



TOWN OF JACKSON TOWN COUNCIL AGENDA DOCUMENTATION

PREPARATION DATE: December 1, 2016
MEETING DATE: September 6, 2016

SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Bob McLaurin
PRESENTER: Roxanne Robinson, Assistant Town Manager

SUBJECT: Flat Creek Water Improvement District (FCWID) Right-of-Entry/Release/Hold Harmless Agreement

STATEMENT/PURPOSE

The Town of Jackson is a property owner along Flat Creek and is a member of the FCWID. The Town Council approves all agreements on behalf of the Town and authorizes the Mayor's signature on these agreements.

BACKGROUND/ALTERNATIVES

The FCWID is requesting all landowners sign and return the forms necessary to allow FCWID authorized personnel onto private property to collect data and to alleviate winter flood threats.

Staff recommends the Council approve the agreement as presented and authorize the Mayor to execute the agreement on behalf of the Town of Jackson.

The Town Council has many options, several are listed below:

1. Approve the FCWID Right-of-Entry/Release/Hold Harmless Agreement as presented and authorize Mayor Flitner to sign the agreement on behalf of the Town of Jackson.
2. Place this agreement on an upcoming Council agenda for further discussion.
3. Other.

STAKEHOLDER ANALYSIS

The stakeholders involved in this issue include all property owners along Flat Creek that are subject to flooding from frazil ice and the damage caused by this flooding and the Town of Jackson corporate organization.

ATTACHMENTS

FCWID July 18 Letter. FCWID Right-of-Entry/Release/Hold Harmless Agreement.

FISCAL IMPACT

None.

STAFF IMPACT

Minimal.

LEGAL REVIEW

Complete.

RECOMMENDATION

Staff recommends the Council approve the FCWID Right-of-Entry/Release/Hold Harmless Agreement as presented and authorize Mayor Flitner to sign the agreement on behalf of the Town of Jackson.

SUGGESTED MOTION

Should the Council be ready to take action, one possible motion would be:

I move to approve the FCWID Right-of-Entry/Release/Hold Harmless Agreement as presented and authorize Mayor Flitner to sign the agreement on behalf of the Town of Jackson.

Synopsis for PowerPoint (120 words max):

Background:

The Town of Jackson is a property owner along Flat Creek and is a member of the FCWID. The Town Council approves all agreements on behalf of the Town and authorizes the Mayor's signature on these agreements.

FLAT CREEK WATER IMPROVEMENT DISTRICT

The mission of the Flat Creek Water Improvement District is to explore and implement ways to prevent damage to private property due to winter flooding of Flat Creek with a commitment to honor water rights, represent the best interests of the district's property owners and residents, while maintaining and improving water and habitat quality within the stream corridor.

July 18, 2016

Dear Flat Creek Water Improvement District members,

With the conclusion of Fiscal Year 2016 (July 1, 2015 - June 30, 2016), the Board of Directors of the Flat Creek Water Improvement District (FCWID) is happy to provide you with this abbreviated annual report outlining a few ways we have been working to meet our mission and serve you, our members. This report will be broken into three sections: Administrative, Projects and Financial. We hope you find this informative. If you have any thoughts or questions please contact us at: flatcreek@fcwid.org and visit us at our web site: www.fcwid.org.

ADMINISTRATIVE: The Flat Creek Water Improvement District (FCWID) exists as a sub-district of the Teton Conservation District (TCD), which operates through the authority of the Wyoming Conservation District. In that regard, we have met and continue to comply with all State Statutes. In addition, the FCWID maintains a liability insurance policy, banks locally and when necessary, and we contract with local vendors for services. We are proud to live in and work with the Jackson Community.

During the past year we executed a Memorandum of Understanding between the FCWID and the Teton Conservation District that establishes and clarifies the supervisory role of the TCD.

In addition, the FCWID executed a MOU with the Town of Jackson that clarifies the roles and responsibilities relating to wintertime emergency care and maintenance of Flat Creek within the boundaries of the FCWID. (*A map of the district is available at **MAPS** on the FCWID web page.*)

Both of the MOU's provide clear direction to our operations, improving efficiency, which in turn helps keep both administrative and project costs down while ensuring required oversight.

