AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL
SERVICES DISTRICT SPECIAL MEETING

TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT
SPECIAL MEETING

AUGUST 16, 2010

FLOWER MOUND TOWN HALL, 2121 CROSS TIMBERS ROAD
FLOWER MOUND, TEXAS

6:00 P.M.

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AN AGENDA INFORMATION PACKET IS AVAILABLE FOR PUBLIC INSPECTION
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All pagers and cell phones must be turned off in the Council Chambers.

A. CALL BRIEFING SESSION TO ORDER

B. BRIEFING SESSION

1. Town Council Boards and Commissions Subcommittee Reports.
2. Discuss Consent and Regular Items.
3. Discuss Future Agenda Items.
4. Discuss Council Communications.

C. ADJOURN BRIEFING SESSION

D. CALL MEETING TO ORDER

E. INVOCATION

F. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND TO THE TEXAS FLAG

“Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one
and indivisible.”

G. PRESENTATIONS

• Certificates of Recognition – Rick Watson, Richard Thibodeaux, Jim Moll, and
  Brad Moll
• Proclamation – Paula Paschal Day
H. **PUBLIC PARTICIPATION**

Please fill out an "Appearance Before Town Council" form in order to address the Council, and turn the form in prior to Public Participation, or by 6:10 p.m. to Town Secretary Paula Paschal. Speakers are normally limited to three minutes. Time limits can be adjusted by the Chair as to accommodate more or fewer speakers.

The purpose of this item is to allow the public an opportunity to address the Town Council on issues that are not the subject of a public hearing. Any item requiring a Public Hearing will allow the public to speak at the time that item appears on this agenda as indicated as a "Public Hearing." Items that are the subject matter jurisdiction of the Town Council include Town policy and legislative issues. Issues regarding daily operational or administrative matters should first be dealt with at the administrative level by calling Town Hall at 972-874-6000 during business hours.

I. **MAYOR AND TOWN COUNCILMEMBER ANNOUNCEMENTS**

- Announcements and brief discussion regarding recent and upcoming civic and social events, traffic issues, informational update on Town projects, capital improvement projects, reports about contacts with other groups and/or individuals about Town issues and projects, Town legislative and regulatory issues, informational responses to questions and information sharing.

J. **TOWN MANAGER’S REPORT**

- Update and status report related to operational issues, capital improvement projects, budget projections, grants, legislation and regulatory activities.

K. **CONSENT AGENDA - Consent Items**

This agenda consists of non-controversial or "housekeeping" items required by law. Items may be removed from the Consent Agenda by any Councilmember by making such request prior to a motion and vote on the Consent Agenda.

1. Consider approval of minutes from a regular meeting of the Town Council held on August 2, 2010.

2. Consider approval of a resolution casting the Town of Flower Mound’s vote for Harlan Jefferson as a member of the Board of Managers of the Denco Area 9-1-1 Emergency Communications District for a two-year term beginning October 1, 2010.

3. Consider approval of an ordinance establishing the 2010 certified appraisal roll.

4. Consider accepting the submission of the certified collection rate of 100 percent for the fiscal year beginning October 1, 2010, and ending September 30, 2011.

5. Consider accepting the submission of the notice of an effective tax rate of $0.4643 per $100 assessed valuation and a rollback tax rate of $0.4914 per $100 assessed valuation for the fiscal year beginning October 1, 2010, and ending September 30, 2011.

6. Consider proposing a maximum tax rate of $0.4497 per $100 valuation for the fiscal year beginning October 1, 2010, and ending September 30, 2011; and scheduling the August 26, 2010, public hearing on the budget, and scheduling the September 20, 2010, adoption of said budget and tax rate; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.
7. Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to schedule a public hearing for August 26, 2010, on the Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget and to schedule a meeting for September 20, 2010, to take action on the proposed budget; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.

8. Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to schedule a public hearing for August 26, 2010, on the Flower Mound Crime Control and Prevention District budget and to schedule a meeting for September 20, 2010, to take action on the proposed budget; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.

9. Consider approval of Bid No. 66-10-B, for the construction of the Hamlett Lane Paving Reconstruction project, to 3D Paving and Contracting, LLC, in the amount of $260,395.00, and authorization for the Mayor to execute same on behalf of the Town.

10. Consider approval of a Professional Services Agreement with Teague, Nall and Perkins, to provide professional engineering design services for Chinn Chapel Road Phase I, in the amount of $299,000.00, and authorization for the Mayor to execute same on behalf of the Town.

L. REGULAR ITEMS

11. Consider approval of the award of Bid No. 76-10-B, with JRJ Paving, L.P., for the construction of Dixon Lane (FM 2499 to Crestside Dr.), in the amount of $2,638,111.57; determining the presumptive low bidder Felix Associates of Florida, Inc., doing business as Lone Star Civil Construction Inc., to be nonresponsible for this project; and authorizing the Mayor to execute the contract documents with JRJ Paving, L.P., on behalf of the Town.

12. ANX 01-10 - Extra Territorial Jurisdiction Annexation Public Hearing
The second of two public hearings to consider approval of an ordinance for annexation (ANX 01-10 - Extra Territorial Jurisdiction Annexation) of land within the Town’s extraterritorial jurisdiction, and adjacent and contiguous to the Town, in accordance with Chapter 43 of the Texas Local Government Code. The subject properties are generally located north and northwest of Tour 18 in the Town’s existing extraterritorial jurisdiction, generally adjacent to the jurisdictional boundaries of the Towns of Argyle and Bartonville.

13. Discuss and consider the possible appointment and replacement of members serving on the Oil and Gas Advisory Board.

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS
N. CLOSED MEETING

The Town Council to convene into a closed meeting pursuant to Texas Government Code Sections 551.071, 551.072, 551.074, and 551.087 to discuss matters relating to consultation with Town Attorney, pending litigation, real property, personnel, and economic development negotiations as follows:

a. Discuss and consider economic development incentives.

b. Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.

c. Discuss Town of Flower Mound v. Mockingbird Pipeline, L.P., No. 02-10-00069-CV, pending in the Texas Court of Appeals at Fort Worth, and all matters incident and related thereto.

d. Discuss and consider Titan Operating, LLC v. Town of Flower Mound, et al., Cause No. 2010-60171-393, pending in the 393rd Judicial District Court of Denton County, Texas, and all matters incident and related thereto.

e. Discuss and consider Virginia Simonson and Prakash Parameswaran v. Town of Flower Mound, et al., Cause No. 2010-50955-367, pending in the 367th Judicial District Court of Denton County, Texas, and all matters incident and related thereto.

f. Discuss and consider appointments to the Animal Services Board, Board of Adjustment, Community Development Corporation, Environmental Conservation Commission, LISD Liaison, Parks, Arts and Library Services Board, Planning and Zoning Commission, TIRZ #1 Board, and Transportation Commission.

g. Discuss selection of and applications for Town Secretary position, and all matters incident and related thereto.

h. Discuss and consider appointment of an Interim Town Secretary, effective September 1, 2010.

i. Discuss and consider appointment of a Presiding Municipal Judge for the Municipal Court of Record No. 1 in the Town of Flower Mound, Texas.

O. OPEN MEETING

The Town Council to reconvene into an open meeting pursuant to Texas Government Code Sections 551.071, 551.072, 551.074, and 551.087 to take any action necessary relating to consultation with Town Attorney, pending litigation, real property, personnel, and economic development negotiations as follows:

a. Discuss and consider economic development incentives.

b. Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.
c. Discuss Town of Flower Mound v. Mockingbird Pipeline, L.P., No. 02-10-00069-CV, pending in the Texas Court of Appeals at Fort Worth, and all matters incident and related thereto.

d. Discuss and consider Titan Operating, LLC v. Town of Flower Mound, et al., Cause No. 2010-60171-393, pending in the 393rd Judicial District Court of Denton County, Texas, and all matters incident and related thereto.

e. Discuss and consider Virginia Simonson and Prakash Parameswaran v. Town of Flower Mound, et al., Cause No. 2010-50955-367, pending in the 367th Judicial District Court of Denton County, Texas, and all matters incident and related thereto.

f. Discuss and consider appointments to the Animal Services Board, Board of Adjustment, Community Development Corporation, Environmental Conservation Commission, LISD Liaison, Parks, Arts and Library Services Board, Planning and Zoning Commission, TIRZ #1 Board, and Transportation Commission.

g. Discuss selection of and applications for Town Secretary position, and all matters incident and related thereto.

h. Discuss and consider appointment of an Interim Town Secretary, effective September 1, 2010.

i. Discuss and consider appointment of a Presiding Municipal Judge for the Municipal Court of Record No. 1 in the Town of Flower Mound, Texas.

P. ADJOURN MEETING

Harlan Jefferson, Town Manager

I do hereby certify that the Notice of Meeting was posted on the bulletin board in Town Hall of the Town of Flower Mound, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time: **AUGUST 13, 2010 at 7:15 PM**, at least 72 hours prior to the scheduled time of said meeting.

Paula Paschal, Town Secretary

Pursuant to Section 551.071 of the Texas Government Code, the Town Council reserves the right to consult in a closed meeting with its attorney and to receive legal advice regarding any item listed on this agenda. The Flower Mound Town Hall and Council Chambers are wheelchair accessible. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting by contacting Paula Paschal, Town Secretary, at (972) 874-6076.
TOWN COUNCIL MEETING  
AGENDA ITEM NO:  
August 16, 2010

[X] CONSENT ITEM  [ ] REGULAR ITEM  [ ] WORK SESSION ITEM

FROM:  Paula Paschal, Town Secretary

THROUGH:  Harlan Jefferson, Town Manager

PRESENTER:  Paula Paschal, Town Secretary

ITEM:  Consider approval of minutes from a regular meeting of the Town Council held on August 2, 2010.

[ ] Ordinance  [ ] Resolution  [X] Motion  [ ] Direction

I. SUMMARY:

The Town Council held a regular meeting on August 2, 2010.

II. BACKGROUND INFORMATION:

N/A

III. FISCAL IMPACT:

N/A

IV. LEGAL REVIEW:

N/A

V. ATTACHMENTS:

1. Draft minutes.

VI. RECOMMENDED MOTION OR ACTION:

Move to approve the minutes from a regular meeting of the Town Council held on August 2, 2010.
THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 2ND DAY OF AUGUST, 2010 IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

The Town Council met in a regular meeting with the following members present:

Melissa Northern    Mayor
Al Filidoro        Mayor Pro Tem
Tom Hayden         Deputy Mayor Pro Tem
Steve Dixon        Councilmember Place 1
Mike Wallace       Councilmember Place 3
Steve Lyda         Councilmember Place 4

constituting a quorum with the following members of the Town Staff participating:

Harlan Jefferson  Town Manager
Paula Paschal     Town Secretary
Terry Welch       Town Attorney
Chuck Springer    Assistant Town Manager/Chief Financial Officer
Kent Collins      Assistant Town Manager
Eric Metzger      Fire Chief
Doug Powell       Executive Director of Development Services

A. CALL BRIEFING SESSION TO ORDER

Mayor Northern called the briefing session to order at 6:04 p.m.

B. BRIEFING SESSION

1. Town Council Boards and Commissions Subcommittee Reports

Councilmember Dixon attended the July 29, 2010 meeting of the Parks, Arts, and Library Services Board. He noted that the Board would be sending a recommendation to the Council to name the wildflower area off of Garden Road the John Thomas Wildflower Preserve in memory of former Board member John Thomas.

Deputy Mayor Pro Tem Hayden stated he attended the TIRZ Board meeting earlier in the day. The Board discussed road priorities and future revenues.

Mayor Northern recently attended two Planning and Zoning Commission meetings. She noted that the Commission approved the site plan for the Western Elevated Storage Tank. The SMARTGrowth Commission also met, however no action was taken. She added that the Flower Mound Medical Village site plan was approved.

2. Discuss Consent and Regular Items

No discussion.

3. Discuss Future Agenda Items
Deputy Mayor Pro Tem Hayden stated he would like to discuss the election process from the May election and ways to make improvements for heavy voter turnout.

4. Discuss Council Communications

   Town Manager Harlan Jefferson stated the Council had received a Council Communication regarding the appointment of a new Municipal Court Judge, and the matter would be discussed during Closed Session.

C./D. ADJOURN BRIEFING SESSION AND CALL REGULAR MEETING TO ORDER

   Mayor Northern adjourned the briefing session and called the regular meeting to order at 6:08 p.m.

E. INVOCATION

   Pastor Richard Plunk gave the invocation.

F. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND THE TEXAS FLAG

   Pastor Plunk led the pledges.

G. PRESENTATIONS

   Certificate of Achievement: Kirby Lorig – Lone Star Leadership Academy Youth Facilitator Summer 2010

   Mayor Northern presented a Certificate of Achievement to Kirby Lorig for receiving the Lone Star Leadership Academy Youth Facilitator designation for Summer 2010.

H. PUBLIC PARTICIPATION

Bryan Webb, 4112 High Road, Flower Mound
   Mr. Webb commented that two citizens filed a lawsuit against the Town regarding the Town’s gas drilling ordinances. He did not agree with a board or commission member filing a lawsuit against the Town. He asked for the removal of those on the Oil and Gas Advisory Board who were involved with the lawsuit.

Renee Doyle, 1920 Widgon Way, Flower Mound
   Ms. Doyle referred to the Consent Agenda items and asked that the Town have a policy that placed monetary limits and parameters on money items. She asked the Council to postpone Items 11 and 12 until after the budget is approved. Ms. Doyle asked where the funding was located for legal fees, consultants, etc. She felt the staff should be able to do some of the work. She asked why the Town was acquiring right-of-way in Tarrant County. She asked the Council if they read and researched the information in the agenda packets.
Paul Stone, 709 Lake Bluff Drive, Flower Mound
Mr. Stone thanked Deputy Mayor Pro Tem Hayden for his email regarding an issue that occurred at the last meeting. He noted that language on the agenda on two items indicated that they would be tabled to the next meeting. Mr. Stone stated he waited two hours and the Town Council never called the public hearing open. Additionally, the members of the Council continued talking after the motion for tabling. Mr. Stone stated that at the last Oil and Gas Advisory Board meeting, the Chair announced that the Board would adjourn to Executive Session to have counsel answer their questions. He stated the Board was an ad hoc committee, not a governmental body. He asked what had happened to the promise of transparency. Mr. Stone asked why the Town was fighting the ICP lawsuit, and why the Town did not have more diverse housing options.

Todd Schreiber, 925 Canongate, Flower Mound
Regarding Item 12, Mr. Schreiber commended staff for creatively looking for funding sources.

Michael Flores, 4500 Jenny Lane, Flower Mound
Mr. Flores addressed the Windsor extension and noted that the previous councils removed the extension from the Master Plan. He gave a history of the issues with Windsor. He stated the Town bought Mr. Shu’s property, and now the Council was faced with the situation of the extension and park. He stated that now was the time to mandate traffic safety, and he asked the Council to deny Item 12.

Brad Pittman, 4908 Kingswood Drive, Flower Mound
Mr. Pittman stated he was president of the Bridlewood HOA and was representing the board of directors. The board had polled 1300 households about the Windsor extension. The results, based on 483 responses, indicated that 35.8% supported the extension if the road was curvilinear, through a park, and the members of the Bridlewood community could give input regarding the design. 32.5% of the residents who responded supported the extension no matter how the road was constructed. 30.2% of the residents did not support the extension regardless of the design. 2.5% of the respondents had no preference. The survey also asked for comments. Most comments centered on the feeling that a curvilinear road would reduce the speed of cars and go a long way into protecting the children who walked to and from school. Additionally, the residents suggested installing stop signs along West Windsor at the road’s intersections with Glenwick, Preakness/Auburn, Triple Crown, and the golf club entrance. The residents asked for a school crossing guard at the Preakness/Auburn/West Windsor intersection. They asked that the sidewalks be widened to eight feet along the existing section of West Windsor. They also asked for an island in the half circle to help separate the homes directly facing West Windsor from traffic. Mr. Pittman stated the Bridlewood residents wanted to help design the road.

