Item Number: 39

Addendum StartPage: 0

FILED

2015 AUG 20 AM 11:50

PUBLIC UTILITY COMMISSION
FILING CLERK

JOINT APPLICATION OF THE §
TOWN OF PROVIDENCE VILLAGE §
AND PROVIDENCE VILLAGE WCID §
OF DENTON COUNTY TO OBTAIN §
CCNS AND REQUEST TO §
DECERTIFY A PORTION OF §
MUSTANG SPECIAL UTILITY §
DISTRICT'S WATER AND SEWER §
CCNS IN DENTON COUNTY §

BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

**THE TOWN OF PROVIDENCE VILLAGE'S REPLY TO
MUSTANG SUD'S REPLY TO COMMISSION STAFF'S RESPONSE TO
ORDER NO. 8 AND PROPOSED PROCEDURAL SCHEDULE**

To the Honorable Administrative Law Judge Susan E. Goodson:

Pursuant to Order No. 9 issued in this docket on August 7, 2015, the Town of Providence Village (the "Town" or "Applicant") submits this reply to the reply submitted by Mustang Special Utility District ("Mustang") to Commission Staff's response to Order No. 8 and to the proposed procedural schedule submitted by Mustang.

I. Relevant Background

On June 3, 2015, Order No. 8 was issued which required that the Town amend its application to cure deficiencies noted by Commission Staff. On July 3, the Town and Providence Village WCID of Denton County (the "WCID") as co-applicants timely submitted the application amendments as requested by Commission Staff. On July 31, Commission Staff filed a response to Order No. 8 noting that the PUC had determined in the *City of Heath* case that an application under Texas Water Code § 13.255 must include financial information on whether the property of a retail public utility would be rendered useless or valueless in order for the application to be declared administratively complete. If an appraisal is needed, Staff

recommended that the parties conduct appropriate appraisal under § 13.255(l) to determine the value of Mustang's property to be transferred taking into account the criteria under § 13.255(g).

Commission Staff then recommended the following procedural schedule:

Event	Deadline
Deadline for Parties to file additional information and/or appraisal on the value of Mustang's water and sewer system	October 29, 2015
Deadline for Staff to file supplemental recommendation on administrative completeness	November 12, 2015

On August 6, Mustang filed a reply to Staff's response in which Mustang (1) discussed the differences in the § 13.255 appraisal process between the situation where a city incorporates over a retail public utility and the situation where the city annexes property within the retail public utility; (2) distinguished the *City of Heath* case from the present case and asserted that, notwithstanding the PUC policy established in the *City of Heath* case, Mustang should not be required to provide financial information until after the application is declared administratively complete; (3) proposed an alternative procedural schedule under which the Applicants would be required to specifically identify the property of Mustang to be transferred to the Applicants prior to a declaration of administrative completeness; (4) requested that the ALJ hold a pre-hearing conference "to sort out the final schedule"; and (5) alleged certain deficiencies in the Notice of Application and the published Texas Register notice for this Application.

II. Recent Developments Affecting This Application

Prior to addressing Mustang's points, it is necessary to advise the PUC and all interested parties of recent developments that impact the Application and any procedural schedule to be established in this docket. On August 15, 2015 the Town adopted an ordinance dissolving the

Providence Village WCID of Denton County under Texas Local Government Code § 43.075. That statute provides for such a dissolution when a city annexes the entirety of a water control and improvement district and further provides that the annexing city takes over all assets, rights, liabilities, obligations and functions of the WCID. Attached as Exhibit 1 is a copy of that Section 43.075 Ordinance showing the dissolution of the WCID on August 15, 2015. Because the WCID has been dissolved, it can no longer be shown as a co-applicant with the Town in this Application and the Application needs to be amended to reflect that fact. As also reflected in the Town's Ordinance attached as Exhibit 1, on July 21, 2015, the Town annexed a 10.006-acre tract of land and therefore the Application needs to be further amended to include this tract of land as part of the area for which single certification to the Town is being requested. Because of the need to amend the Application to account for these recent developments, additional time must be built into a proposed procedural schedule to allow the Town sufficient time to submit the appropriate amendments to the Application.