In regards to our primary mission to protect private property from experiencing damage due to winter flooding, the FCWID has written and adopted a *Flat Creek Water Improvement District Emergency Wintertime and Spring Runoff Action Plan* (available at **MEMBER RESOURCES** on the FCWID web page). Among other things, this Action Plan sets forth the sequence of actions and the roles various parties will play in the event of threatening winter time flooding. This Action Plan has been submitted to and accepted by the Teton County Emergency Management Department enabling the FCWID to apply for emergency assistance should the need occur.

This past year the FCWID contracted with Alder Environmental, LLC, a local environmental consulting firm, to collect a variety of winter data pertaining to Flat Creek ice formation and flood behavior. Additional data will be collected this coming winter. Details of the study can be found in the PROJECTS portion of this communications.

We have finalized two agreements allowing entry by FCWID authorized personnel onto private property to collect data and to alleviate winter flood threats. These agreements: the *Right-of-Entry, Data Collection, Monitoring Consent* and the *Right-of-Entry/Release/Hold Harmless Agreement* can be found on the FCWID web page under **MEMBER RESOURCES**. If you have not already signed these forms, we ask that you do and return them to the FCWID at the TCD office at 420 W. Pearl Avenue, Jackson, WY.

UPCOMING BOARD ELECTIONS:

Terms of two of the five-member FCWID Board of Directors seats will be up at the end of 2016. These are currently held by William Wotkyns and Franz Camenzind. Persons interested in running for these open seats must file at the Teton

Conservation District, at 420 W. Pearl Avenue, Jackson, WY, between August 10 and August 30, 2016 in order to be on the November 8th ballot. We encourage anyone interested to get your name on the ballot. This is your water improvement district, and is an opportunity to become directly involved in mapping the future of Flat Creek.

BOARD MEETINGS:

The FCWID board meets at 9:00 AM every second Monday of the month in the TCD offices located at 420 W. Pearl. We encourage members to attend and share their ideas and questions with the board.

PROJECTS: FCWID was formed by a vote of prospective members in December 2014. Since that time, it has been involved in a number of activities and pursued several projects.

The principal projects of the FCWID have been:

- Hiring and overseeing a qualified consultant to gather, quantify and organize pertinent data with respect the creek behavior through the winter of 2015-16;
- Hiring and overseeing another qualified consultant to analyze the creek behavior data gathered to date, making recommendations on potential measures to be taken to reduce the number of flooding events;
- Developing the financial means to pay for future projects and flood mitigation efforts. Included in this effort has been exploring grant funding opportunities and devising an equitable formula for assessing district members to raise operating monies and put in place a standing mitigation fund.

A great deal of quantitative and qualitative data was collected by Alder Environmental, LLC, between November 2015 to February 2016. It included well over 10,000 data points covering Water Temperature, Stream Stage, Stream Discharge, Thaw Well Operations as well as hundreds of location photos. The report can be found at: <https://www.dropbox.com/sh/xbl33egqdsa26un/AABOnO1CRrke6moZwJicEqia?dl=0>

We have entered the next phase of the project by contracting with qualified consultants who will analyze the data in order to make recommendations for future research, or identifying possible mitigations measures, which might help prevent winter flooding to the extent of causing property damage.

FINANCIALS: Since inception of the Flat Creek Water Improvement District, all administrative, operational, and winter study expenses have been paid for through revenues collected from the Town of Jackson and the Teton Conservation District. Through funding provided by these agencies, the district has also been able to establish and fund a reserve account, which the district's board of directors believes to be an important element to the district's financial position. We have and continue to be appreciative of the financial support provided by the Town of Jackson and the Teton Conservation District and we plan to continue to seek their financial and operational support.

With two operating cycles now behind us and the need to continue funding the district's financial needs, the district's Board of Directors has determined that now is an appropriate time to incorporate member assessments into the district's revenue stream. The district's Board of Directors has prepared and approved a 2017 budget (7/1/16 - 6/30/17), which is detailed in the below chart along with a comparison to the two past fiscal years.