Liza Doll, 4501 Kyle Lane, Flower Mound
Ms. Doll stated that when she and her husband bought their house, they were told the extension was not on the Master Plan. She was concerned for the safety of the children in the neighborhood. She asked if the Town had the matching funds. She felt the survey that was conducted by the HOA was flawed. She asked the Council to deny Item 12.
Dave Johnson, 3617 San Paula Drive, Flower Mound

Mr. Johnson agreed with the comments made by Bryan Webb.

Mayor Pro Tem Filidoro asked if members of the Oil and Gas Advisory Board did indeed have a conflict of interest.

Town Attorney Terry Welch stated he would send a memo to the Town Council in response to that request.

I. MAYOR AND TOWN COUNCILMEMBER ANNOUNCEMENTS

• Announcements and brief discussion regarding recent and upcoming civic and social events, traffic issues, informational updates on Town projects, capital improvement projects, reports about contacts with other groups and/or individuals about Town issues and projects, Town legislative and regulatory issues, informational responses to questions, and information sharing.

Deputy Mayor Pro Tem Hayden commented that at the last Council meeting, Mr. Stone did sit for two hours during discussion of an item, and he was right. The public hearing was never opened. He stated that in the future, the Council needed to listen to the citizens. He noted that Congressman Burgess was speaking at a town hall meeting on Tuesday evening.

Mayor Pro Tem Filidoro agreed there should have been an opportunity for people to speak at the last meeting. He noted that the Town Attorney had concurred that the public hearing did not have to be opened, but the Council would do so in the future.

Councilmember Lyda attended the TML New Councilmember Orientation and met many fellow councilmembers and mayors from around the state. He commended the staff for having a good reputation.

Councilmember Wallace announced that the Youth Fire Academy would be held this week, and the department would be having an upcoming Citizen Academy.

Mayor Northern stated that on July 12 she participated with TML on the gas issues subcommittee, noting that the 2011 legislative session was fast approaching. She stated the subcommittee opposed two items and approved two items. Mayor Northern stated that Flower Mound would be actively participating in the TML process. She also attended the TML Newly Elected Officials training, and added that staff was highly respected throughout the state of Texas. At the Precinct 3 Task Force meeting last week, the group discussed concerns and frustrations on Phase 1 of FM 1171.

Town Manager Harlan Jefferson stated that the contractor had moved traffic over to the new lanes of FM 1171 between Shiloh and Huntwick.

Mayor Northern stated she attended several retention meetings with businesses in Flower Mound. She announced that some of the businesses were planning to expand. She stated that Congressman Burgess would be holding a town hall meeting at Flower
Mound High School tomorrow. She announced that the Oil and Gas Advisory Board was meeting on the second and fourth Tuesdays at the Central Fire Station, and the new Sign Regulation Committee had started meeting, as well.

J. TOWN MANAGER’S REPORT

- Update and status report related to operational issues, capital improvement projects, budget projections, grants, legislation, and regulatory activities.

Town Manager Harlan Jefferson stated the Town had received input from the design team for the interim free standing senior center. He stated the center could be fully open and operational in about a year.

Deputy Mayor Hayden asked what type of interaction the design team was having with the Seniors in Motion.

Kent Collins, Assistant Town Manager, stated they had met once.

Mayor Pro Tem Filidoro asked if Dunaway had gleaned a great deal of information during the Parks Master Plan process.

Mr. Jefferson responded that they did receive information about a permanent facility.

Mayor Pro Tem Filidoro noted that the Town and the Seniors In Motion did have a meeting in the shell of the proposed facility.

Mr. Jefferson commented that at the last Council meeting during Dr. Tramm’s presentation, there was a question about dry cleaners. Staff worked with TCEQ and they had records on the number of cleaners and those that use perchloroethylene or “perc.” There were 13 cleaners in Flower Mound of which eight were full cleaners and five were pick up only. Mr. Jefferson stated staff discovered that TCEQ had many standards and reporting efforts. Staff will continue to do some spot check monitoring.

Councilmember Wallace asked that air testing on cleaners be included in the ambient air study with canisters downwind from those locations. He also asked for an aerial of the four locations that used perc. He also asked that the testing information be sent to the Town Council along with more information about perc and both the short- and long-term effects screening levels.

Councilmember Lyda suggested sending the information to the Environmental Conservation Commission.

Mayor Pro Tem Filidoro asked if there were other options besides perc, and if there were any safer methods.

Mr. Jefferson commented that one of the four cleaners was phasing out of using perc. Regarding the ambient air testing, there was a device that could detect a perc leak.
Mayor Northern asked how often TCEQ reviewed the dry cleaners sites.

Mr. Jefferson stated the cleaners had monthly leak inspections and vapor leak tests. The cleaners did self monitoring testing and they reported back to TCEQ.

Councilmember Dixon asked about the letter that the Town received from the Federal Highway Administration about certain intersections that did not meet ADA requirements.

Mr. Jefferson responded that Town crews would install the improvements in the next 60 days.

Councilmember Dixon stated he was absent from the last meeting and did not have the opportunity to ask questions about legal expenses. He referred to the comprehensive monthly financial report for June. He stated the legal expenses were broken into two categories—general and lawsuits. He noted that $294,000 (year-to-date) had been spent on lawsuits, and that was a 109% increase from last year. He noted that the majority of the expenses were due to the ICP lawsuit. Under the general category for year-to-date FY 2008-2009, the expenses were $385,292. The year to date number for FY 2009-2010 was $550,105 which was a 43% increase. He stated that the general legal expenses were broken out by department. He noted that the Town Manager’s Office budget, showed that June 2009 actual legal expenses were $7,905. The June 2010 expenses were $32,383 (a 300% increase). He asked for an explanation. Councilmember Dixon stated in June 2009, the general expenses were $47,570, and in June 2010, the amount was $64,437 (an increase of 35%). He stated it would help the citizens and Council to have more description in the comprehensive monthly report. He understood that many experts and legal consultants were used in the ICP case. Councilmember Dixon asked when the Rule 11 Agreement was entered into on the Hilliard site.

Mr. Welch responded it was entered into on June 25.

Councilmember Dixon noted that the primary access point to the drill site would be at Aberdeen. He felt that was much safer for ingress and egress. He noted that the new access plan would require a revised Rule 11 Agreement. He stated that certain information stated this could be done by a letter between the two parties or a potential development agreement.

Mr. Welch stated that new developments with this matter would be discussed in Closed Session.

Mr. Jefferson addressed the increases in legal fees for the Town Manager’s Office. He noted that he had held many discussions with the Town Attorney regarding gas drilling. He noted that the Town was no longer negotiating with Williams. Regarding the amount of detail in the comprehensive monthly report, Mr. Jefferson stated it could compromise his position in working on agreements with others. He did offer to give a delayed response after the work was done.

Councilmember Dixon responded that “after the fact” was fine.
Mayor Northern asked when the ICP lawsuit was filed.

Mr. Welch responded that it was filed in 2008.

Mayor Northern commented that the Town was just now seeing some of the financial impacts of the lawsuit.

Mr. Welch stated that the Town incurred fees for experts’ testimonies and depositions. The Town was still waiting on a decision from the court.

Mayor Pro Tem Filidoro stated that the issue of lawsuits came up quite often, and lawsuits were a fact of life. Depending on what the issue was, members of the Council sometimes wanted them defended and sometimes not. He stated the Town should be consistent that if sued, they should expect the Town Attorney to defend the best interests of the Town.

Councilmember Wallace supported the Town Attorney in vigorously defending the Town. He stated he would like to see a monthly update on legal fees—what was budgeted and what was actual. He also asked if the information could be posted on the Town’s website.

Mr. Jefferson stated the information was in the comprehensive monthly financial report. Also, he added that most lawsuits were settled out of court. He stated he would include the information in the Weekly Briefing.

K. CONSENT ITEMS

Mayor Pro Tem Filidoro made a motion to approve by consent Items 1, 2, 3, 4, 5, 6, 7, 8, and 9. Deputy Mayor Pro Tem Hayden seconded the motion. Each item, as approved by consent, is restated below along with the approved recommendation for each, for the record.

1. Consider approval of minutes from a special meeting of the Town Council held on July 6, 2010.

RECOMMENDATION: Approve the minutes from a special meeting of the Town Council held on July 6, 2010.

2. Consider approval of minutes from a regular meeting of the Town Council held on July 19, 2010.

RECOMMENDATION: Approve the minutes from a regular meeting of the Town Council held on July 19, 2010.

3. Consider approval of cancelling the September 6, 2010, regular meeting of the Town Council and calling a special meeting on September 7, 2010.
RECOMMENDATION: Approve cancelling the September 6, 2010, regular meeting of the Town Council and calling a special meeting on September 7, 2010.

4. Consider approval of an ordinance cancelling the special election previously ordered by the Town Council for November 2, 2010.

RECOMMENDATION: Approve Ordinance No 46-10 cancelling the special election previously ordered by the Town Council for November 2, 2010. The caption of the ordinance reads as follows:

ORDINANCE NO. 46-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, REPEALING ORDINANCE NO. 30-10: CANCELING THE SPECIAL ELECTION PREVIOUSLY ORDERED BY THE TOWN COUNCIL FOR NOVEMBER 2, 2010, AND DECLARING THAT SUCH ELECTION IS AND WOULD BE MOOT FOR THE REASONS STATED HERETO; MAKING CERTAIN FINDINGS RELATED THERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

5. Consider approval of Change Order No. 2 for Phase III of the CDBG - Sunrise Circle Paving Improvements project, amending the contract with N.A.E. Enterprises, Inc., for a decrease in the amount of $800.00; acceptance of the project; authorization of final payment to the contractor, N.A.E. Enterprises, Inc., in the amount of $7,825.30, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve Change Order No. 2 for Phase III of the CDBG - Sunrise Circle Paving Improvements project, amending the contract with N.A.E. Enterprises, Inc., for a decrease in the amount of $800.00; acceptance of the project; authorization of final payment to the contractor, N.A.E. Enterprises, Inc., in the amount of $7,825.30, and authorize the Mayor to execute same on behalf of the Town.

6. Consider approval of an agreement with Teague Nall and Perkins, to provide professional engineering design services associated with the College Parkway Reconstruction project, in the amount of $63,000.00, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve an agreement with Teague Nall and Perkins, to provide professional engineering design services associated with the College Parkway Reconstruction project, in the amount of $63,000.00, and authorize the Mayor to execute same on behalf of the Town.

7. Consider approval of an agreement with Teague Nall and Perkins, to provide professional engineering design services associated with the Sagebrush Drive Paving Reconstruction project, in the amount of $107,000.00, and authorization for the Mayor to execute same on behalf of the Town.
RECOMMENDATION: Approve an agreement with Teague Nall and Perkins, to provide professional engineering design services associated with the Sagebrush Drive Paving Reconstruction project, in the amount of $107,000.00, and authorize the Mayor to execute same on behalf of the Town.

8. Consider approval of a Professional Services Agreement with Kimley–Horn and Associates, Inc., to provide professional engineering services associated with the Waketon Road 16-inch Water Line project, in the amount of $16,000.00, and authorization for the Mayor to execute same on behalf of the Town.

RECOMMENDATION: Approve a Professional Services Agreement with Kimley–Horn and Associates, Inc., to provide professional engineering services associated with the Waketon Road 16-inch Water Line project, in the amount of $16,000.00, and authorize the Mayor to execute same on behalf of the Town.

9. Consider approval of an ordinance amending Chapter 66, Article V, Section 66-214, of the Code of Ordinances of the Town of Flower Mound, Texas, relating to prima facie speed limits for specific streets, by lowering the prima facie speed limit for Park Ridge Road northeast of Creekview Drive and River Hill Drive to 25 mph.

RECOMMENDATION: Approve Ordinance No 47-10 amending Chapter 66, Article V, Section 66-214, of the Code of Ordinances of the Town of Flower Mound, Texas, relating to prima facie speed limits for specific streets, by lowering the prima facie speed limit for Park Ridge Road northeast of Creekview Drive and River Hill Drive to 25 mph. The caption of the ordinance reads as follows:

ORDINANCE NO. 47-10


VOTE ON THE MOTION

AYES: Wallace, Lyda, Filidoro, Hayden, Dixon
NAYS: None

L. REGULAR ITEMS

Mayor Northern opened Items 10 and 11 together.
10. Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, Certificates of Obligation, Series 2010, in the amount of $6,045,000, and resolving other matters incident and related thereto.

11. Consider approval of an ordinance authorizing the issuance of the Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2010, in the approximate amount of $7,715,000, and resolving other matters incident and related thereto.

Boyd London, First Southwest Company

Mr. London gave the following presentation, noting that Morgan Keegan & Co., Inc. was the best responsive bidder on both the General Obligation Bonds and the Certificates of Obligation.
Flower Mound Executive Summary

- Sold two series of debt
  - Certificates of Obligation - $6,045,000
  - General Obligation Refunding Bonds - $7,635,000
- Ratings were affirmed by S&P at “AA+” and Moody’s at “Aa1”
  - Sustained property tax base and economic expansion
  - High wealth and income indicators
  - Sound financial performance and position
  - Strong financial and management policies

Flower Mound Bid Summary

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<tr>
<th>$6,045,000 Certificates of Obligation, Series 2010</th>
<th>$7,635,000 General Obligation Refunding Bonds, Series 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidder Name</td>
<td>TIC</td>
</tr>
<tr>
<td>Morgan Keegan &amp; Co., Inc.</td>
<td>3.148904%</td>
</tr>
<tr>
<td>BOSC, Inc.</td>
<td>3.364403%</td>
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<tr>
<td>The Baker Group</td>
<td>3.313385%</td>
</tr>
<tr>
<td>Robert W. Baird &amp; Co., Inc.</td>
<td>3.313824%</td>
</tr>
<tr>
<td>FTN Financial Capital markets</td>
<td>3.324356%</td>
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<tr>
<td>J.P. Morgan Securities Inc.</td>
<td>3.403149%</td>
</tr>
<tr>
<td>Southwest Securities, Inc.</td>
<td>3.412034%</td>
</tr>
<tr>
<td>Fidelity Capital Markets</td>
<td>3.418948%</td>
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<tr>
<td>SAMCO Capital Markets</td>
<td>3.420356%</td>
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<td>Morgan Stanley &amp; Co Inc.</td>
<td>3.448601%</td>
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<td>RBC Capital Markets</td>
<td>3.454067%</td>
</tr>
<tr>
<td>Sterne, Agee &amp; Leach, Inc.</td>
<td>3.485873%</td>
</tr>
<tr>
<td>Wells Fargo Advisors</td>
<td>3.589131%</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Flower Mound Summary of Certificates of Obligation

- Par: $6,045,000
  - $3,380,000 for fire improvements
  - $2,665,000 for Water and Sewer Fund purposes
- Proceeds: $6,045,000
- Maturities: 3/1/11 – 3/1/30
- True Interest Cost (TIC): 3.149%
- Equal Principal Payments: 2013-2030 on the tax supported portion
- Call Date: 3/1/2020

Flower Mound Summary of General Obligation Refunding Bonds

- Par: $7,635,000
- Refunded: Series 2001 Certificates of Obligation and Series 2001 General Obligation Bonds
  - Both are callable on 3/1/2011
- Average Annual Savings: FY 2011-2021: $96,070
- Present Value Savings: $940,551
  - Present value savings as a % of Refunded Principal = 12.616%
  - Town’s financial policy states minimum of 3.5%
### Flower Mound – Comparative Ratings