III. Reply to Points Raised by Mustang

1. Appropriate Appraisal Process. The Town agrees with Mustang that the required appraisal process differs depending upon whether land within the retail public utility was made a part of the city via "incorporation over" or via annexation. However, now that the 10.006-acre tract has been brought into the Town via annexation, the § 13.255 appraisal process for annexations must be applied to determine any compensation due to Mustang under § 13.255(g) related to the 10.006-acre tract.¹ The appraisal process for "incorporation over" must be used for any land within the Town that has not been annexed by the Town.

2. Need for Mustang to identify property for which compensation from the Town is due.

¹ The Town does not admit that Mustang is due any compensation except to the extent property of Mustang is actually transferred to the Town under § 13.255.

Under the PUC's ruling in the *City of Heath* case, prior to a § 13.255 application being declared administratively complete, the administrative record must contain financial information about the property for which compensation is to be provided. In order to satisfy that new administrative completeness requirement, on July 31, the undersigned counsel for the Town conferred with counsel for Mustang about how this new requirement would apply in this case. Mustang's counsel agreed that before an appraiser is engaged, the Parties need to develop a list of specific facilities and equipment that are to be acquired by the Applicants and which will therefore need to be appraised. To accomplish that, the undersigned counsel and counsel for Mustang agreed that the respective engineers for Mustang and the Town should attempt to agree on such a list, and once such a list is developed, Mustang would choose an appraiser and the Town would pay for the appraisal (as required by statute).

However, Mustang now appears to be backtracking on the understanding discussed on July 31 and is taking the position that it "should not be compelled or obligated to provide reports or appraisal information until after the Application is declared administratively complete" because "the statute does not require anything of Mustang SUD prior to the beginning of the appraisal process"². In other words, prior to administrative completeness, Mustang does not intend take a position on what particular assets would be rendered useless or valueless to Mustang as a result of the single certification to the Town, and apparently Mustang does not even intend to cooperate with the Town in identifying such assets. Such a position is unworkable. Under Mustang's proposed procedural schedule, the Town would have to merely guess at which Mustang assets should be appraised, and any financial information submitted by the Town prior to administrative completeness would be rendered useless if Mustang later asserted that other assets needed to be appraised. Stated another way, on the first day of

² Mustang's Reply, pg. 4.

Mustang's proposed procedural schedule, the Town would have to take a position on what assets of Mustang should be compensated for by the Town while Mustang could wait until the 30th day after administrative completeness to take a position on what assets it believes should be compensated for. It would therefore be a huge waste of the Town's time and resources to identify and appraise property that the Town believed should be compensated for, yet have to wait until the 30th day of the 90-day process to discover that Mustang wants compensation for a large number of additional assets or even an entirely different list of assets (as may likely be the case).

Therefore, for the § 13.255 appraisal process to work as envisioned by the PUC in the *City of Heath* case, the Town and Mustang must agree up front on a list of assets or items that need to be appraised. If the Town and Mustang cannot agree on such a list, the PUC or SOAH is perfectly capable of having a preliminary hearing to decide the issue of what assets must be compensated for by the Town. Once that determination is made (whether by agreement or by ALJ ruling), then the appraisal process can commence in an orderly fashion. Therefore any proposed procedural schedule must establish a pre-administrative completeness deadline for identifying what assets or items are to be compensated for through the appraisal process.

3. Proposed Procedural Schedule. In light of the above, the Town respectfully proposes the following as a viable procedural schedule:

Event	Deadline
Town files amended application to delete the WCID as co-applicant, to include the 10.006-acre tract of annexed land, and to make other conforming changes.	Sept. 30, 2015
Town and Mustang attempt agree on list of assets and items that the Town should compensate Mustang for.	Oct. 1 through Oct. 14

