



FOR IMMEDIATE RELEASE

## **City of Fulshear Seeks Declaratory Judgment on Debt Issuance**

**FULSHEAR, TEXAS (October 28, 2016):** *Following multiple public meetings held during and after the City of Fulshear's fiscal year 2017 budget process, the City determined that it was in the best interest of the citizens to issue combination tax and revenue certificates of obligation* in the amount of \$6.5 million dollars to finance the construction of street, curb, and sidewalk improvements, including related utility relocation and drainage improvements. In connection with the proposed issuance of these certificates, the City filed a lawsuit in Travis County District Court, seeking a declaration that the certificates would be legal and valid. A court declaration that the certificates are legal and valid will make them more marketable to investors, whose capital will ultimately make up the \$6.5 million raised.

Texas municipalities generate revenues to fund operations via ad valorem taxation, sales tax, and fees for service, unlike municipalities in most other states which receive significant state revenues to fund services. The portion of ad valorem (property) taxes for operations is often referred to as Maintenance and Operations (M & O) taxes. In most Texas cities, most capital improvement and infrastructure projects require the issuance of debt which is repaid through ad valorem taxes specifically levied to service this debt. This is often referred to as Interest and Sinking (I & S) tax. The combination of M & O and I & S taxes make up the total ad valorem (property) tax rate for municipalities.

The *City of Fulshear currently collects only M & O tax at a rate of \$0.156901*, the lowest of any city in Fort Bend County that collects property tax, and among the lowest in Texas. For comparison, ad valorem rates for cities with similar size and growth rates range from \$0.35 to \$0.72 per \$100 valuation.

For fiscal year 2017, Fulshear's ad valorem M & O receipts will amount to \$1.7 million. ***Under development agreements entered into by the City in 2006 and 2007 for the development of Cross Creek Ranch and Fulbrook on Fulshear Creek, the City is obligated to rebate "all the City's collected ad valorem tax revenue in excess of \$0.10 per \$100 assessed value" to these developments.*** Currently, the MUDs receive almost \$0.06 in additional property tax via City rebates on top of the \$1.16 to \$1.34 in property taxes they already levy on MUD residents. For fiscal year 2017, the City will net approximately \$1.1 million in ad valorem taxes after rebating more than \$600,000 to the MUDs under these agreements – approximately 35% of the City's ad valorem tax revenue.

As long as the MUDs have debt, the City is obligated to pay this rebate for at least 25 to 30 years. The typical term for such agreements is only 10 years. ***Because of these rebates, the City is unable to raise money through municipal debt to complete projects to address the City's crucial, growing needs and to meet the citizens' desire for better amenities because the City will not have the means to repay that debt.***

Seeking a declaratory judgement allows the City to be able to establish its inherent right to issue certificates of obligation and capture the necessary property tax funds to repay the debt on these proposed obligations. Through this action, the City is working to ensure that it is capable of providing the infrastructure and services its citizens deserve today and well into the future.

*"We are grateful for the tremendous assets we have in Cross Creek Ranch and Fulbrook on Fulshear Creek, and for the partners each of these developers are in the Fulshear community. These two developments have set the standard for the high-quality development we now enjoy across our community and the surrounding area. However, to maintain the value of properties across our City, we must be able to use the tools available to us to fund improvements over the long term,"* said Fulshear Mayor Jeff Roberts. *"This is not a decision the Council has taken lightly, and at this point, we feel it is our only recourse. To continue to provide services for our growing community, we have to be able leverage the community's assets to gain access to capital to invest in key critical infrastructure."*

## Facts:

- ***The inability to issue debt has pushed the City to the brink of bankruptcy.*** In fiscal year 2016, the City depleted general fund reserves by more than \$2.9 million; in fiscal year 2017, the City is budgeted to draw down reserves by an additional \$1.2 million. Most of these funds were designated to pay for much needed street repairs and capacity upgrades to aging water and wastewater facilities. Given these draw downs, the City is projected to have slightly more than \$2.3 million in reserve funds at the end of fiscal year 2017. In the event of a disaster, the City could only operate for approximately 100 days.
- ***The City has been forced to curtail public safety services to one of the fastest growing populations in Texas because it cannot pay for required infrastructure improvements.*** The City will net approximately \$1.1 million in ad valorem revenue after paying the MUDs more than \$600,000 in rebates in fiscal year 2017. To put that into context for taxpayers, the Fulshear Police Department's fiscal year 2017 operating budget is \$1.9 million and includes delaying the hiring of two much needed additional officers and the decision to eliminate one new patrol position.
- ***The proposed \$6.5 million in certificates of obligation would fund regional mobility projects that will benefit the entire City,*** regardless of the neighborhoods in which individuals may reside.
- ***The City did not file the lawsuit in secret.*** The City published notification of the suit twice in both the West Fort Bend Buzz and the Austin American Statesman newspapers, as required under the law. The West Fort Bend Buzz separately ran a front-page story on the lawsuit. The certificates of obligation and the suit were the culmination of several properly posted open City Council meetings held inside the city limits during the evening so citizens and other interested parties could participate, if they desired, and to ensure open, visible governance.
- ***The City did not "venue shop."*** The suit filed by the City falls under a very specific section of law that allows municipalities to seek a judgment validating debt issuances. The law that provides for this type of lawsuit contains various unique legal procedures, which the Travis County District Courts are most familiar with since municipalities regularly file these actions there. The statute, in fact, specifically states that the suit may be filed in Travis County. Equally important, this suit requires close collaboration with the Attorney General Office's Public Finance Division, which is in Austin. For these reasons, Travis County is the most efficient and cost effective venue to bring suit, and thus the decision was made to file there.
- ***The City cannot accept subpar water, wastewater, street or drainage facilities from MUDs and developers that require significant remediation at the cost of all City of Fulshear taxpayers.*** The City has refused to accept sub-par facilities constructed by the MUDs in Cross Creek Ranch until these facilities are completed in a manner acceptable for operational conveyance. Water Plant Number 2 has repeatedly failed to operate due to the incorrect installation of the well by contractors under the supervision of the MUDs. Additionally, the Waste Water Treatment Plant continues to fail inspections more than a year after its completion. The City has already had to pay more than \$100,000 to mitigate the MUD's failed sewer lines in Heron Lakes and residents of the Heights have experienced flooding resulting from MUD inspectors and contractors' failure to require the removal of a brick wall from the drainage system.

– END –