<table>
<thead>
<tr>
<th>City</th>
<th>Moody’s</th>
<th>City</th>
<th>Standard &amp; Poor’s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Irving</td>
<td>Aaa</td>
<td>Allen</td>
<td>AAA</td>
</tr>
<tr>
<td>Plano</td>
<td>Aaa</td>
<td>Carrollton</td>
<td>AAA</td>
</tr>
<tr>
<td>Richardson</td>
<td>Aaa</td>
<td>Colleyville</td>
<td>AAA</td>
</tr>
<tr>
<td>Allen</td>
<td>Aa1</td>
<td>Coppell</td>
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</tr>
<tr>
<td>Carrollton</td>
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<td>Irving</td>
<td>AAA</td>
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<tr>
<td>Coppell</td>
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<td>Plano</td>
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</tr>
<tr>
<td>Flower Mound</td>
<td>Aa1</td>
<td>Richardson</td>
<td>AAA</td>
</tr>
<tr>
<td>Frisco</td>
<td>Aa1</td>
<td>Southlake</td>
<td>AAA</td>
</tr>
<tr>
<td>McKinney</td>
<td>Aa1</td>
<td>Farmers Branch</td>
<td>AA+</td>
</tr>
<tr>
<td>Southlake</td>
<td>Aa1</td>
<td>Flower Mound</td>
<td>AA+</td>
</tr>
<tr>
<td>Colleyville</td>
<td>Aa2</td>
<td>Lewisville</td>
<td>AA+</td>
</tr>
<tr>
<td>Denton</td>
<td>Aa2</td>
<td>North Richland Hills</td>
<td>AA+</td>
</tr>
<tr>
<td>Farmers Branch</td>
<td>Aa2</td>
<td>McKinney</td>
<td>AA+</td>
</tr>
<tr>
<td>Grapevine</td>
<td>Aa2</td>
<td>Denton</td>
<td>AA</td>
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<tr>
<td>Lewisville</td>
<td>Aa2</td>
<td>Frisco</td>
<td>AA</td>
</tr>
<tr>
<td>North Richland Hills</td>
<td>Aa2</td>
<td>Grapevine</td>
<td>AA</td>
</tr>
<tr>
<td>Rowlett</td>
<td>Aa2</td>
<td>Rowlett</td>
<td>AA-</td>
</tr>
</tbody>
</table>
Deputy Mayor Pro Tem Hayden asked if the financial outlook was stable in Flower Mound.

Mr. London responded yes.

Deputy Mayor Pro Tem Hayden asked if there was any way to use Build America bonds.

Mr. London responded that Build America usually did not do small amounts of bonds.

Councilmember Lyda asked Mr. London to review repayment of the bonds.

Mr. London stated the General Obligation Refunding Bonds matured from 2011-2021. When those bonds were refunded, the debt service was just matched. For the Certificates of Obligation Bonds from 2011-2030, the Town would transfer money into the Utility Fund and levy a tax to pay for the General Fund portion.

Mr. Jefferson stated the bonds would be repaid with property tax revenues and it would help to balance the budget over the next 10 years. The Town would save about $1 million.

Mayor Pro Tem Filidoro moved to approve Ordinance No. 48-11 authorizing the issuance of the Town of Flower Mound, Texas, Certificates of Obligation, Series 2010, in the amount of $6,045,000, and resolve other matters incident and related thereto. Dixon seconded the motion. The caption of the ordinance reads as follows:

**ORDINANCE NO. 48-10**


**VOTE ON THE MOTION**

**AYES:** Lyda, Filidoro, Hayden, Dixon, Wallace

**NAYS:** None
Mayor Pro Tem Filidoro moved to approve Ordinance No. 49-10 authorizing the issuance of the Town of Flower Mound, Texas, General Obligation Refunding Bonds, Series 2010, in the approximate amount of $7,635,000, and resolve other matters incident and related thereto. Councilmember Dixon seconded the motion. The caption of the ordinance reads as follows:

**ORDINANCE NO. 49-10**

AN ORDINANCE AUTHORIZING THE ISSUANCE OF "TOWN OF FLOWER MOUND, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2010"; SPECIFYING THE TERMS AND FEATURES OF SAID BONDS; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX FOR THE PAYMENT OF SAID BONDS; PROVIDING FOR THE REDEMPTION OF CERTAIN OUTSTANDING OBLIGATIONS OF THE TOWN; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, PAYMENT AND DELIVERY OF SAID BONDS, INCLUDING THE APPROVAL AND EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND AN ESCROW AGREEMENT AND THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT; AND PROVIDING AN EFFECTIVE DATE.

**VOTE ON THE MOTION**

**AYES:** Filidoro, Hayden, Dixon, Wallace, Lyda  
**NAYS:** None

12. Consider approval of a resolution in support of the Flower Mound Downtown Sustainable Development Project (a.k.a. Windsor Extension project) and providing an effective date.

Kent Collins, Assistant Town Manager, stated this item was to consider a resolution in support of receiving a sustainable development grant. The project was selected by the North Central Texas Council of Governments (NCTCOG). The project had two planned traffic circles that would allow connections with Pecan Acres. It called for an eight foot concrete trail along with crushed granite trails for pedestrian and bike access. Safety access would improve in Pecan Acres. Mr. Collins noted that the project called for a four hole Frisbee golf course and picnic areas. Many trees on the property would be saved. He added that the land at FM 2499 and Windsor had been platted and was currently on the market for sale. The Town owns the entire tract. Proceeds from the sale will cover the Town’s matching portion of the grant. Mr. Collins gave the following presentation.
Flower Mound Downtown (aka West Windsor Extension) Sustainable Development Grant

Town Council
August 2, 2010

Project History

- Public process associated with Transportation Master Plan – 12 month process
- Schematic prepared by staff
- Property purchased and platted
- FM 2499 parcel marketed for sale
- Sustainable development grant applied for and selected for funding

Project Elements

- Provides link between traditional suburban subdivision and mixed-use development with hospital
- Curvilinear alignment; managed traffic; bike/pedestrian links (6’ crushed granite and 8’ concrete multi-use); linear park with passive amenities
  - All improvements to be constructed at same time
- Improves emergency access/response
- "Median" treatment for Windsor Court
Status

- Town owns property to make roadway, trail and park improvements
- Town is marketing a portion of property for sale (alignment and plat was necessary)
- Design has not started
- Grant rules require local support by resolution; RTR funds of approximately $3 million plus 20% local match of approximately $750k

Concerns & Requests

- Speed enforcement of existing and future Windsor extension
- Improvements at intersection of W. Windsor and Preakness (crossing guard, crosswalk, all-way stop)
- Glenwick @ Camden (warranted?)
- Existing sidewalk width
- Barriers or guardrail along existing Windsor

Project Future

- Sustainable grant resolution
- Funding available in FY 2011
- Design start in early FY 2011
- Neighborhood design review meetings at 30%, 60% and 90%
- Construction start late 2011 or early 2012; complete in 2012

Questions?
Mr. Collins stated the Town’s model showed 4,500 vehicles per day on Windsor. He added that staff was not aware of any bankruptcy with The River Walk at Central Park, although there was a foreclosure in January 2010. The grant application was made in 2009. He noted that the Town continued to receive applications for buildings in The River Walk.

Deputy Mayor Pro Tem Hayden asked how long the Town had to spend the grant money.

Mr. Collins stated the Town did not have a draft agreement yet from NTCTCOG, however he stated it would probably be a five-year timeframe.

Deputy Mayor Pro Tem Hayden asked if the project would start before the piece of property is sold.

Mr. Collins stated the Town would need the money for its portion of the match.

Deputy Mayor Pro Tem Hayden clarified that the total cost would be $3.7 million, including the park and amenities.

Councilmember Lyda asked what the maximum speed limit would be.

Mr. Collins responded that the speed limit on the existing Windsor Road was 30 mph, and he anticipated the new section would be signed to match. He added that the Town would conduct a speed study after the road is opened.

Councilmember Wallace asked where people would park their vehicles.

Mr. Collins stated this would be a linear park and was designed to serve the surrounding area. There were no plans for parking.

Councilmember Wallace asked what would happen if the Council did not approve the resolution.

Mr. Collins stated the Town would not receive the grant.

Councilmember Wallace asked if the Town could spend the money on another project.

Mr. Collins responded no.

Councilmember Wallace asked if the signal at FM 2499 was already warranted.

Mr. Collins stated TxDOT would not warrant a signal based on projections. The project would have to be completed first and then be warranted by TxDOT.

Councilmember Wallace asked about meeting with the nearby residents.
Mr. Collins stated the meeting last week was the first time staff met with the residents. The alignment was driven by comments received in the public process. Staff had received a few emails. The purpose of the meeting was to receive specific input on elements of the project. Most residents that attended the meeting were opposed to the project but offered ideas.

Councilmember Dixon stated the Town needed to mitigate the speed on Windsor and to create a nice park for the neighborhood. He asked if it was possible to have a three-way stop sign at Glenwick and Windsor even if it did not meet warrants.

Mr. Collins stated the Town used the warrants from the Texas Manual on Uniform Traffic Control Devices for stop signs. The manual was adopted by ordinance, so putting in a stop sign that did not meet warrants would be in conflict with the ordinance.

Councilmember Dixon asked for the criteria for warranting a stop sign.

Mr. Collins stated the first was accident experience. For a location to warrant an all way stop, there would have to be five or more correctable accidents in a twelve month period. The volume warrant was the combined volume on a major street and the volume had to have 300 vehicles per hour for eight hours of a day. The side street traffic would have to have 200 vehicles per hour for the same eight hours of a day. If a location met warrants for a traffic signal, but there was no funding for the signal, it would meet warrants for an all-way stop in the interim time period.

Councilmember Lyda asked how much influence NCTCOG had in the design of the project.

Mr. Collins stated the Town had 100% control of the design. The funding was from Regional Tollway Revenue.

Mayor Northern commented that two residents had concerns about bike traffic. She asked if there were school crossing guards at Bridlewood and Windsor.

Mr. Collins stated that during the public process for the Master Plan, staff learned that students cross the wooded property to get to Bridlewood Elementary. He noted that some cities were using the combination of a speed limit sign with another sign that tells how fast a driver is driving.

Mayor Northern asked if the trail would meet up with a new or current trail at FM 2499.

Mr. Collins answered that it would tie into the Bridlewood trail.

Mayor Pro Tem Filidoro stated the Town had received citizen input on this property over the past 10-15 years. Prior to the Town buying the property, it was owned by a private individual. He was planning to put in homes or offices. Mayor Pro Tem Filidoro stated he had talked to people in the Westchester, Glenwick, Pecan Acres, and Bridlewood subdivisions. Pecan Acres residents did not want homes or offices behind them. They
liked the idea of a natural park. The Town bought the property in order to control its development, and he was comfortable that the Council took the action to buy the property.

Deputy Mayor Pro Tem Hayden stated he walked through the neighborhoods and handed out flyers about the project. He received comments from citizens and asked if they could be added to the funding agreement. He asked that staff review the speed limits along West Windsor. He asked if the extension could have a speed limit of 15 mph.

Mr. Jefferson stated the Town would have to set speed limits at the 85th percentile. He noted that the roundabouts were designed to effectively control speeding.

Deputy Mayor Pro Tem Hayden asked that stop signs be placed where applicable (West Windsor/Triple Crown, West Windsor/Preakness/Auburn, and West Windsor/Glenwick).

Mr. Jefferson stated that the Town had a difficult time enforcing stop signs that were not warranted, however staff would conduct the warrant studies.

Deputy Mayor Pro Tem Hayden stated the Town needed to do periodic warrant studies.

Mr. Jefferson stated that annual studies would be reasonable. Usually warrant studies were tied to an event that happened in the area.

Deputy Mayor Pro Tem Hayden stated the sidewalk on West Windsor directly across from Kyle Road was right at the road. He asked if it could be moved back and/or a guard rail could be installed.

Mr. Jefferson stated that could be looked at during the design phase.

Mayor Northern noted that this would not be in the current project, and she asked that staff look at that outside this project for safety issues.

Deputy Mayor Pro Tem Hayden stated the Town needed to be sensitive to the safety issues. He noted that the Windsor extension was taken off the Master Plan at one point and people bought their houses that way. He stated a school crossing guard was needed at West Windsor/Preakness/Auburn, and a landscaped design should be placed in front of the small cul-de-sac. He stated the roundabouts should not be like those in Lakeside. Increased traffic enforcement should be located where golf carts cross to avoid accidents. Residents had told him that the 35 mph speed limit was not enforced now. He asked for more enforcement on weekends when kids were causing mischief in the country club parking lot. He asked if the brick wall could be increased. Deputy Mayor Pro Tem Hayden stated the nearby residents wanted to have input in the design of the road.

Mayor Pro Tem Filidoro agreed with Deputy Mayor Pro Tem Hayden’s comments. He stated he would appreciate segregating the concerns for West Windsor from the Windsor extension project.
Councilmember Dixon asked if the hammerheads were good for Pecan Acres, would they not be appropriate in other areas.

Deputy Mayor Pro Tem Hayden asked for a future agenda item to address the stop signs and the landscape feature in front of the four homes.

Mr. Jefferson stated that staff could propose and an estimate of the costs and then the Council could discuss it during the budget process. Staff could do warrant studies now and then and check them again once the road is in. Staff would look at school and pedestrian traffic after school starts. He was not sure if those concerns should be included in the agreement. The agreement was just the funding tool.

Deputy Mayor Pro Tem Hayden asked who requested traffic studies.

Mr. Jefferson responded that requests could be submitted by a member of the Council, a resident, or the Transportation Commission.

Deputy Mayor Pro Tem Hayden asked about enforcement on Windsor.

Mr. Jefferson stated the Town could use placards showing what speed people are driving. Additionally, if the beat officer was notified, they would come up with a strategy for enforcement. The Town could also use the trailers that showed speed limits, and would look at increasing officer coverage.

Mayor Northern asked who maintained the sidewalks.

Mr. Jefferson responded that within subdivisions, generally the residents were responsible. The Town did maintain the sidewalks that were along major roadways.

Councilmember Wallace commented that at one time, the extension was going to be a straightaway. At that time, the property owner and many residents were opposed. The curvilinear roadway would be much safer. He thanked Deputy Mayor Pro Tem Hayden for reaching out to the citizens.

Councilmember Lyda suggested getting a recommendation from the Transportation Commission about adding something in the resolution that would address the design process.

Mr. Jefferson stated the proposed resolution was a model resolution and Council could add different language.

Mayor Northern commented that staff would make sure there would be resident input at the 30%, 60%, and 90% completion stages of the design.

Councilmember Dixon asked Mr. Jefferson to make sure that the road, park, and amenities would be completed simultaneously.

Mr. Jefferson stated the project would be done that way.
Mayor Pro Tem Filidorio moved to approve Resolution No. 18-10 in support of the Flower Mound Downtown Sustainable Development Project and provide an effective date. Councilmember Wallace seconded the motion.

Councilmember Lyda amended the motion to include language about a new Section 10: “The Town of Flower Mound shall endeavor to seek and receive public input in the design phases of this project, including review by the Town’s Transportation Commission.”

Mayor Pro Tem Filidorio and Councilmember Wallace accepted the amendment.

The caption of the resolution reads as follows:

RESOLUTION NO. 18-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, IN SUPPORT OF THE TOWN OF FLOWER MOUND’S SUSTAINABLE DEVELOPMENT PROJECT.