Town and Mustang announce whether agreement has been reached on a list of items to be appraised.	Oct. 15, 2015
If no agreement reached on list of items to be appraised, preliminary hearing is held to determine list of items to be appraised.	Oct. 22, 2015
ALJ decision on list of items to be appraised.	Oct. 29, 2015
PUC Staff files supplemental recommendation on administrative completeness	Dec. 14, 2015
Finding of Administrative Completeness and Issuance of Procedural Order triggering 90-day PUC appraisal process	Day 0
Mustang selects appraiser for “incorporated over” land. For annexed land, Mustang and Town each designate their own appraiser (if Town and Mustang are unable to agree on a single appraiser).	Day 10
PUC selects third appraiser for annexed land (if Town and Mustang are unable to agree on a single appraiser).	Day 20
All Parties submit information or reports to appraiser(s) identifying compensation to be provided to Mustang.	Day 30
All Parties respond to information and report submissions of other Parties.	Day 40
Appraiser of “incorporated over” land issues final compensation decision.	Day 70
Appraiser(s) of annexed land issues compensation determination.	Day 70
PUC-appointed third appraiser (if Town and Mustang are unable to agree on a single appraiser) issues final decision on compensation for annexed land.	Day 80
PUC issues Order adopting appraisers’ compensation decisions.	Day 90

4. Prehearing Conference. The Town has no objection to holding a pre-hearing conference (in-person or telephonic) to discuss and finalize the procedural schedule.

5. Alleged Deficiencies in Notice of Application. If upon the filing and acceptance of Application amendments as discussed above, the Notice for this docket needs to be corrected, a revised notice can be issued at that time.

Accordingly, the Town respectfully requests that the ALJ and PUC Staff consider the points raised in this reply and that a procedural schedule in substantial accord with the above-proposed procedural schedule be issued in this docket.

Respectfully submitted,

KELLY HART & HALLMAN LLP

301 Colorado Street, Suite 2000

Austin, Texas 78701

Telephone: (512) 495-6413

Facsimile: (512) 495-6613

By: 

Stephen C. Dickman

State Bar No. 05836500

Brenda L. Clayton

State Bar No. 00783837

**ATTORNEYS FOR THE TOWN OF
PROVIDENCE VILLAGE**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all Parties of record as required by PUC Procedural Rules on this 20th day of August, 2015.

Via Email and Regular U.S. Postal Service

Leonard Dougal

ldougal@jw.com

JACKSON WALKER L.L.P.

100 Congress, Suite 1100

Austin, TX 78701

Tel: (512) 236-2233

Fax (512) 391-2112

ATTORNEY FOR MUSTANG SPECIAL UTILITY DISTRICT

Via Email and Regular U.S. Postal Service

Jason Haas

Jason.Haas@puc.texas.gov

Attorney - Legal Division

Public Utility Commission of Texas

1701 N. Congress Avenue

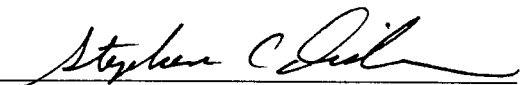
P.O. Box 13326

Austin, Texas 78711-3326

Tel: (512) 936-7295

Fax: (512) 936-7268

ATTORNEY FOR PUBLIC UTILITY COMMISSION



Stephen C. Dickman

EXHIBIT 1

ORDINANCE NO. 2015-077

AN ORDINANCE ADOPTED UNDER THE AUTHORITY OF TEXAS LOCAL GOVERNMENT CODE SECTION 43.075 TO DESIGNATE THE EFFECTIVE DATE ON WHICH THE TOWN OF PROVIDENCE VILLAGE, TEXAS (THE "TOWN") SHALL COMMENCE PERFORMING THE DUTIES AND ASSUMING THE ASSETS, RIGHTS, DUTIES AND OBLIGATIONS OF THE PROVIDENCE VILLAGE WATER CONTROL AND IMPROVEMENT DISTRICT OF DENTON COUNTY ("PVWCID") AS SPECIFIED UNDER SECTION 43.075(d) AND (e); PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS RELATING TO THE CARRYING OUT OF THE TOWN'S OBLIGATIONS UNDER SECTION 43.075; ASSUMING THE AUTHORITY TO ISSUE AND SELL MUNICIPAL BONDS AS SPECIFIED UNDER TEXAS LOCAL GOVERNMENT CODE SECTION 43.080; CONTAINING MISCELLANEOUS TRANSITION PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, under Ordinance No. 2015-074 effective July 21, 2015, the Town has annexed that certain 10.006-acre tract of land more particularly described on Exhibit "A" attached hereto and incorporated herein for all purposes; and