	FY 15	FY 16	FY 17	Notes
	Actual	Actual	Budget	
<u>Revenue</u>				
Town of Jackson	\$ 19,000	\$ 12,000	\$27,000	1
Teton Conservation District	\$ 25,000	\$ 61,573	\$30,000	2
Member Assessments	\$ -	\$ -	\$39,360	3
Total Revenue	\$ 44,000	\$ 73,573	\$96,360	
<u>Expenses</u>				
Administration	\$ 5,616	\$ 18,459	\$23,700	4
Operations	\$ 2,778	\$ 3,868	\$15,150	5
Flood Control/Mitigation	\$ -	\$ -	\$15,000	6
Winter Study	\$ -	\$ 49,573	\$30,000	7
Total Expenses	\$ 8,394	\$ 71,900	\$83,850	
Net Profit (Loss)	\$ 35,606	\$ 1,673	\$12,510	
<u>Cash Position</u>				
Checking	\$ 35,606	\$ 22,279	\$19,789	8
Reserve	\$ -	\$ 15,000	\$30,000	9
Total Cash	\$ 35,606	\$ 37,279	\$49,789	

- **Note 1:** FY 17 Budget includes a funding request to the Town of Jackson in the amount of \$27,000. \$12,000 is for Administration and Operations while the remaining \$15,000 is for Flood Control/Mitigation (Note 6). In past years all funds provided by the Town of Jackson have been used for Administration and Operations.
- **Note 2:** FY 15 funds were used for Administration and Operations. FY 16 funds were used to support Administration and Operations (\$12,000) and the Flat Creek Winter Study (\$49,573). FY 17 Budget includes a funding request to the Teton Conservation District in the amount of \$30,000, and all of this request would be used to support another Flat Creek Winter Study (2016/2017 winter).
- **Note 3:** FY 17 Budget of \$39,360 is to support \$24,360 in Administration and Operations while the remaining \$15,000 is budgeted to be placed in the district's cash reserves (Note 9). The \$39,360 in member assessment revenue will be assessed across 164 members at an annual rate of \$240/member. The assessments will be outlined on members' property tax assessment notices, and will be collected by the Teton County Treasurer's office, who will pass the received assessments to the district.
- **Note 4:** FY 17 Budget is higher than FY 16 Actual due to anticipated needs. For example, in both FY 16 and FY 17 we budgeted \$13,000 in contract labor expense, while actual contract labor expense in FY 16 was \$10,680.
- **Note 5:** FY 17 Budget is higher than FY 16 Actual due to anticipated consulting fees of \$10,000. FY 17 budgeted consulting fees are associated with consultants that the district has contracted to analyze the 2015/2016 Flat Creek Winter Study.
- **Note 6:** Refer to Note 1 for funding source.
- **Note 7:** Refer to Note 2 for funding source.
- **Note 8:** Operating funds held in checking.
- **Note 9:** In FY 16 the district funded \$15,000 into a reserve account and the FY 17 Budget assumes that an additional \$15,000 will be funded into the reserve account via FY 17 Member Assessments. The reserve account was established for the purpose of having funds on hand to support unexpected or emergency expenses and for Flat Creek flood mitigation.

Frequent and accurate financial reporting is of the upmost importance to the district's Board of Directors. The district's Treasurer routinely monitors the district's finances and in addition to the Treasurer's financial review the following processes are in place to report and monitor the district's finances:

Monthly

- Profit and Loss Statement updated with year-to-date actuals vs. budget. Report prepared by Toran Accounting.
- Bank account reconciliation reports prepared by Toran Accounting.
- Profit and Loss Statement and bank account reconciliations are reviewed, amended, and approved by the district's Board of Directors.

Quarterly

- Financial reports are prepared and provided to the Teton County Conservation District for their review and input.

Annually

- Statement of Investment Policy prepared, reviewed, and approved by the district's Board of Directors.
- Budgets are prepared, reviewed, and adopted by the district's Board of Directors.
- Budget forms are prepared and submitted to the Wyoming Department of Audit and the Teton County Commissioners in accordance with requirements established by the Public Funds Division of the Wyoming Department of Audit.
- Survey of Local Government Finances (Form F-32) prepared, reviewed, and submitted to the Wyoming Department of Audit.
- Local Government Annual Report Summary and Proof of Cash forms prepared, reviewed, and submitted to the Wyoming Department of Audit. The Proof of Cash form is prepared by a third party CPA firm.
- Year-end financial reports are prepared and provided to the Teton County Conservation District for their review and input.

Should you have any questions or comments in regards to the district's finances please send an email to flatcreek@fcwid.org.