VOTE ON THE MOTION

AYES: Hayden, Dixon, Wallace, Lyda, Filidorio
NAYS: None

13. ANX 01-10 - Extra Territorial Jurisdiction Annexation Public Hearing
The first of two public hearings to consider approval of an ordinance for annexation (ANX 01-10 - Extra Territorial Jurisdiction Annexation) of land within the Town’s extraterritorial jurisdiction, and adjacent and contiguous to the Town, in accordance with Chapter 43 of the Texas Local Government Code. The subject properties are generally located north and northwest of Tour 18 in the Town’s existing extraterritorial jurisdiction, generally adjacent to the jurisdictional boundaries of the Towns of Argyle and Bartonville.

Staff Presentation

Doug Powell, Executive Director of Development Services, briefed the Council and gave the following presentation.
Extra Territorial Jurisdiction Annexation

Annexation
ANX 01-10

2010 Annexation

- Overview
  - Annex remaining ETJ land
  - Last annexation was in 2007
- Schedule
  - Two Public Hearings at Town Council
    - August 2, 2010
    - August 16, 2010
  - Town Council Action September 7, 2010
The subject property included part of the Estates of Montalcino. This annexation would conclude the Town’s extraterritorial jurisdiction (ETJ). The service plan was included in the agenda packet. Property owners had been notified and staff had received a few inquiries.

Public Comments

Robert Furst, 4215 Beverly Drive, Dallas

Mr. Furst asked why the Town was doing this annexation now. He asked if the pad sites in the ETJ would be grandfathered. He asked when municipal services would be provided.

Town Attorney Terry Welch responded that the pad sites would be grandfathered—the Town could not change that. Services would be provided as per the service plan.

Mr. Furst noted that the subject area was in the Bartonville CCN (water).

Mr. Welch stated the Town could not change the service provider.

Mr. Furst stated he had one pad site with two wells and two contemplated wells. He asked if the two additional wells would be grandfathered.

Mr. Welch stated if the Town had notice of a pad site, it had notice of the wells.

Mr. Furst stated that the Town Manager and Mr. Powell had been given permission to enter his ranch and test any well. He stated this annexation affected the people who lived on the property.

Close Public Hearing

Council Deliberation

Mayor Northern commented that prior to being elected and when Montalcino came through, there was discussion by the previous Council to annex the land.

Deputy Mayor Pro Tem Hayden stated that when the Mantalcino project came through it included homes. Half of the project was in Flower Mound and half was in the ETJ. The Town desired to have the entire development under Flower Mound’s jurisdiction.

No action was required or taken.

M. COORDINATION OF CALENDARS AND FUTURE AGENDAS/MEETINGS

- Future agenda item – safety concerns on Windsor
- August 12 – budget work session
- August 16 – regular meeting
- September 6 meeting cancelled and special meeting called for September 7
N/O. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:38 p.m. on August 2, 2010 pursuant to Texas Government Code Sections 551.071, 551.072, 551.074, and 551.087 to discuss matters relating to consultation with Town Attorney, pending litigation, real property, personnel, and economic development negotiations and reconvened into an open meeting at 11:23 p.m. on August 2, 2010 to take action on the items as follows:

1. Discuss and consider economic development incentives.
   No action taken.

2. Discuss and consider acquisition and/or lease of real property for municipal purposes and all matters incident and related thereto.
   No action taken.

3. Discuss Town of Flower Mound v. Mockingbird Pipeline, L.P., No. 02-10-00069-CV, pending in the Texas Court of Appeals at Fort Worth, and all matters incident and related thereto.
   No action taken.

4. Discuss and consider Titan Operating, LLC v. Town of Flower Mound, et al., Cause No. 2010-6-171-393, pending in the 393rd Judicial District Court of Denton County, Texas, and all matters incident and related thereto.
   No action taken.

5. Discuss and consider appointments to the Animal Services Board, Board of Adjustment, Community Development Corporation, Environmental Conservation Commission, LISD Liaison, Parks, Arts and Library Services Board, Planning and Zoning Commission, TIRZ #1 Board, and Transportation Commission.
   No action taken.

6. Discuss selection of and applications for Town Secretary position, and all matters incident and related thereto.
   No action taken.

7. Discuss and consider appointment of a Presiding Municipal Judge for the Municipal Court of Record No. 1 in the Town of Flower Mound, Texas.
   No action taken.

P. ADJOURN REGULAR MEETING
Mayor Northern adjourned the regular meeting at 11:26 p.m. on Monday, August 2, 2010, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

________________________
MELISSA D. NORTHERN, MAYOR

ATTEST:

________________________
PAULA J. PASCHAL, TOWN SECRETARY
FROM: Paula Paschal, Town Secretary

THROUGH: Harlan Jefferson, Town Manager

PRESENTER: Paula Paschal, Town Secretary

ITEM: Consider approval of a resolution casting the Town of Flower Mound’s vote for Harlan Jefferson as a member of the Board of Managers of the Denco Area 9-1-1 Emergency Communications District for a two-year term beginning October 1, 2010.

I. SUMMARY:

Each participating entity in the Denco Area 9-1-1 District is requested to vote for one of the candidates that has been nominated by the entities. The vote must be made and submitted to the Denco Area 9-1-1 District by September 15, 2010. The two candidates nominated were Troy Powell and Harlan Jefferson.

II. BACKGROUND INFORMATION:

The two candidates submitted resumes to the participating entities. Town Manager Harlan Jefferson has been a member of the Board since 1998, and desires to serve another two-year term, if elected. There has been no indication that the Council wishes to change board members at this time.

III. FISCAL IMPACT:

N/A

IV. LEGAL REVIEW:

Meredith Ladd, with Brown and Hofmeister, LLP, has reviewed the resolution as to form and legality.
V. ATTACHMENTS:

1. Memo from Denco Area 9-1-1 District
2. Denco Area 9-1-1 District resolution
3. Resume of Harlan Jefferson
4. Resume of Troy Powell
5. Current Board of Managers
6. Draft resolution

VI. RECOMMENDED MOTION OR ACTION:

Move to approve a resolution casting the Town of Flower Mound’s vote for Harlan Jefferson as a member of the Board of Managers of the Denco Area 9-1-1 Emergency Communications District for a two-year term beginning October 1, 2010.
TO: Denco Area 9-1-1 District Participating Jurisdictions

FROM: Mike Pedigo, Executive Director

DATE: July 16, 2010

RE: Appointment to the Denco Area 9-1-1 District Board of Managers

On May 15, 2010, the Denco Area 9-1-1 District requested participating cities to nominate a representative to the district board of managers. The following nominations were received by the July 15, 2010 deadline:

<table>
<thead>
<tr>
<th>Nominee</th>
<th>City/Town Making Nomination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harlan Jefferson</td>
<td>Denton</td>
</tr>
<tr>
<td></td>
<td>Flower Mound</td>
</tr>
<tr>
<td></td>
<td>Justin</td>
</tr>
<tr>
<td></td>
<td>Lewisville</td>
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<tr>
<td></td>
<td>Little Elm</td>
</tr>
<tr>
<td></td>
<td>Pilot Point</td>
</tr>
<tr>
<td>Troy Powell</td>
<td>The Colony</td>
</tr>
</tbody>
</table>

The Denco Area 9-1-1 District requests that each participating city vote for one of the candidates and advise the district of its selection prior to 5 p.m. September 8, 2010. Please send a copy of the resolution or minutes recording council action. Enclosed is a sample resolution you may wish to use and resumes for the candidates. Also enclosed is a copy of the resolution outlining board appointment procedures and a list of current board members.

Please mail your response to Denco Area 9-1-1 District, P.O. Box 293058, Lewisville, TX 75029-3058 or fax it to 972-420-0709. You may also email your response to me at mpedigo@denco.org.

Thank you for your assistance in this matter.

Enclosures
DENCO AREA 9-1-1 DISTRICT

RESOLUTION

DEFINING PROCEDURE FOR APPOINTMENT OF PARTICIPATING MUNICIPALITIES’ REPRESENTATIVE TO THE DISTRICT BOARD OF MANAGERS.

WHEREAS, Chapter 772, Texas Health and Safety Code provides for the Denco Area 9-1-1 District Board of Managers to have "two members appointed jointly by all the participating municipalities located in whole or part of the district."; and

WHEREAS, each member serves a term of two years beginning on October 1st of the year member is appointed; and

WHEREAS, one member representing participating municipalities is appointed each year.

NOW, THEREFORE BE IT RESOLVED BY THE DENCO AREA 9-1-1 DISTRICT BOARD OF MANAGERS:

The procedure for participating municipalities to appoint a representative to the Denco Area 9-1-1 District Board of Managers shall be the following:

1. Prior to May 15th of each year, the executive director shall send a written notice to the mayor of each participating municipality advising that nominations are open for one of the municipal representatives to the Denco Area 9-1-1 District Board of Managers until July 15th of that same year. The notice shall advise the mayors that, for a nomination to be considered, written notification of council action must be received at the Denco office prior to 5:00 p.m. on July 15th of that year. No nominations shall be considered after that time.

2. On July 16th of each year, the executive director shall send written notice to the mayor of each participating municipality providing the slate of nominees to be considered for appointment to the Denco Area 9-1-1 District Board of Managers for the term beginning October 1st. The notice shall advise the mayor that the city council shall vote, by resolution from such city, for one of the nominees. Written notice of the council’s selection must be received at the district office by 5:00 p.m. on September 15th. No notice will be accepted after that time.

3. The one nominee with the most votes received by the deadline will be the municipality representative appointed for the two-year term beginning October 4th.

4. If there is a tie between two candidates with the most votes, a runoff election will be held immediately with the candidate receiving the most votes serving the remainder of the term. The incumbent representative shall serve in that position until replaced.

APPROVED and ADOPTED on this 4th day of February 1999.

Chairman, Board of Managers

Secretary, Board of Managers
SUMMARY OF ACCOMPLISHMENTS

Over twenty-three years of diverse local government and supervisory experience. Demonstrated ability to pioneer innovative initiatives and actualize organizational objectives such as:
- Successful Dedicated Sales Tax Election for a Crime Control District, Fire Prevention District, Street Maintenance, and Park Improvements
- Eight bond rating upgrades culminating in an AA+ rating by Standard & Poor’s and an Aa2 rating by Moody’s
- Secured more than $105 million in transportation funding from the Regional Transportation Council for roadway capacity improvements
- Design of western pump station to provide water to western Flower Mound
- Design of Denton Creek Wastewater System to serve Flower Mound, Argyle, and Northlake
- Creation of a Transportation Commission for traffic management and project prioritization
- Construction and completion of numerous roadway projects
- Proactive initiatives creating vibrant, sustainable neighborhoods
- Implementation of a proactive code enforcement program
- Development of a self-insurance fund
- Cultivation of a vehicle and equipment internal financing program

WORK-RELATED EXPERIENCE

Town Manager (April 2006 to present)
Town Manager’s Office, Town of Flower Mound, Texas
Responsibilities: Administration and management of the daily operations of the Town’s departments; communicate and accomplish Town Council policies and initiatives; keep citizens informed and promote awareness of Town services, projects, and community activities.

Deputy Town Manager/Chief Financial Officer (October 2000 to April 2006)
Financial Services Department; Internal Services Department, Town of Flower Mound, Texas
Responsibilities: Administration of all financial functions including, but not limited to Budget, Cash Management, Debt Management, Accounting, Tax Collection, Payroll, Utility Billing, Municipal Court, and Internal Services, comprised of Purchasing, Facilities Management, Information Technology, and Fleet Management.

Director of Finance/Town Treasurer/Chief Financial Officer (June 1997 to October 2000)
Finance Department, Town of Flower Mound, Texas
Responsibilities: Administration of all financial functions including, but not limited to Budget, Cash Management, Debt Management, Accounting, Purchasing, Tax Collection, Payroll, and Utility Billing.

Director of Fiscal Operations (November 1994 to June 1997)
Finance Department, City of Denton, Texas
Responsibilities: Collecting, monitoring, and investing the revenue of the City of Denton. Directing all aspects of a $100+ million investment portfolio (i.e., depository bank contract, arbitrage tracking, investment purchases, and Investment Committee support). Supervision of the Municipal Court, Customer Service, and Treasury Division of the City. Also, responsible for Risk Management (i.e., Health and Liability Insurance), Debt Management, and Motor Pool activities.
Director of Treasury Operations (January 1992 to November 1994)
Finance Department, City of Denton, Texas

Treasurer (April 1990 to January 1992)
Finance Department, City of Denton, Texas
Responsibilities: Management of all aspects of the investment portfolio. Supervision of Tax Division, Municipal Court, and Treasury Divisions.

Assistant to the City Manager (October 1989 to April 1990)
City Manager’s Office, City of Jackson, Michigan
Responsibilities: Providing administrative support and leadership in the area of budget development and monitoring. Identifying and reviewing policy issues and making recommendations for City Manager and Council consideration. Direct and perform special projects for manager, such as assisting in bond issue campaign and financing strategy development, evaluation of Jackson County Solid Waste Management Plan, heading task force to develop water main replacement criteria, implementation of the new commercial driver’s license, etc. Serving as staff person to the Human Relations Commission and as a member of each of the City Council’s goals committees.

Risk Manager (October 1986 to October 1989)
Finance Department, City of Denton, Texas
Responsibilities: Establishing a system to promote the safety of City employees and to protect City resources and facilities from unexpected losses. Identifying and reviewing policy issues and making recommendations for management and Council consideration. Development of a Risk and Safety Manual, Hazard Communication Manual, and implementation of a self-insurance program which saved approximately $500,000, annually. Special projects included writing an Investment Policy, researching health insurance alternatives, and making presentations to citizen groups and professional organizations. Also, served as the Budget Analyst for the Police and Fire Departments.

Administrative Assistant (May 1985 to October 1986)
Finance Department, City of Denton, Texas
Responsibilities: Evaluating finance policies and procedures, recommending warranted modifications, producing revenue and expenditure long-range forecasts, and a variety of special projects as assigned by the Finance Director. Assisted in the coordination of the City’s operating budget, and developed strategies for the City to obtain the Government Finance Officers Association’s Distinguished Budget Award. Special projects included strategies to save an insolvent Motor Pool Fund and preparation of bond program presentations material for rating agencies.

TRAINING AND PROFESSIONAL SEMINARS

Model-Netics Instructor
Managing Management Time
Leadership Effectiveness Training
Toastmasters International (speech organization)
Flower Mound Leadership Academy
Jackson Leadership Academy
National Forum for Black Public Administrators’ Executive Leadership Institute
Covey Leadership Center’s Seven Habits of Highly Effective People
COMMUNITY INVOLVEMENT AND AFFILIATIONS

DENCO 911 Board Member, 1998-Present
United Way of Denton County, Campaign Chairman, 1996
Denton Public Schools Foundation Board of Directors, 1995-June 1997
Kiwanis Member
Texas City Management Association
International City Management Association
National Forum for Black Public Administration
Government Finance Officers Association of the United States and Canada
Government Finance Officers Association of Texas

EDUCATION/CERTIFICATION

Masters of Public Administration, University of North Texas, Denton, 1987
Bachelor of Arts, Political Science, University of North Texas, Denton, 1983
Certified Government Finance Officer, Government Finance Officers Association of Texas
Certified Municipal Finance Administrator, Municipal Treasurers' Association of the United States and Canada.
Troy C. Powell
3712 Saint Andrews Drive
The Colony, Texas 75056
Cell: (918) 269-4193
Office: (972) 624-3102
Email: tpowell@thecolonytx.gov

Objective
To serve as part of a leadership team in a dynamic local government addressing the future in visionary and innovative ways.