WHEREAS, as a result of such annexation, the entire area within PVWCID is now included within the incorporated limits of the Town as also shown on Exhibit "A"; and

WHEREAS, Section 43.075 of the Texas Local Government Code (the "Code") provides that if a municipality annexes all of the area in a water control and improvement district not located in more than one municipality, then the municipality succeeds to the powers, duties, assets and obligations of the district and shall (1) take over all property and other assets of the district; (2) assume all the debts, liabilities and obligations of the district; and (3) perform all the functions of the district, including the provision of services; and

WHEREAS, Section 43.075(e) of the Code provides that the governing body of such a municipality by ordinance shall designate the date on which the duties and assumption of liabilities and obligations of the district shall take effect and as of which date the district is abolished, which date must be set for a day within 90 days after the date all the area within the district becomes part of the municipality; and

WHEREAS, on or about October 25, 2010, the Town adopted, by at least two-thirds vote of its governing body, Ordinance No. 2010-07, which makes Section 43.075 of the Code applicable to the Town; and

WHEREAS, on or about September 15, 2014, the Town and PVWCID entered into the Second Amended and Restated Interim Allocation Agreement (the "Interim Allocation Agreement") which provides for a certain allocation of rights and obligations between the Town and PVWCID and contemplates a process for orderly transition of management and ownership of the PVWCID's assets and liabilities to the Town; and

WHEREAS, pursuant to Section 43.080(b) of the Code, the Town may issue and sell municipal bonds in an amount not to exceed the amount of the unissued bonds authorized by the voters of PVWCID to provide waterworks, sanitary sewer and drainage facilities to carry out the purposes for which the bonds were voted; and

WHEREAS, the Town intends to issue and sell such bonds as needed to carry out the stated purposes under Section 43.080 of the Code;

WHEREAS, the Town intends to fully carry out its rights and duties under Section 43.075 of the Code.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN OF PROVIDENCE VILLAGE, TEXAS, THAT:

Section 1. Validity of Premises.

The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Effective Date of Assumption of Assets, Duties, Rights and Obligations Under Section 43.075 of the Code.

Effective August 15, 2015, the Town shall assume its obligations and duties under Sections 43.075(d) and 43.080(b) of the Code to (1) take over all property and other assets of PVWCID, including all funds, general funds, capital project funds, debt service funds, water and sewer revenues, property tax revenues, accounts receivable and other accounts of PVWCID; (2) assume all the valid debts, liabilities and obligations of PVWCID, including accounts payable and all bonds, notes and other obligations issued by PVWCID; (3) assume the authority to issue and sell municipal bonds in an amount not to exceed the amount of the unissued PVWCID bonds to carry out the purposes for which the PVWCID bonds were voted, including waterworks, sanitary sewer and drainage purposes; and (4) perform all the functions of PVWCID, including the provision of services that are currently being provided by PVWCID.

Section 3. Levy of Tax Sufficient to Pay PVWCID Ad Valorem Tax Bonds.

As required by Section 43.075(h) of the Code, the Town shall levy and collect taxes on all taxable property within the Town in an amount sufficient to pay the principal of and interest on all bonds, warrants or other obligations of PVWCID that are due and payable in whole or in part from ad valorem taxes. The Town may issue refunding bonds or warrants to refund such PVWCID tax bonds, warrants, or other obligations, including unpaid earned interest on them, that are assumed by the Town. The tax on property within the Town to pay or refund the PVWCID bonds is authorized by the Texas Constitution and the home-rule charter of the Town and shall be levied by the Town on September 15, 2015 and collected in the current tax year in an amount sufficient to pay the principal of and interest on all bonds, warrants or other obligations of PVWCID that are due and payable in whole or in part from property taxes. The Town shall notify the Paying Agent for PVWCID's outstanding debt obligations of the Town's assumption of such obligations, engage consultants to provide arbitrage rebate calculations for the PVWCID obligations, provide any necessary disclosure filings to the Municipal Securities Rulemaking Board and the Town Manager

is hereby authorized to take any other actions necessary for the assumption of the PVWCID obligations.