In closing, your Board of Directors are happy to say that the organization has a strong legal foundation, is well situated with our partners, the Teton Conservation District and Town of Jackson, and has a sound and lean fiscal base with a well-structured budgetary process. We have and will continue to contract with highly qualified research parties who are responsive to our needs as identified in partnership with, and guidance from both the TOJ and the TCD; and, of course, with the involvement of our members. We look forward to the next year and the prospects of identifying true, long-term solutions that can be put in place that will not only eliminate the threat of winter flood damage, but will enhance water quality and the riparian community. By working together we can develop a safer, more productive and enjoyable Flat Creek environment. We invite you to attend our monthly board meetings, held on the second Monday of each month, 9:00 – 10:30 AM, at the Teton Conservation District offices, 420 W. Pearl Avenue, Jackson, WY. To receive up-to-date communications, please provide us with your email address. Just go to flatcreek@fcwid.org and send it to us via email.

Sincerely,

The FCWID Board of Directors

P.O. Box 2037, Jackson WY 83001

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Right-of-Entry/Release/Hold Harmless Agreement

I/We _____, the owner(s) (collectively "*Landowner*") of the property commonly identified as _____, (street) Jackson, Teton County, State of Wyoming ("*Property*") do hereby grant and give freely and without coercion to the Flat Creek Water Improvement District, together with its board members, employees, agents, contractors, and subcontractors (collectively "*WID*"), the right of access and entry on and to the Property for the purposes of collecting data regarding Flat Creek (including, but not limited to, water temperature, water flow levels, icing locations, and ice depths and nature), monitoring Flat Creek and its water flows and icing, and conducting Flat Creek watershed improvements and fighting flood waters from Flat Creek.

It is fully understood and acknowledged by the undersigned Landowner that the WID does not have any obligation or legal duty to collect data regarding Flat Creek or monitor Flat Creek and its water flows and icing. Likewise, the WID does not have any obligation or legal duty to conduct any Flat Creek watershed improvements or to fight flooding on the Property or adjacent properties.

The Landowner hereby irrevocably waive and release the WID of and from any and all rights, liabilities, claims, actions, causes of action, suits, demands, debts, liens, attorneys fees, expenses, costs, sums of money, damages and other compensation, of any nature or form, arising in law or in equity, from any action or inaction taken by the WID related to the Property or any other properties located in the Flat Creek Water Improvement District in any way related to this Agreement, Flat Creek watershed improvements, and/or fighting flood waters from Flat Creek. It is agreed that this Agreement shall cover all damages, including punitive and exemplary damages, damage for economic injury, property damage, personal injury, breach of statutory duty, loss of consortium, loss of care, comfort, advice and society, attorneys fees or any other damages that in any way arise out of or from any action or inaction taken by the WID related to the Property or any other properties located in the Flat Creek Water Improvement District in any way related to this Agreement, Flat Creek watershed improvements, and/or fighting flood waters from Flat Creek.

The Landowner hereby agrees to defend, indemnify, and hold harmless the WID, to the fullest extent allowed by law, against all claims, actions, causes of actions, and any other liability the WID may be subject to by owner(s), their guests, invitees, heirs, successor and/or assigns that in any way arise out of or from any action or inaction taken by the WID related to the Property or any other properties located in the Flat Creek Water Improvement District in any way related to this Agreement. Notwithstanding any consent, waiver or release granted herein, any action undertaken by the WID remains

subject to the terms of the applicable conservation easement(s) and any amendments thereto.

The Landowner will mark any sewer lines, water lines, and other utility lines located on the Property.

This Agreement shall remain in full force and effect unless or until the Landowner no longer owns an interest in the Property.

By signing this Agreement, (I/we) certify that

1. (I/we) (am/are) the owner of the Property and/or that (I/we) (am/are) authorized to sign this right of entry;
2. **I/WE HAVE CAREFULLY REVIEWED THIS AGREEMENT;**
3. **I/WE HAVE HAD AN OPPORTUNITY TO HAVE LEGAL COUNSEL ADVISE ME/US AS TO THE MEANING OF THE TERMS OF THIS AGREEMENT AND LEGAL CONSEQUENCES OF THIS AGREEMENT; AND**
4. **I/WE FULLY UNDERSTAND THE TERMS AND LEGAL CONSEQUENCES OF THIS AGREEMENT.**

IN WITNESS WHEREOF, for the considerations and purposes set forth herein, I/we execute this agreement this _____ day of _____, 201__.

OWNER(S) SIGNATURE(S):

Mailing Address (if different from address listed above):

Current Telephone Number(s) _____

PRE-ENTRY PHOTOS ATTACHED: _____ Yes _____ No

Name of Insurance Company: _____

Policy Number: _____