Education
Master of Political Science - Urban Affairs Management (Urban Management emphasis), University of Central Oklahoma, Edmond, OK.
- **Areas of Concentration:** Public Administration, Public Policy, Urban Management, and American Government.
- Awarded the Outstanding Graduate Award for Political Science/Urban Affairs

Bachelor of Arts in Political Science, University of Central Oklahoma, Edmond, Oklahoma.
- **Major Option:** Public Administration
- Awarded the Outstanding Undergraduate Award for Political Science Public Administration

Work Experience

City Manager, City of The Colony, Texas (May 2010- Present)
- Ensure implementation and communication of Council priorities and goals to both internal and external customers.
- Provide innovative and cost effective services to maximize our customer’s investment in our community.
- Administer the daily operations and activities of city divisions.

City Manager, City of Claremore, Oklahoma (Dec. 2005 – April 2010)
- Streamlined and flattened the organization making us more responsive and efficient
- Reduced departments from 29 to 21 by eliminating duplication of services and combining like departmental functions.
- Named by “Oklahoma Magazine” as one of the **Top 40 Professionals Under 40** in the State of Oklahoma for 2009.
- Embarked upon an aggressive community revitalization program to redevelop old and forgotten parts of our community.
- Implemented a Citizen Relationship Management software system to guarantee that citizens concerns are tracked, monitored and completed. If issues are not completed in allocated time I am notified and can take action.
- Implemented marketing and PR program to communicate aggressively and make sure we are getting our message to the citizens
- Reduced general operating budget four years in a row so more revenues can be spent on needed capital projects.
- Developed a long range strategy for community water, traffic, parks, drainage and electric needs.
- Created dynamic leadership teams that helped determine the outcomes and processes of our rapid change process. These teams ensured buy-in throughout the organizational shift.
- Lowered sanitation rates while increasing sanitation profitability by 131%.
- Streamlined boards and external support groups to provide for meaningful/efficient partnerships within our community.
- Developed partnerships with regional communities and county governments to create cost savings in duplicated service areas.
- Formed partnerships with private sector companies that increased service levels while providing innovative revenue streams for our community.

City of Edmond, Oklahoma  (1997- Dec. 2005)

**Assistant City Manager of Administration, (Jan. 2005- Dec. 2005)**
- Responsible for management of Parks and Recreation, Code Enforcement, Community Image, Oil and Gas Wells Enforcement, Urban Forestry, Organizational Development and Strategic Planning Departments. Human Resources, Management Information Systems, the Guthrie/Edmond regional Airport and the Convention and Visitors Bureau.

- Responsible for management of Parks and Recreation, Code Enforcement, Community Image, Oil and Gas Wells Enforcement, Urban Forestry, Organizational Development and Strategic Planning Departments
- Manage and direct all strategic planning activities and responsibilities for 32 operating units

**Director of Utility Accounting, Code Enforcement, and Community Image Departments, (2001 - 2002)**
- Managed Utility Accounting Department that is responsible for collecting and accounting for 40,000 accounts and $60+ million in revenue
- Managed and re-energized Code Enforcement and Oil and Gas Wells Enforcement Departments that were previously plagued by low morale and productivity
- Manage and direct all strategic planning activities and responsibilities for 32 operating units

**Management Analyst, (1999 - 2001)**
- Member of senior level management staff
- Directed benchmarking and performance measurement development for 32 operating units
- Coordinated joint facility use and partnering opportunities on behalf of the City of Edmond with other metropolitan government entities

**Strategic Business Plan Manager, (1998 - 1999)**
- Responsible for development and implementation of the strategic business plans for 32 operating units
- Responsible for monitoring all departmental plans and budgets quarterly

**Professional Service**
- Member of International City Management Association
• Awarded the International City Management Association Credentialed Manager Candidate designation for dedication to ethics and professional management
• Selected by Oklahoma Magazine as one of the top 40 leaders in the state under 40 years old, 2009
• Former member of International City Management Association Strategic Planning Committee and Conference Evaluation Committee
• Former President of the Edmond Exchange Club
• Founding Member of Champions of Character Council for the promotion of character in the workplace
• Received Citation and Commendation from the Oklahoma State Legislature for Leadership during the devastating ice storm of 2007.
Denco Area 9-1-1 District Board of Managers
FY2010

Jack Miller, Chairman
- Appointed by Denton County Commissioners Court
- Member since October 2000
- Term expires September 2010
- Former mayor and council member of Denton
- Self-employed as a human resource manager

Mayor Olive Stephens, Vice Chair
- Appointed by member cities in Denton County
- Member since 1987
- Term expires September 2011
- Mayor, Town of Shady Shores

Chief Lonnie Tatum, Secretary
- Appointed by Denton County Fire Chief’s Association
- Member since May 2004
- Term expires September 2011
- Fire Chief, City of Highland Village

Harlan Jefferson
- Appointed by member cities in Denton County
- Member since November 1998
- Term expires September 2010
- Town Manager, Town of Flower Mound

Bill Lawrence
- Appointed by Denton County Commissioners Court
- Member since October 2006
- Term expires September 2010
- Former Mayor of Highland Village
- Businessman, Highland Village

Keith Stephens
- Non-voting member appointed by largest telephone company (Verizon)
- Member since 2004
- Serves until replaced by telephone company
- Manager, Region Network Reliability, Verizon

All voting members serve two-year terms and are eligible for re-appointment.
ATTACHMENT 6

TOWN OF FLOWER MOUND, TEXAS

RESOLUTION NO. _________

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPOINTING ONE MEMBER TO THE BOARD OF MANAGERS OF THE DENCO AREA 9-1-1 DISTRICT.

WHEREAS, Section 772, Health and Safety Code, provides that two voting members of the Board of Managers of an Emergency Communications District shall be appointed jointly by all cities and towns lying wholly or partly within the District.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS:

SECTION 1

The Town of Flower Mound hereby votes for Harlan Jefferson as a member of the Board of Managers for the Denco Area 9-1-1 Emergency Communication District.

SECTION 2

This Resolution shall become effective immediately upon its passage and approval.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____ , ON THIS 16TH DAY OF AUGUST, 2010.

APPROVED:

______________________________
Melissa D. Northern, MAYOR

ATTEST:

______________________________
Paula J. Paschal, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

______________________________
Terrence S. Welch, TOWN ATTORNEY
TOWN COUNCIL MEETING
AGENDA ITEM NO: 3
August 16, 2010

| [X] CONSENT ITEM | [ ] REGULAR ITEM | [ ] WORK SESSION ITEM |

FROM: Tammy Wilson, Director of Accounting and Budget

THROUGH: Harlan Jefferson, Town Manager
Chuck Springer, Assistant Town Manager/CFO

PRESENTER: Chuck Springer, Assistant Town Manager/CFO

ITEM: Consider approval of an ordinance establishing the 2010 certified appraisal roll.

| [X] Ordinance | [ ] Resolution | [ ] Motion | [ ] Direction |

I. SUMMARY:

Approval of the certified appraisal roll is an annual process required by the Texas Property Tax Code. The Town will also be required to approve the tax roll after the rate is set. The roll lists all the taxable property and values within the Town limits for 2010.

II. BACKGROUND INFORMATION:

There are three main parts to the property tax system. First, the Denton Central Appraisal District (DCAD) and the Tarrant Appraisal District (TAD) set the value of the property in our Town’s limits each year. Second, the Appraisal Review Boards (ARB) settle any disagreements between the taxpayers and the DCAD or the TAD about the value of any property under protest. Third, the Town decides how much money it will need to spend to provide services to taxpayers. This determines the total amount of taxes that will need to be collected.

The preliminary appraisal was provided by the DCAD and the TAD in mid May and the certified appraisal roll was provided in late July. The Chief Appraisers certify the appraisal rolls that allows the Town to calculate and submit the effective and rollback tax rates.

The total taxable value on the 2010 appraisal roll including estimated values under protest is $6,767,459,520. Once the tax rate is approved, the Town will be able to calculate its 2010 tax levy (i.e., property tax revenue). These funds will be used to cover operating and maintenance expenses as well as debt service. On September 19, 2005, an ordinance was approved establishing a Tax Increment Reinvestment Zone (TIRZ). Approximately $176,665,889 of the 2010 appraisal roll is the incremental difference between the 2005 and 2010 appraised value of properties in the TIRZ.
III. **FISCAL IMPACT:**

N/A

IV. **LEGAL REVIEW:**

Meredith Ladd, of Brown & Hofmeister, L.L.P., has reviewed and approved as to form the proposed ordinance.

V. **ATTACHMENTS:**

1. Ordinance

VI. **RECOMMENDED MOTION OR ACTION:**

Move to approve an ordinance establishing the 2010 certified appraisal roll.
TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO._______

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING THE 2010 APPRAISAL ROLL; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Denton Central Appraisal District (DCAD) and the Tarrant Appraisal District (TAD) prepare the certified appraisal rolls and rolls under protest of the taxable property in the Town of Flower Mound, Texas (Town); and

WHEREAS, the Town uses the certified appraisal rolls and rolls under protest received from the DCAD and TAD to calculate the tax rate and rollback tax rate applicable to taxable property in the Town; and

WHEREAS, approval by the Town of the certified appraisal roll is required by state law as an integral part of the Town’s ability to levy and collect property taxes.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual determinations of the Town and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2

The Town Council hereby approves the 2010 appraisal roll of the Town, in the amount of $6,767,459,520 assessed valuation, based on the certified appraisal rolls and rolls under protest as approved by the Appraisal Review Board of the DCAD and the TAD.

SECTION 3

Any and all ordinances, resolutions, rules, regulations, policies, or provisions in conflict with the provisions of this Ordinance are hereby repealed and rescinded to the extent of the conflict herewith.
SECTION 4

If any section, paragraph, sentence, clause, phrase, or word in this Ordinance, or application thereof by any persons or circumstances is held invalid in any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and, the Town Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS 16TH DAY OF AUGUST, 2010.

APPROVED:

Melissa D. Northern, MAYOR

ATTEST:

Paula J. Paschal, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, TOWN ATTORNEY
TOWN COUNCIL MEETING
AGENDA ITEM NO: 4
August 16, 2010

[X] CONSENT ITEM [ ] REGULAR ITEM [ ] WORK SESSION ITEM

FROM: Tammy Wilson, Director of Accounting and Budget

THROUGH: Harlan Jefferson, Town Manager
Chuck Springer, Assistant Town Manager/CFO

PRESENTER: Chuck Springer, Assistant Town Manager/CFO

ITEM: Consider accepting the submission of the certified collection rate of 100 percent for the fiscal year beginning October 1, 2010, and ending September 30, 2011.

[ ] Ordinance [ ] Resolution [X] Motion [ ] Direction

I. SUMMARY:

Ad valorem tax collection revenue is divided between the General Fund (for operation and maintenance), the Debt Service Fund (for payment of principal and interest on debt obligations), and the Tax Increment Reinvestment Zone (TIRZ) Fund. The Town’s current rate of collection of ad valorem taxes is expected to meet or exceed 100 percent. The total collections include the current taxes, delinquent taxes, penalties, and interest.

II. BACKGROUND INFORMATION:

The purpose of this agenda item is to certify that the anticipated collection rate used for the General Fund, Debt Service Fund, and the TIRZ Fund is 100 percent for the 2010-2011 fiscal year, which is one of the steps required by state law to establish the 2010-2011 tax rate. The collection rate includes the current taxes, delinquent taxes, penalties, and interest. The attachment contains the Town’s collection rate for the last ten fiscal years.

Chapter 26 of the Property Tax Code requires municipalities to adopt an estimated collection rate to comply with truth-in-taxation laws in adopting their tax rates. The laws have two purposes: 1) to make taxpayers aware of tax rate proposals; and 2) to allow taxpayers, in certain cases, to roll back or limit a tax increase.

III. FISCAL IMPACT:

N/A
IV. LEGAL REVIEW:

Meredith Ladd, of Brown & Hofmeister, L.L.P., has reviewed this item.

V. ATTACHMENTS:

1. Property Tax Collections – Last Ten Fiscal Years

VI. RECOMMENDED MOTION OR ACTION:

Move to accept the submission of the certified collection rate of 100 percent for the fiscal year beginning October 1, 2010, and ending September 30, 2011.
# TOWN OF FLOWER MOUND, TEXAS

PROPERTY TAX COLLECTIONS
LAST TEN FISCAL YEARS

<table>
<thead>
<tr>
<th>Year Ended September 30</th>
<th>Percent of Current Levy Collected</th>
<th>Total Collections as Percent of Tax Levy</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>99.27%</td>
<td>100.48%</td>
</tr>
<tr>
<td>2001</td>
<td>98.99%</td>
<td>99.92%</td>
</tr>
<tr>
<td>2002</td>
<td>98.74%</td>
<td>100.16%</td>
</tr>
<tr>
<td>2003</td>
<td>99.11%</td>
<td>100.56%</td>
</tr>
<tr>
<td>2004</td>
<td>99.20%</td>
<td>100.17%</td>
</tr>
<tr>
<td>2005</td>
<td>99.42%</td>
<td>100.80%</td>
</tr>
<tr>
<td>2006</td>
<td>99.42%</td>
<td>100.08%</td>
</tr>
<tr>
<td>2007</td>
<td>99.46%</td>
<td>100.34%</td>
</tr>
<tr>
<td>2008</td>
<td>99.28%</td>
<td>100.32%</td>
</tr>
<tr>
<td>2009</td>
<td>99.17%</td>
<td>100.15%</td>
</tr>
</tbody>
</table>
TOWN COUNCIL MEETING  
AGENDA ITEM NO: 5  
August 16, 2010

[ ] CONSENT ITEM  [ ] REGULAR ITEM  [ ] WORK SESSION ITEM

FROM: Tammy Wilson, Director of Accounting and Budget

THROUGH: Harlan Jefferson, Town Manager  
Chuck Springer, Assistant Town Manager/CFO

PRESENTER: Chuck Springer, Assistant Town Manager/CFO

ITEM: Consider accepting the submission of the notice of an effective tax rate of $0.4643 per $100 assessed valuation and a rollback tax rate of $0.4914 per $100 assessed valuation for the fiscal year beginning October 1, 2010, and ending September 30, 2011.

[ ] Ordinance  [ ] Resolution  [X] Motion  [ ] Direction

I. SUMMARY:

State law requires municipalities to submit to their governing boards and publish in a local newspaper a notice showing their effective and rollback tax rates and the notice-and-hearing limit for the upcoming fiscal year. The effective tax rate allows the public to evaluate the relationship between taxes for the current fiscal year and the upcoming fiscal year. This rate will produce the same amount of tax revenue if applied to the same properties in both years. The rollback rate is the highest tax rate the Town can set before taxpayers can start rollback procedures.

II. BACKGROUND INFORMATION:

All taxing units that levied property taxes in 2009 and intend to levy them in 2010 must calculate an effective tax rate and a rollback tax rate. Although the actual calculation is more detailed, the Town’s effective tax rate is generally equal to the prior year’s taxes divided by the current taxable value of properties that were also on the tax roll in the prior year.

The effective tax rate enables the public to evaluate the relationship between taxes for the current year and taxes that a proposed tax rate would produce if applied to the same properties taxed in both years.

The rollback rate calculation is split into two separate components: an operating and maintenance rate and a debt rate. The rollback rate calculation allows municipalities to raise 108 percent of the operating and maintenance money raised in the prior year, plus the necessary debt rate.
State law also requires municipalities to publish the effective and rollback tax rates, and to hold two public hearings if the proposed tax rate exceeds the lower of the effective or rollback tax rate. Because the Town’s proposed tax rate of $0.4497 is lower than the effective tax rate of $0.4643 and the rollback rate of $0.4914 the Town will not hold public hearings on the tax rate.

III. FISCAL IMPACT:

N/A

IV. LEGAL REVIEW:

Meredith Ladd, of Brown & Hofmeister, L.L.P., has reviewed this item.