Section 4. Transition of Accounts and Records

To effectuate the transfer of assets and obligations pursuant to Section 43.075(d) of the Code, the Town hereby authorizes the immediate transfer of assets and accounts upon the Effective Date of this Ordinance and authorizes the Mayor, Town Manager and Town consultants to take any actions necessary to effectuate such transfer. The Town requests that all PVWCID documents, records, bank statements, paying agent statements and delinquent tax accounts (collectively, "District Records") be transferred to the Town within thirty (30) days of the date of delivery of a certified copy of this Ordinance to "President, Board of Directors, Providence Village Water Control and Improvement District of Denton County" c/o Crawford & Jordan LLP, 3100 McKinnon Street, Suite 1100, Dallas, Texas 75201, or as soon as reasonably possible thereafter. The Town hereby further authorizes the payment of all reasonable costs and expenses of such transfer. The current custodians of any District Records may rely upon a certified copy of this Ordinance in making the transfer of District Records as requested herein.

Section 5. Application of Net Revenues to Payment of Outstanding Revenue Bonds of PVWCID.

As may be required by Section 43.075(i) of the Code, the Town shall take over and operate the water and sewer utility systems or property of PVWCID and shall apply the net revenues from the operation of such utility service systems or property to the payment of any outstanding revenue bonds, warrants or other obligations of PVWCID that are payable solely from net revenues of such utility systems.

Section 6. Termination of Interim Allocation Agreement.

The Town will continue to carry out and meet all applicable terms and conditions of the Interim Allocation Agreement until the date on which PVWCID is abolished as referenced in Section 43.075(e) of the Code. As of the date PVWCID is abolished, the Interim Allocation Agreement will be terminated by operation of law under Section 43.075(e) of the Code, but the Town will assume responsibility for providing all municipal services and performing all functions that would be provided by PVWCID under the Interim Allocation Agreement.

Section 7. Severability.

If any section, paragraph, subdivision, clause, part or provision hereof shall be adjudged invalid, illegal or unconstitutional, the same shall not affect the validity hereof as a whole or any part of provision other than the part or parts held invalid or unconstitutional.

Section 8. Open Meetings.

It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapter 551, Texas Government Code*.

Section 9. Authorization for Further Action in Implementation Hereof, Transition Matters.

The Mayor is authorized and empowered to take all steps necessary to carry out the terms of this Ordinance and to effectuate the will of the Town Council that Section 43.075 and 43.080 of the Code be complied with and PVWCID be abolished as of the effective date hereof.

Section 10. Effective Date.

This Ordinance shall take effect immediately from and after its passage.

PASSED AND APPROVED on this the 15th day of August, 2015.

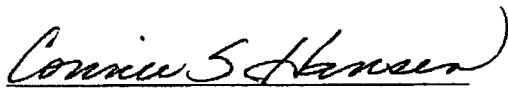


Town of Providence Village, Texas



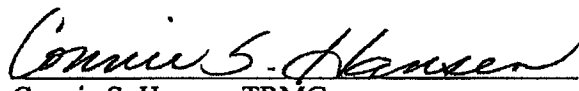
David B. Shuck, Mayor

Attest:



Connie S. Hansen, TRMC
Town Secretary

The caption of the foregoing Ordinance was published in the newspaper of general circulation within the Town on the 18th day of August, 2015.



Connie S. Hansen, TRMC
Town Secretary

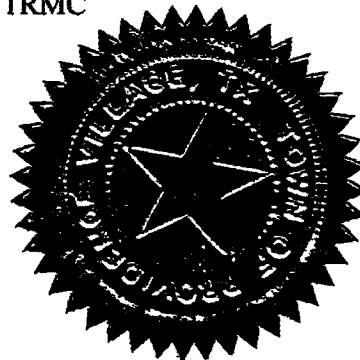


EXHIBIT A

District 9 Commercial Land Property Description

TRACT 1

**DESCRIPTION
D.C.F.W.S.D. NO. 9
10.006 ACRES**

BEING a tract of land situated in the MARSELLA JONES SURVEY, ABSTRACT NO. 662 in Denton County, Texas, and being all of Lot 1, Block X of Providence Phase I, an addition to Denton County according to the 3rd amending plat thereof recorded in Cabinet V, Page 602 of the Real Property Records of Denton County, Texas, all of a called 0.773 acre tract of land described in a deed from David W. Ogles to Valerian Properties Associates, L.P., recorded as Document 2005-13116 in said Real Property Records, all of a called 0.230 acre tract of land described in a deed from Valerian Properties Associates, L.P., to Chris Lowder recorded as Document 2004-150929 of said Real Property Records, and a portion of a called 237.578 acre tract of land described in a deed from Enidam/440 Ranch, L.P., to Valerian Properties Associates, L.P., recorded in Volume 4597, Page 2368 of said Real Property Records, and being more particularly described as follows:

BEGINNING at the intersection of the east line of Providence Boulevard (a 100' right-of-way at this point) with the north line of U.S. Highway 380, said point also being the southwest corner of said Lot 1;

THENCE North 01 degree 27 minutes 09 seconds East, along the east line of said Providence Boulevard, a distance of 209.02 feet to the northwest corner of said Lot 1;

THENCE South 87 degrees 45 minutes 48 seconds East, a distance of 58.40 feet to the beginning of a tangent curve to the left;

THENCE Northeasterly, along the tangent curve to the left which has a chord that bears North 72 degrees 24 minutes 12 seconds East for 193.39 feet, a central angle of 39 degrees 40 minutes 00 seconds and a radius of 285.00 feet, for an arc distance of 197.31 feet to the end of said curve and the beginning of a reverse curve to the right;

THENCE Northeasterly, along the reverse curve to the right which has a chord that bears North 72 degrees 23 minutes 58 seconds East for 135.68 feet, a central angle of 39 degrees 39 minutes 27 seconds and a radius of 200.00 feet, for an arc distance of 138.43 feet to the end of said curve;

THENCE South 87 degrees 48 minutes 21 seconds East, a distance of 1330.06 feet;

THENCE South 02 degrees 22 minutes 36 seconds West, a distance of 97.77 feet;

THENCE North 88 degrees 14 minutes 22 seconds West, a distance of 214.16 feet to a point on the south line of said 0.230 acre tract;

THENCE South 01 degree 46 minutes 38 seconds West, along the southwest line of said 0.230 acre tract a distance of 16.16 feet;

THENCE North 88 degrees 14 minutes 22 seconds West, continuing along the south line of said 0.230 acre tract a distance of 114.75 feet to the northeast corner of said 0.773 acre tract;