V. ATTACHMENTS:

1. 2010 Property Tax Rates in the Town of Flower Mound

VI. RECOMMENDED MOTION OR ACTION:

Move to accept the submission of the notice of an effective tax rate of $0.4643 per $100 assessed valuation and a rollback tax rate of $0.4914 per $100 assessed valuation for the fiscal year beginning October 1, 2010, and ending September 30, 2011.
Attachment 1

2010 Property Tax Rates in Town of Flower Mound

This notice concerns 2010 property tax rates for the Town of Flower Mound. It presents information about three tax rates. Last year’s tax rate is the actual rate the taxing unit used to determine property taxes last year. This year’s effective tax rate would impose the same total taxes as last year if you compare properties taxed in both years. This year’s rollback tax rate is the highest tax rate the taxing unit can set before taxpayers can start tax rollback procedures. In each case these rates are found by dividing the total amount of taxes by the tax base (the total value of taxable property) with adjustments as required by state law. The rates are given per $100 of property value.

LAST YEAR’S TAX RATE:

- Last year’s operating taxes $23,097,863
- Last year’s debt taxes $8,294,038
- Last year’s total taxes $31,391,901
- Last year’s tax base $6,980,631,718
- Last year’s total tax rate 0.449700 /$100

THIS YEAR’S EFFECTIVE TAX RATE:

- Last year’s adjusted taxes (after subtracting taxes on lost property) $30,452,209
- ÷ This year’s adjusted tax base (after subtracting value of new property) $6,558,146,508
- = This year’s effective tax rate 0.464341 /$100

THIS YEAR’S ROLLBACK TAX RATE:

- Last year’s adjusted operating taxes (after subtracting taxes on lost property and adjusting for any transferred function, tax increment financing, and/or enhanced indigent health care expenditures) $22,152,185
- ÷ This year’s adjusted tax base $6,558,146,508
- = This year’s effective operating rate 0.337781 /$100
- x 1.08 = this year’s maximum operating rate 0.364803 /$100
- ÷ This year’s debt rate 0.126610 /$100
- = This year’s rollback rate 0.491413 /$100

STATEMENT OF INCREASE/DECREASE

If the Town of Flower Mound adopts a 2010 tax rate equal to the effective tax rate of $0.464341 per $100 of value, taxes would decrease compared to 2009 taxes by $915,969.

SCHEDULE A - UNENCUMBERED FUND BALANCES

The following estimated balances will be left in the unit’s property tax accounts at the end of the fiscal year. These balances are not encumbered by a corresponding debt obligation.

<table>
<thead>
<tr>
<th>Type of Property Tax Fund</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>$7,256,155</td>
</tr>
<tr>
<td>Debt Service Fund</td>
<td>$510,560</td>
</tr>
</tbody>
</table>
SCHEDULE B - 2010 DEBT SERVICE

The unit plans to pay the following amounts for long-term debts that are secured by property taxes. These amounts will be paid from property tax revenues (or additional sales tax revenues, if applicable).

<table>
<thead>
<tr>
<th>Description of Debt</th>
<th>Principal or Contract Payment to be Paid from Property Taxes</th>
<th>Interest to be Paid from Property Taxes</th>
<th>Other Amounts to be Paid</th>
<th>Total Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Obligation, Series 2001</td>
<td>$55,000</td>
<td>$1,788</td>
<td>$0</td>
<td>$56,788</td>
</tr>
<tr>
<td>General Obligation, Series 2003</td>
<td>$155,000</td>
<td>$116,180</td>
<td>$0</td>
<td>$271,180</td>
</tr>
<tr>
<td>General Obligation, Series 2004</td>
<td>$215,000</td>
<td>$171,994</td>
<td>$0</td>
<td>$386,994</td>
</tr>
<tr>
<td>General Obligation, Series 2005 - A</td>
<td>$325,000</td>
<td>$284,169</td>
<td>$0</td>
<td>$609,169</td>
</tr>
<tr>
<td>General Obligation Refunding, Series 2005</td>
<td>$1,760,000</td>
<td>$1,037,708</td>
<td>$0</td>
<td>$2,797,708</td>
</tr>
<tr>
<td>General Obligation, Series 2006</td>
<td>$290,000</td>
<td>$309,531</td>
<td>$0</td>
<td>$599,531</td>
</tr>
<tr>
<td>General Obligation, Series 2007</td>
<td>$350,000</td>
<td>$383,888</td>
<td>$0</td>
<td>$733,888</td>
</tr>
<tr>
<td>General Obligation Refunding, Series 2009</td>
<td>$475,000</td>
<td>$130,250</td>
<td>$0</td>
<td>$605,250</td>
</tr>
<tr>
<td>General Obligation Refunding, Series 2010</td>
<td>$100,000</td>
<td>$186,945</td>
<td>$0</td>
<td>$286,945</td>
</tr>
<tr>
<td>Certificates of Obligations, Series 2001</td>
<td>$495,000</td>
<td>$11,138</td>
<td>$0</td>
<td>$506,138</td>
</tr>
<tr>
<td>Certificates of Obligations, Series 2003</td>
<td>$45,000</td>
<td>$33,090</td>
<td>$0</td>
<td>$78,090</td>
</tr>
<tr>
<td>Certificates of Obligations, Series 2004</td>
<td>$20,000</td>
<td>$15,969</td>
<td>$0</td>
<td>$35,969</td>
</tr>
<tr>
<td>Certificates of Obligations, Series 2005</td>
<td>$35,000</td>
<td>$28,746</td>
<td>$0</td>
<td>$63,746</td>
</tr>
<tr>
<td>Certificates of Obligations, Series 2006</td>
<td>$225,000</td>
<td>$238,100</td>
<td>$0</td>
<td>$463,100</td>
</tr>
<tr>
<td>Certificates of Obligations, Series 2007</td>
<td>$130,000</td>
<td>$141,929</td>
<td>$0</td>
<td>$271,929</td>
</tr>
<tr>
<td>Certificates of Obligations, Series 2008</td>
<td>$75,000</td>
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<td>Certificates of Obligations, Series 2010</td>
<td>$110,000</td>
<td>$100,943</td>
<td>$0</td>
<td>$210,943</td>
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<tr>
<td>Administration and Arbitrage Fees</td>
<td>$0</td>
<td>$0</td>
<td>$20,000</td>
<td>$20,000</td>
</tr>
</tbody>
</table>

Total required for 2010 debt service $8,411,870
- Amount (if any) paid from funds listed in Schedule A $70,000
- Amount (if any) paid from other resources $0
- Excess collections last year $0
= Total to be paid from taxes in 2010 $8,341,870
+ Amount added in anticipation that the unit will collect only 100% of its taxes in 2010 $0

= Total Debt Levy $8,341,870

This notice contains a summary of actual effective and rollback tax rates’ calculations. You can inspect a copy of the full calculations at 1505 E. McKinney Street, Denton, TX 76209.

Name of person preparing this notice: Steve Mossman
Title: Denton County Tax Assessor Collector
Date Prepared: July 25, 2010
[X] CONSENT ITEM  [ ] REGULAR ITEM  [ ] WORK SESSION ITEM

FROM: Tammy Wilson, Director of Accounting and Budget

THROUGH: Harlan Jefferson, Town Manager
Chuck Springer, Assistant Town Manager/CFO

PRESENTER: Chuck Springer, Assistant Town Manager/CFO

ITEM: Consider proposing a maximum tax rate of $0.4497 per $100 valuation for the fiscal year beginning October 1, 2010, and ending September 30, 2011; and scheduling the August 26, 2010, public hearing on the budget, and scheduling the September 20, 2010, adoption of said budget and tax rate; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.

[ ] Ordinance  [ ] Resolution  [X] Motion  [ ] Direction

I. SUMMARY:

The purpose of this agenda item is to consider proposing a maximum tax rate of $0.4497 per $100 valuation for FY 2010-2011, scheduling the August 26, 2010, public hearing on the budget, and scheduling the September 20, 2010, adoption of the FY 2010-2011 budget and tax rate.

II. BACKGROUND INFORMATION:

Chapter 26 of the Property Tax Code requires municipalities to comply with truth-in-taxation laws in adopting their tax rates. The laws are designed to make taxpayers aware of tax rate proposals and to allow taxpayers, in certain cases, to roll back or limit a tax increase.

The Town Council must take a record vote on the maximum tax rate to be considered for the upcoming fiscal year. The adopted tax rate may not exceed this maximum rate.

The Town is required to hold two public hearings on the tax rate and publish a notice in the newspaper, on TV, and web site before adopting a tax rate that exceeds $0.4643 (the lower of the rollback rate or the effective tax rate). Because the Town is proposing a maximum tax rate of $0.4497 which is lower than the effective tax rate, the Town will not hold public hearings on the tax rate or publish a notice this year.

Section 9.06 of the Town Charter requires the Town Council to fix the time and place of the public hearing on the budget and to publish a notice in the official
newspaper of the Town, as required by law. This public hearing is in addition to
the tax rate public hearings required by the State Property Tax Code.

III. FISCAL IMPACT:

Proposed Revenue: $30,285,072 in property tax revenue.

Proposed Receipts/Collections:

<table>
<thead>
<tr>
<th>Account No./Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>100-4105 Property Taxes</td>
<td>$21,162,149</td>
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<td>110-4105 Property Taxes</td>
<td>8,328,456</td>
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<tr>
<td>308-4105 Property Taxes</td>
<td>794,467</td>
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</table>

Once the proposed tax rate is applied to the Town’s 2010 taxable value, it will produce
appropriate revenue to fund expenditures of the General Fund, Debt Service Fund, and
TIRZ #1 Fund.

Finance Review by: Chuck Springer, Assistant Town Manager/CFO

IV. LEGAL REVIEW:

Meredith Ladd, of Brown & Hofmeister, L.L.P., has reviewed this item.

V. ATTACHMENTS:

N/A

VI. RECOMMENDED MOTION OR ACTION:

Move to propose a maximum tax rate of $0.4497 per $100 valuation for the
fiscal year beginning October 1, 2010, and ending September 30, 2011; and
scheduling the August 26, 2010, public hearing on the budget, and scheduling
the September 20, 2010, adoption of said budget and tax rate; with each
meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers
Road.
FROM: Tammy Wilson, Director of Accounting and Budget

THROUGH: Harlan Jefferson, Town Manager
Chuck Springer, Assistant Town Manager/CFO

PRESENTER: Chuck Springer, Assistant Town Manager/CFO

ITEM: Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to schedule a public hearing for August 26, 2010, on the Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget and to schedule a meeting for September 20, 2010, to take action on the proposed budget; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.

I. SUMMARY:

The purpose of this agenda item is to schedule the August 26, 2010, public hearing on the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District (Fire District) budget and schedule the September 20, 2010, adoption of the FY 2010-2011 Fire District budget.

II. BACKGROUND INFORMATION:

At the March 3, 2008, Town Council meeting, the Town Council acting as the Board of Directors for the Fire District, adopted alternative budget procedures for the Fire District to follow similar procedures and dates to the Town’s annual budget.

Section 9.06 of the Town Charter requires the Town Council to fix the time and place of the public hearing on the budget and to publish a notice in the official newspaper of the Town, as required by law.

III. FISCAL IMPACT:

N/A

IV. LEGAL REVIEW:

Meredith Ladd, of Brown & Hofmeister, L.L.P., has reviewed this item.
V. ATTACHMENTS:

N/A

VI. RECOMMENDED MOTION OR ACTION:

Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District move to schedule a public hearing for August 26, 2010, on the Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget, and schedule a meeting for September 20, 2010, to take action on the proposed budget; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.
TOWN COUNCIL MEETING
AGENDA ITEM NO: 8
August 16, 2010

[X] CONSENT ITEM [ ] REGULAR ITEM [ ] WORK SESSION ITEM

FROM: Tammy Wilson, Director of Accounting and Budget

THROUGH: Harlan Jefferson, Town Manager
Chuck Springer, Assistant Town Manager/CFO

PRESENTER: Chuck Springer, Assistant Town Manager/CFO

ITEM: Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to schedule a public hearing for August 26, 2010, on the Flower Mound Crime Control and Prevention District budget and to schedule a meeting for September 20, 2010, to take action on the proposed budget; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.

[ ] Ordinance [ ] Resolution [X] Motion [ ] Direction

I. SUMMARY:

The purpose of this agenda item is to schedule the August 26, 2010, public hearing on the Town of Flower Mound Crime Control and Prevention District (Crime District) budget and schedule the September 20, 2010, adoption of the FY 2010-2011 Crime District budget.

II. BACKGROUND INFORMATION:

At the March 3, 2008, Town Council meeting, the Town Council acting as the Board of Directors for the Crime District, adopted alternative budget procedures for the Crime District to follow similar procedures and dates to the Town’s annual budget.

Section 9.06 of the Town Charter requires the Town Council to fix the time and place of the public hearing on the budget and to publish a notice in the official newspaper of the Town, as required by law.

III. FISCAL IMPACT:

N/A

IV. LEGAL REVIEW:

Meredith Ladd, of Brown & Hofmeister, L.L.P., has reviewed this item.
V. ATTACHMENTS:

N/A

VI. RECOMMENDED MOTION OR ACTION:

Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District move to schedule a public hearing for August 26, 2010, on the Flower Mound Crime Control and Prevention District budget, and schedule a meeting for September 20, 2010, to take action on the proposed budget; with each meeting to be held at 6:00 PM, at Town Hall, located at 2121 Cross Timbers Road.
TOWN COUNCIL MEETING
AGENDA ITEM NO: 9
August 16, 2010

[X] CONSENT ITEM  [ ] REGULAR ITEM  [ ] WORK SESSION ITEM

FROM: Doug Stevens, Assistant Director of Public Works

THROUGH: Harlan Jefferson, Town Manager
          Kent Collins, P.E., Assistant Town Manager

PRESENTER: Kent Collins, P.E., Assistant Town Manager

ITEM: Consider approval of Bid No. 66-10-B, for the construction of the Hamlett Lane Paving Reconstruction project, to 3D Paving and Contracting, LLC, in the amount of $260,395.00, and authorization for the Mayor to execute same on behalf of the Town.

[ ] Ordinance  [ ] Resolution  [ X ] Motion  [ ] Direction

I. SUMMARY:

On July 7, 2010, bids were received and opened for construction of Hamlett Lane Paving Reconstruction, from Churchill Drive east to 2800 Hamlett Lane. The project includes the reconstruction of existing concrete pavement, including areas of adjacent sidewalk. 3D Paving and Contracting, LLC, submitted a bid of $260,395.00, and was the lowest responsible bidder of ten responding bidders.

II. BACKGROUND INFORMATION:

Due to age and deterioration, Street Services identified a portion of Hamlett Lane as a priority for reconstruction. On November 16, 2009, the Town Council approved a contract with Teague Nall and Perkins, to provide professional engineering services associated with the Hamlett Lane Paving Reconstruction project, in the amount of $51,800.00.

The construction will include replacing existing deteriorating concrete pavement with new concrete pavement and the replacement of existing sidewalks at various locations. The balance of the project funds will be used for testing and contingency.

III. FISCAL IMPACT:

Proposed Expenditure: $260,395.00

Proposed Funding: Account No./Description        Amount
                   316-556-7806        $260,395.00
This project is included in the Capital Improvement Program plan, with a total budget of $450,000.00. Upon approval of this item, the project will have the following funds available:

316-556-7806 $137,562.60

Finance Review by: Chuck Springer, Assistant Town Manager/CFO

IV. LEGAL REVIEW:

Alan Lathrom, of Brown & Hofmeister, L.L.P., has reviewed the construction agreement as to form and legality.

V. ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

VI. RECOMMENDED MOTION OR ACTION:

Move to approve the award of Bid No. 66-10-B, for the construction of the Hamlett Lane Paving Reconstruction project, to 3D Paving and Contracting, LLC, in the amount of $260,395.00, and authorize the Mayor to execute same on behalf of the Town.
## TOWN OF FLOWER MOUND

### BID TABULATION

<table>
<thead>
<tr>
<th>Bidders</th>
<th>Total Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>3D Paving and Contracting, LLC</td>
<td>$ 260,395.00</td>
</tr>
<tr>
<td>Santos Construction, Inc.</td>
<td>$ 267,900.00</td>
</tr>
<tr>
<td>Camino Construction, LP</td>
<td>$ 289,313.40</td>
</tr>
<tr>
<td>Jim Bowman Construction Company, Inc.</td>
<td>$ 322,674.00</td>
</tr>
<tr>
<td>Jeske Construction Company</td>
<td>$ 340,238.00</td>
</tr>
<tr>
<td>Tiseo Paving Company</td>
<td>$ 344,047.50</td>
</tr>
<tr>
<td>JRJ Paving, LP</td>
<td>$ 344,334.82</td>
</tr>
<tr>
<td>Rebcon, Inc.</td>
<td>$ 373,340.00</td>
</tr>
<tr>
<td>L &amp; E Hart Enterprises, Inc.</td>
<td>$ 378,142.00</td>
</tr>
<tr>
<td>Estrada Concrete Co., LLC</td>
<td>$ 404,520.00</td>
</tr>
</tbody>
</table>

**All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.**

Certified By: January M. Cook, CPPO, CPPB  
Purchasing Agent  
Town of Flower Mound, Texas  

Date: July 7, 2010
ATTACHMENT 2

TOWN OF FLOWER MOUND

HAMLETT LANE PAVING RECONSTRUCTION

Bid # 66-10-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 16th day of August, 2010, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town”, and 3D Paving and Contracting, LLC, a limited liability company, hereinafter referred to as the “Contractor.” For and in consideration of the payment, agreements and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

HAMLETT LANE PAVING RECONSTRUCTION,

Bid # 66-10-B

in the Town of Flower Mound, Texas, and all extra work in connection therewith, under the terms as stated in this Agreement, and under the terms of the Contract Documents; and at his, her or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools and other accessories and services necessary to complete the said construction in accordance with all the Contract Documents, incorporated herein as if written word for word, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the Conditions and Specifications as prepared by the Town of Flower Mound or its consultant hereinafter called Engineer, who has been identified by the endorsement of the Contractor's written proposal, and the General Conditions, Supplemental Conditions and Special Provisions of this Agreement, and the payment, performance, and maintenance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Agreement.

ARTICLE 1. The Contract Documents shall consist of the following documents:

A. The Construction Agreement;
B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;
C. Any listed and numbered addenda;
D. Special Provisions;
E. Supplementary Conditions;
F. Construction Drawings or Plans;
G. Technical Specifications;
H. Town's Standard Construction Details;
I. The most current edition of the Town of Flower Mound Design Criteria and Construction Standards (by reference);

J. Occupational Safety and Health Standards – Excavation, 20 CFR Part 1926 (by reference);

K. Texas Manual on Uniform Traffic Control Devices (TMUTCD) (by reference);

L. The General Conditions;

M. Public Works Construction Standards - North Central Texas, as amended (by reference);

N. Notice to Bidders;

O. Instructions to Bidders;

P. The Town's written notice to proceed to Contractor;

Q. The Contractor’s Bid Proposal;

R. The Performance Bond, Payment Bond and Maintenance Bond; and

S. Bid materials distributed by the Town that relate to the Project.

These Contract Documents are incorporated by reference into this Agreement as if set out in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings it shall be the Contractor’s obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the project.

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed Two Hundred Sixty Thousand Three Hundred Ninety Five Dollars and No cents ($260,395.00) taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and substantial manner, ready for use, within the specified time for completion of one hundred twenty (120) calendar days, and final completion of one hundred fifty (150) calendar days ready for final payment. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.
ARTICLE 3. Before commencing work, the Contractor shall, at its own expense, procure, pay for and maintain the insurance coverage required by the Contract Documents written by companies approved by the State of Texas and acceptable to the Town of Flower Mound. The Contractor shall furnish to the Town of Flower Mound Purchasing Manager certificates of insurance executed by the insurer or its authorized agent stating the type of coverages, limits of each such coverage, expiration dates and compliance with all applicable required provisions of the Contract Documents.

ARTICLE 4. The Contractor shall procure and pay for performance and payment bonds applicable to the work in the amount of the total bid price. The Contractor shall also procure and pay for a maintenance bond applicable to the work in the amount of one hundred percent (100%) of the total bid price. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in the Special Conditions. The performance, payment and maintenance bonds shall be issued in the form attached to this Construction Agreement as Exhibits B, C and D. Other performance, payment and maintenance bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

The performance, payment and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment and maintenance bonds upon Town request. In addition to the foregoing requirements, if the amount of the bond exceeds One Hundred Thousand Dollars ($100,000) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety’s name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars ($100,000) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety’s or reinsurer’s name in the current U.S. Treasury Department Circular 570.

ARTICLE 5. It is hereby further agreed that in consideration of the faithful performance of the work by the Contractor, the Town shall pay the Contractor the compensation due him by reason of said faithful performance of the work in accordance with the provisions of this Agreement. As it completes portions of the Work, the Contractor may request progress payments from the Town. Progress payments shall be made by the Town based on the Town's estimate of the value of the Work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site only if the Contractor provides to the Town satisfactory evidence that material suppliers have been paid for these materials.

No progress payment shall be due to the Contractor until the Contractor furnishes to the Town:

1. copies of documents reasonably necessary to aid the Town in preparing an estimate of the value of Work properly completed;

2. full releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to the Town releasing all
licensa or claims relating to goods and services provided up to the date of the most recent
previous progress payment;

3. an updated and current schedule clearly detailing the project's critical path elements; and

4. any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the
Town determines that more frequent payments are appropriate. Further, progress payments are to be
based on estimates and these estimates are subject to correction through the adjustment of subsequent
progress payments and the final payment to Contractor. If the Town determines after final payment that it
has overpaid the Contractor, then Contractor agrees to pay to the Town the overpayment amount specified
by the Town within thirty (30) calendar days after it receives written demand from the Town.

The fact that the Town makes a progress payment shall not be deemed to be an admission by the Town
concerning the quantity, quality or sufficiency of the Contractor's work. Progress payments shall not be
deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its
responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the Town shall
withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each
progress payment shall be set depending upon the value of the Contract Work on the effective date of the
Contract:

<table>
<thead>
<tr>
<th>Contract Amount</th>
<th>Retainage Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to $25,000</td>
<td>15%</td>
</tr>
<tr>
<td>$25,000 to $400,000</td>
<td>10%</td>
</tr>
<tr>
<td>Over $400,000</td>
<td>5%</td>
</tr>
</tbody>
</table>

Retainage shall be withheld and may be paid to:

a. ensure proper completion of the Work. The Town may use retained funds to pay
   replacement or substitute contractors to complete unfinished or defective work;

b. ensure timely completion of the Work. The Town may use retained funds to pay
   liquidated damages; and

c. provide an additional source of funds to pay claims for which the Town is entitled to
   indemnification from Contractor under the Contract Documents.

Retained funds shall be held by the Town in accounts that shall not bear interest. Retainage not otherwise
withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the
final payment.
ARTICLE 6. The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that the Work has not been performed in accordance with the Contract Documents. The Town may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work.

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents.

Amounts withheld under this section shall be in addition to any retainage.

ARTICLE 7. When the erosion control measures have been completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents and per TPDES General Construction Permit, it shall issue a written Notice of Acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents or TPDES General Construction Permit, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

ARTICLE 8. When the Work is completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents, then it shall provide the Contractor with a written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that Work shall be deemed accepted on the date specified in the Town’s written notice of acceptance of the Work. The Work shall not be deemed to be accepted based on “substantial completion” of the Work, use or occupancy of the Work, or for any reason other than the Town’s written Notice of Acceptance. Further, the issuance of a certificate of occupancy for all or any part of the Work shall not constitute a Notice of Acceptance for that Work.

In its discretion, the Town may issue a Notice of Acceptance covering only a portion of the Work. In this event, the notice shall state specifically what portion of the Work is accepted.

ARTICLE 9. After all Work required under the Contract Documents has been completed, inspected, and accepted, the Town shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

1. include the estimate of the value of Work properly completed since the date of the most recent previous progress payment;

2. correct prior progress payments; and

3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and

CA-5 Construction Agreement

Rev. 04-20-10
materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the Town copies of all documents that the Town determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that the Town has satisfied its obligation to administer the Agreement in accordance with applicable law.

Subject to the requirements of the Contract Documents, the Town shall pay the Final Payment within thirty (30) calendar days after the date specified in the Notice of Acceptance. This provision shall apply only after all Work called for by the Contract Documents has been accepted.

ARTICLE 10. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE TOWN, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENCE ACTS OR OMISSIONS OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS").

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven (7) business days after receiving written notice from the Town that it is invoking its right to indemnification under this Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay these attorneys' fees and expenses.

The Town retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so. To the extent that Town elects to provide and pay for any such costs, Contractor shall indemnify and reimburse Town for such costs.

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred Forty Dollars ($240.00) per day or portion of a day

CA-6  Construction Agreement

Rev. 04-20-10
in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Forty Dollars ($240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

ARTICLE 12. For a two-year period after the date specified in a written notice of acceptance of Work and authorization to make final payment by the Flower Mound Town Council, Contractor shall provide and pay for all labor and materials that the Town determines are necessary to correct all defects in the Work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor. This shall also include areas of vegetation that did meet TPDES General Construction Permit during final close out but have since become noncompliant.

Forty-five (45) to sixty (60) calendar days before the end of the two-year warranty period, the Town may make a warranty inspection of the Work. The Town shall notify the Contractor of the date and time of this inspection so that a Contractor representative may be present. After the warranty inspection, and before the end of the two-year warranty period, the Town shall mail to the Contractor a written notice that specifies the defects in the Work that are to be corrected.

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the Town. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Town may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the performance bond surety, or both.

If the Town determines that a hazard exists because of defective materials and workmanship, then the Town may take steps to alleviate the hazard, including making repairs. These steps may be taken without prior notice either to the Contractor or its surety. Expenses incurred by the Town to alleviate the hazard shall be paid by the Contractor, the performance bond surety, or both.

Any Work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that Work performed during the warranty period is performed with required insurance and the performance and payment bonds still in effect.

Work performed during the two-year warranty period shall itself be subject to a one-year warranty. This warranty shall be the same as described in this section.

The Town may make as many warranty inspections as it deems appropriate.

ARTICLE 13. The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the Work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.
Ancillary/Integral Professional Services: In selecting an architect, engineer, land surveyor, or other professional to provide professional services, if any, that are required by the Contract Documents, Contractor shall not do so on the basis of competitive bids but shall make such selection on the basis of demonstrated competence and qualifications to perform the services in the manner provided by Section 2254.004 of the Texas Government Code and shall so certify to the Town the Contractor's agreement to comply with this provision with Contractor's bid.

ARTICLE 14. The Contractor shall sign the Construction Agreement, and deliver signed performance, payment and maintenance bonds and proper insurance policy endorsements (and/or other evidence of coverage) within ten (10) calendar days after the Town makes available to the Contractor copies of the Contract Documents for signature. Six (6) copies of the Contract Documents shall be signed by an authorized representative of the Contractor and returned to the Town.

The Construction Agreement "effective date" shall be the date on which the Town Council acts to approve the award of the Contract for the Work to Contractor. It is expressly provided, however, that the Town Council delegates the authority to the Town Manager or his designee to rescind the Contract award to Contractor at any time before the Town delivers to the Contractor a copy of this Construction Agreement that bears the signature of the Mayor or Town Manager and Town Secretary or their authorized designees. The purpose of this provision is to ensure:

1. that Contractor timely delivers to the Town all bonds and insurance documents; and

2. that the Town retains the discretion not to proceed if the Town Manager or his designee determines that information indicates that the Contractor was not the lowest responsible bidder or that the Contractor cannot perform all of its obligations under the Contract Documents.

THE CONTRACTOR AGREES THAT IT SHALL HAVE NO CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST TOWN, INCLUDING A CLAIM FOR BREACH OF CONTRACT, NOR SHALL THE TOWN BE REQUIRED TO PERFORM UNDER THE CONTRACT DOCUMENTS, UNTIL THE DATE THE TOWN DELIVERS TO THE CONTRACTOR A COPY OF THE CONSTRUCTION AGREEMENT BEARING THE SIGNATURES JUST SPECIFIED.

The Contract Documents shall be construed and interpreted by applying Texas law. Exclusive venue for any litigation concerning the Contract Documents shall be Denton County, Texas.

Although the Construction Agreement has been drafted by the Town, should any portion of the Construction Agreement be disputed, the Town and Contractor agree that it shall not be construed more favorably for either party.

The Contract Documents are binding upon the Town and Contractor and shall inure to their benefit and as well as that of their respective successors and assigns.

If Town Council approval is not required for the Construction Agreement under applicable law, then the Construction Agreement "effective date" shall be the date on which the Mayor or Town Manager and Town Secretary or their designees have signed the Construction Agreement. If the Mayor or Town Manager and Town Secretary sign on different dates, then the later date shall be the effective date.
IN WITNESS WHEREOF, the Town and the Contractor, respectively, have caused this Agreement to be duly executed in the day and year first herein written in six copies, all of which to all intents and purposes shall be considered as the original.

This Agreement will be effective on the 16th day of August, 2010.

TOWN OF FLOWER MOUND

Melissa D. Northern, MAYOR

ATTEST:

Paula J.Paschal, TOWN SECRETARY

CONTRACTOR

______________________________ (Signature)

______________________________ (Printed Name)

______________________________ (Position)

(CORPORATE SEAL)

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, TOWN ATTORNEY

ATTEST:

______________________________ (Signature)

______________________________ (Position)
TOWN COUNCIL MEETING
AGENDA ITEM NO: 10
August 16, 2010

[ ] CONSENT ITEM  [ ] REGULAR ITEM  [ ] WORK SESSION ITEM

FROM: Tiffany Bruce, P.E., Engineering Manager

THROUGH: Harlan Jefferson, Town Manager,
          Kent Collins, P.E., Assistant Town Manager,

PRESENTER: Kent Collins, P.E., Assistant Town Manager

ITEM: Consider approval of a Professional Services Agreement with Teague, Nall and Perkins, to provide professional engineering design services for Chinn Chapel Road Phase I, in the amount of $299,000.00, and authorization for the Mayor to execute same on behalf of the Town.

[ ] Ordinance  [ ] Resolution  [ ] Motion  [ ] Direction

I. SUMMARY:

The Professional Services Agreement provides professional engineering services associated with the construction of Chinn Chapel Road Phase I (Waketon Road to FM 407), including preliminary design, final design, preparation of bidding documents, bidding phase services, and legal documents for property acquisition. This agreement sets forth the services, schedule, and basis of compensation in the amount of $299,000.00 between Teague, Nall and Perkins, and the Town of Flower Mound. Teague, Nall and Perkins, is on the current list of firms for engineering services with the Town, until May 21, 2011.

II. BACKGROUND INFORMATION:

The Chinn Chapel Road Phase I project is included in the five-year Capital Improvement Program. Chinn Chapel Road Phase I is the last segment of Chinn Chapel Road scheduled for improvements within the Town. The project will provide for the construction of an Urban Minor Arterial Undivided cross section with one roundabout at Dixon Lane.