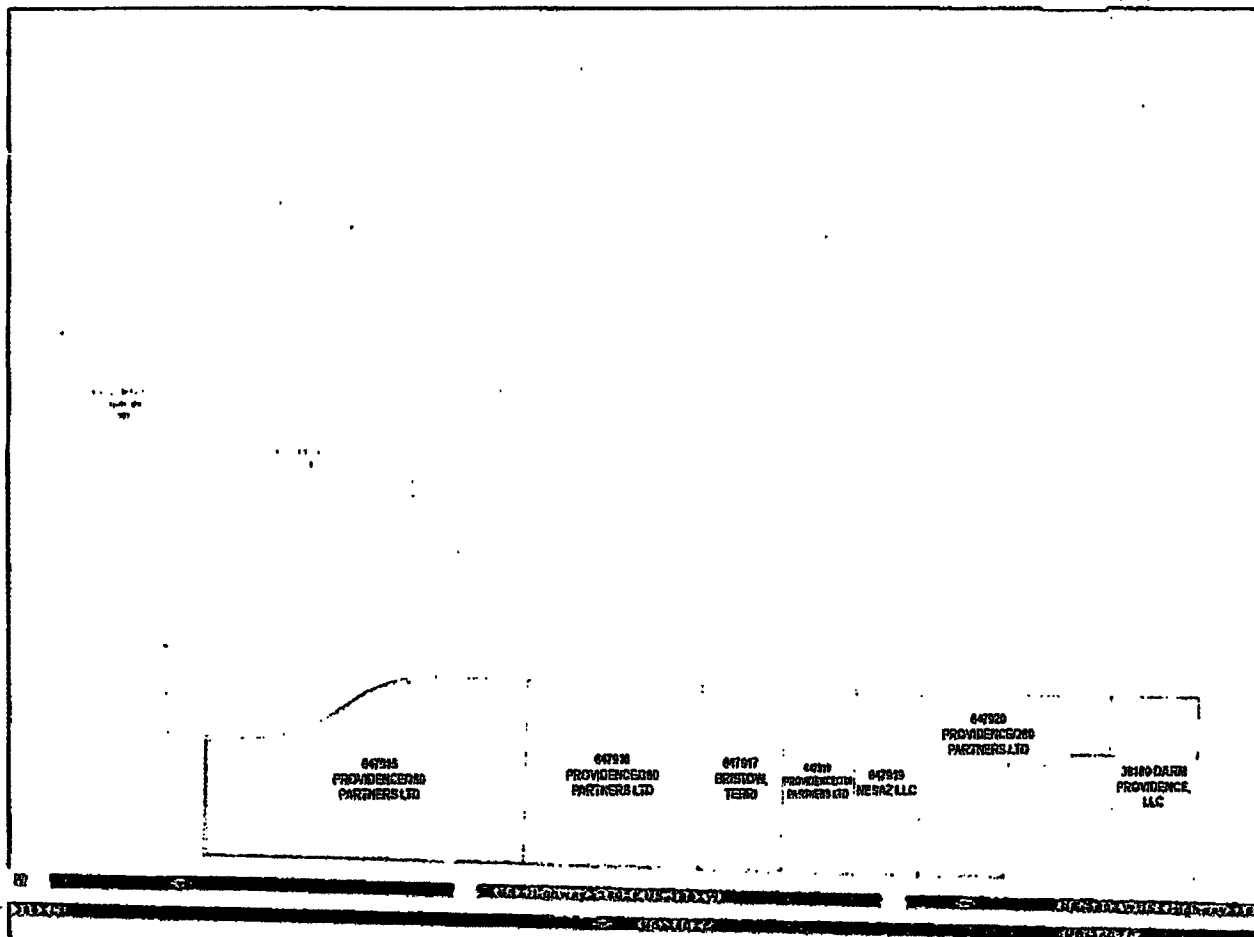
THENCE South 02 degrees 12 minutes 41 seconds West, along the east line of said 0.773 acre tract a distance of 180.15 feet;

THENCE South 00 degrees 01 minute 53 seconds West, continuing along the east line of said 0.773 acre tract a distance of 4.04 feet to a point on the north line of said U.S. Highway 380;

THENCE North 87 degrees 52 minutes 36 seconds West, along the north line of U.S. Highway No. 380, a distance of 185.93 feet;

THENCE South 02 degrees 46 minutes 19 seconds East, a distance of 0.70 feet to the most southerly southeast corner of said Providence Phase 1;

THENCE North 87 degrees 45 minutes 48 seconds West, continuing along the north line of U.S. Highway No. 380 and along the south line of said Providence Phase 1, a distance of 1200.64 feet to a point in the east line of Providence Boulevard (100' right-of-way at this point) to the POINT OF BEGINNING and containing 435,871 square feet, or 10.006 acres of land, more or less.



Legend

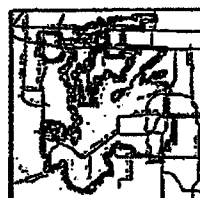
-  Parcels
-  FWSD 9 to be released

Sources: Esri, DeLorme, NAVTEQ, USGS, Intermap, IPC, MRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, 2013



Providence FWSD 9
Release by LE
 Town of Little Elm
 Denton County, Tx
 Date: 5/1/2015

0 130 260
 Feet



This map is the property of the Town of Little Elm and is not to be reproduced by any means, mechanical or digital, without written consent of the Town.

This product is for informational purposes and may not have been prepared for or be suitable for legal engineering or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