The Professional Services Agreement provides for schematic design, preliminary design, and final design services including preparation of bidding documents. The agreement also provides for the preparation of legal descriptions for the acquisition of necessary right-of-way for the construction of the road. Remaining funds will be used for real property services, including appraisal and acquisition, and construction and testing for the project.

III. FISCAL IMPACT:

Proposed Expenditure: $299,000.00
Proposed Funding:  

<table>
<thead>
<tr>
<th>Account No./Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>308-503-7061</td>
<td>$299,000.00</td>
</tr>
</tbody>
</table>

This project is included in the Capital Improvement Program plan, with a total budget of $3,112,000.00. Upon approval of this item, the project will have the following funds available:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>308-503-7061</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Future Funding</td>
<td>2,812,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$2,813,000.00</td>
</tr>
</tbody>
</table>

Finance Review by: Chuck Springer, Assistant Town Manager/CFO

IV. LEGAL REVIEW:

Meredith Ladd, of Brown & Hofmeister L.L.P., has reviewed the agreement as to form and legality.

V. ATTACHMENTS:

1. Professional Services Agreement

VI. RECOMMENDED MOTION OR ACTION:

Move to approve a Professional Services Agreement with Teague, Nall and Perkins, to provide professional engineering design services for Chinn Chapel Road Phase I, in the amount of $299,000.00, and authorize the Mayor to execute same on behalf of the Town.
THE STATE OF TEXAS §
COUNTY OF DENTON §

Professional Services Agreement
with Teague Nall and Perkins

THIS CONTRACT is entered into on this ____ day of ________________, 20__,
by and between the TOWN OF FLOWER MOUND, TEXAS, a municipal corporation
located in Denton County, Texas, (hereinafter referred to as “TOWN”), acting by and
through its Town Manager or his designee, and Teague Nall and Perkins (“hereinafter
referred to as “CONSULTANT”) whose address is Denton, Texas 76201, 235 West
Hickory Street, Suite 100.

WITNESSETH:

WHEREAS, TOWN desires to obtain professional services from CONSULTANT for
Chinn Chapel Paving Improvements; and

WHEREAS, CONSULTANT is an architectural, engineering, professional planning,
urban design, or landscape architecture firm qualified to provide such
services and is willing to undertake the performance of such services for
TOWN in exchange for fees hereinafter specified; NOW, THEREFORE,

THAT IN CONSIDERATION of the covenants and agreements hereinafter
contained and subject to the terms and conditions hereinafter stated, the parties hereto
do mutually agree as follows:

I. Employment of Consultant

CONSULTANT will perform as an independent contractor all services under this
Contract to the prevailing professional standards consistent with the level of care and
skill ordinarily exercised by members of the architectural, engineering and planning
professions, both public and private, currently practicing in the same locality under
similar conditions including but not limited to the exercise of reasonable, informed
judgments and prompt, timely action. If CONSULTANT is representing that it has
special expertise in one or more areas to be utilized in this Contract, then
CONSULTANT agrees to perform those special expertise services to the appropriate
local, regional and national professional standards.

II. Scope of Services

CONSULTANT shall perform such services as are necessary to re-construct
Chinn Chapel from Waketon Road to FM 407. Re-construction will include pavement,
sidewalk (as necessary), traffic circles, storm drain, determination of ROW,
specifically including, but not necessarily limited to, the tasks enumerated more fully in
Attachment “A” hereto entitled “Scope of Work” (hereafter referred to as the “Project”).
Attachment “A” is hereby incorporated herein by reference and made a part hereof as if
written word for word. However, in case of conflict in the language of Attachment “A”

Rev. 3/26/09
and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Two Hundred Ninety Nine Thousand and 00/100 Dollars ($299,000.00). This total payment for services includes CONSULTANT’s ordinary expenses. Additional expenses, which are extraordinary in nature, shall be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT.

CONSULTANT will bill TOWN on a percent complete basis in accordance with Attachment “B”; provided however that this Contract shall control in the event of any conflict between the language in Attachment “B” and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by TOWN in writing to proceed. The scope of services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month CONSULTANT will submit to TOWN an invoice supporting the percentage complete for which payment is sought. Each invoice shall also state the percentage of work completed on the Project through the end of the then submitted billing period, the total of the current invoice amount and a running total balance for the Project to date.

Within thirty (30) days of receipt of each such monthly invoice TOWN shall make monthly payments in the amount shown by CONSULTANT’s approved monthly statements and other documentation submitted.

Nothing contained in this Contract shall require TOWN to pay for any work that is unsatisfactory as determined by TOWN or which is not submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which TOWN may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

IV.

Revisions of the Scope of Services

TOWN reserves the right to revise or expand the scope of services after due approval by TOWN as TOWN may deem necessary, but in such event TOWN shall pay
CONSULTANT equitable compensation for such services. In any event, when CONSULTANT is directed to revise or expand the scope of services under this Section of the Contract, CONSULTANT shall provide TOWN a written proposal for the entire costs involved in performing such additional services. Prior to CONSULTANT undertaking any revised or expanded services as directed by TOWN under this Contract, TOWN must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

It is expressly understood and agreed by CONSULTANT that any compensation not specified in Paragraph III herein above may require Flower Mound Town Council approval and is subject to the current budget year limitations.

V.

Term

This Contract shall begin on the date first written above, and shall terminate when TOWN has approved the Project as being final or otherwise terminates this Contract as provided herein.

VI.

Contract Termination Provision

This Contract may be terminated at any time by TOWN for any cause by providing CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

All materials and documents prepared or assembled by CONSULTANT under this Contract shall become the sole property of TOWN and shall be delivered to TOWN without restriction on future use. CONSULTANT may retain in its files copies of all drawings, specifications and all other pertinent information for the work. CONSULTANT shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

VIII.

Insurance

A. CONSULTANT shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. CONSULTANT shall not commence work under this Contract until CONSULTANT has obtained all the insurance required under this Contract and such insurance has been approved by TOWN, nor shall CONSULTANT allow any subcontractor to commence work on its own subcontract until all similar insurance of the subcontractor has been obtained and
approved. All insurance policies provided under this Contract shall be written on an “occurrence” basis save and except the Professional Liability Insurance which may be written on a “claims-made” form provided that “tail coverage” or continuation coverage is provided as hereinafter required. The insurance requirements shall remain in effect throughout the term of this Contract.

The CONSULTANT shall furnish to TOWN certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the Project and be addressed as follows:

Town of Flower Mound  
c/o Periculum Services Group  
Department 72  
PO Box 257  
Portland, MI 48875-0257

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; Employers' Liability Insurance of not less than $100,000.00 for each accident, $100,000.00 disease-each employee, $500,000.00 disease-policy limit;

2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, covering but not limited to the indemnification provisions of this Contract, fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of $1,000,000 per occurrence, $1,000,000 Products/Completed Operations Aggregate and $1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;

3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of $1,000,000.00 per occurrence; and

4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that “tail coverage” or continuation coverage is provided as hereinafter required. Limits of liability shall be $1,000,000.00 per claim, $1,000,000.00 annual aggregate. The coverage under this policy shall include a contractual liability endorsement.

If any of the foregoing insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six
(36) months following completion of the Contract and acceptance by the TOWN. All such insurance shall be purchased from an insurance company that meets a financial rating of B+V1 or better as assigned by A.M. Best Company or equivalent.

B. Each insurance policy to be furnished by CONSULTANT shall include the following conditions by endorsement to the policy:

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;

2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker’s Compensation Insurance and Professional Liability Insurance;

3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

   Tiffany Bruce, P.E.
   Town of Flower Mound
   2121 Cross Timbers Road
   Flower Mound, Texas 75028
   972-874-6302 Telephone
   972-874-6472 Facsimile

   However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to TOWN is required. CONSULTANT shall also notify TOWN within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s);

4. The term "Owner" or "TOWN" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of TOWN and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of TOWN;

5. The policy phrase "Other Insurance" shall not apply to TOWN where TOWN is an additional insured on the policy; and

6. All provisions of the Contract concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by CONSULTANT, it is a condition precedent to acceptability thereof that:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance
requirements to be fulfilled by CONSULTANT. The TOWN’s decision(s) thereon shall be final;

2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and

3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;

2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;

3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and

4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

IX.

Right to Inspect Records

CONSULTANT agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of CONSULTANT involving transactions relating to this Contract. CONSULTANT agrees that TOWN shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. TOWN shall give CONSULTANT reasonable advance notice of intended audits.
CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.

Successors and Assigns

TOWN and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither TOWN nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

XI.

CONSULTANT's Liability

Acceptance of the final plans by the TOWN shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, associates, agents or sub-consultants.

Engineer has no duty or responsibility for project site safety. Means and methods of construction and jobsite safety are the sole responsibility of the contractor.

XII.

Indemnification

CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF
CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

CONSULTANT’S OBLIGATIONS TO TOWN UNDER THIS PROVISION SHALL BE LIMITED TO THE APPLICABLE INSURANCE COVERAGE(S) CONSULTANT IS REQUIRED TO PROVIDE IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS CONTRACT PLUS ANY DEDUCTIBLE AMOUNT(S) TO BE PAID BY CONSULTANT IN CONJUNCTION WITH SAID COVERAGE(S) FOR EACH OCCURRENCE GIVING RISE TO ANY SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION. IF, HOWEVER, CONSULTANT FAILS TO PURCHASE AND/OR MAINTAIN ONE OR MORE TYPES OF INSURANCE COVERAGE IN THE AMOUNT(S) REQUIRED BY THIS CONTRACT, CONSULTANT’S OBLIGATIONS TO TOWN UNDER THIS PROVISION SHALL IN NO WAY BE LIMITED.

XIII. Independent Contractor

CONSULTANT’s status shall be that of an Independent Contractor and not an agent, servant, employee or representative of TOWN in the performance of this Contract. No term or provision of or act of CONSULTANT or TOWN under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondeat superior shall not apply as between TOWN and CONSULTANT, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between TOWN and CONSULTANT.

XIV. Default

If at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then TOWN shall have the right, if CONSULTANT shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract. Any such act by TOWN shall not be deemed a waiver of any other right or remedy of TOWN. If after exercising any such remedy due to CONSULTANT’s nonperformance under this Contract, the cost to TOWN to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has not theretofore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall
reimburse TOWN for such excess. CONSULTANT’S liability under this provision shall be limited to the total dollar amount of this Contract.

TOWN’s remedies for CONSULTANT’s default or breach under this Contract shall be limited to one or more of the following remedies which may be exercised separately or in combination at TOWN’s sole exclusive choice:

(a) Specific performance of the Contract;

(b) Re-performance of this Contract at no extra charge to TOWN; or

(c) Monetary damages in an amount not to exceed the greater of:

(1) The amount of any applicable insurance coverage CONSULTANT is required to purchase and maintain under this Contract plus any deductible amount to be paid by CONSULTANT in conjunction with said coverage regardless of whether CONSULTANT has actually purchased and maintained said coverage; or

(2) The total dollar amount of this Contract.

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

XV. Changes

TOWN may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between TOWN and CONSULTANT shall be incorporated by written modification to this Contract.

XVI. Conflict of Interest

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

XVII. Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary
nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning TOWN, its affiliates and subsidiaries, and all oral and written information concerning TOWN or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority.

XVIII. Mailing Address

All notices and communications under this CONTRACT to be mailed to TOWN shall be sent to the address of TOWN's agent as follows, unless and until CONSULTANT is otherwise notified:

Tiffany Bruce, P.E.
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6302 Telephone
972-874-6472 Facsimile

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until TOWN is otherwise notified:

Jeff Chapman, P.E.
Teague Nall and Perkins
235 W. Hickory Street, Suite 100
Denton, TX 76201
940-383-4177 Telephone
940-383-8026 Facsimile

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.
XIX.
Applicable Law

The Contract is entered into subject to the Flower Mound Town Charter and ordinances of TOWN, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. CONSULTANT will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT’s income. Situs of this Contract is agreed to be Denton County, Texas, for all purposes, including performance and execution.

XX.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXI.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXII.
Entire Agreement

This Contract embodies the entire agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXIII.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by TOWN in the exercise of its rights herein shall in no way constitute a waiver thereof.
XXIV. Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXV. Venue

The parties to this Contract agree and covenant that this Contract will be enforceable in Flower Mound, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

XXVI. No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with TOWN or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date first above written.

TOWN:
TOWN OF FLOWER MOUND, TEXAS

By: ________________________________
Name: Melissa D. Northern
Title: Mayor, Town of Flower Mound

State of Texas §
§
County of Denton §

This instrument was acknowledged before me on the _____ day of __________ 20____, by Melissa D. Northern, Mayor of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.

____________________________________
Notary Public, State of Texas

My Commission Expires:

____________________________________
CONSULTANT:
Teague Nall and Perkins

By: _______________________________________

Name: _____________________________________

Title: _______________________________________

Date Signed: ________________________________

State of Texas §

County of __________ §

This instrument was acknowledged before me on the ______ day of ________________, 20____, by ______________________ in his capacity as __________ of ________________, a __________ Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of _______________________.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____________________
DAY OF ____, 20____.

_____________________________________
Notary Public, State of Texas

My Commission Expires:

______________________________________
ATTACHMENT "A"

ITEMIZED SCOPE OF SERVICES

Chinn Chapel Paving and Drainage Improvements

SCOPE OF SERVICES

PROJECT DESCRIPTION

This project consists of preparation of design plans and specifications for the construction of approximately 3400 LF of pavement for Chinn Chapel Road from FM 407/Justin Road to Waketon Road (existing 2 lane asphalt roadway designed to 4 lane undivided concrete roadway). The proposed section will be a 4-lane concrete section, 51’ back to back in a 70’ ROW. Design will include pavement replacement, subgrade design, handicap ramps, storm drain design, determination of ROW needs, and ROW documents. Water line and sanitary sewer line design will not be included in the scope. Paving design will include a round-about at the intersection of Chinn Chapel and Dixon LN. Plans will be designed in consideration that there will be a future round-about at Waketon and Chinn Chapel. However, no design or plans will be done for the future round-about at Waketon Chinn Chapel. The connection to Waketon will be concrete, and will be designed such that only a minimum about of removal will be necessary when the future round-about is constructed. Details of the round-about will be provided by the Consultant for Town review.

GENERAL

A. Basis for Scope of Services

The following assumptions were used by the Consultant for the preparation of the scope of Basic Services for this project:

1. The project will be designed and constructed in accordance with the Town of Flower Mound Engineering Design Criteria and Construction Standards Manual; the North Central Texas Council of Governments Standard Specifications for Public Works Construction, and the previously approved schematics.
2. Boundary survey is included in the scope of agreement.
3. No title work is included in the scope of agreement.
4. ROW and Easement documents for the purposes of obtaining ROW is included in the scope, however right of way acquisition is NOT included in the scope of the agreement.
5. No construction testing services are included in the scope of the agreement.
6. No construction administration services are included in the scope of the agreement except as described below.
7. No construction staking services are included in the scope of the agreement.
8. Signal design and/or modifications are included in the scope of the agreement as described in the special services.
9. Consultant will provide the design for two roundabouts. One at Dixon Lane and the other at Waketon Road. The round-about at Waketon will be designed for, but not included in the construction plans. The round-abouts will be approximately 120-foot in diameter to the outside curb, 80-foot diameter of the inside curb, and 60-foot in diameter for a Landscaped median area. These dimensions are subject to change during the 30% plans submittal. The design of transitions will be included at the entrance and exist to the round-about.

10. Right-of-way design and documents for both roundabouts will be included in this scope.

B. Design Meetings

The Consultant will meet with the Town of Flower Mound staff during the course of the project as outlined below.

**DESIGN SERVICES:**

**DESIGN PHASE**

A. Construction Plan Preparation

Paving and Storm Drain plans will be on a 1" = 20' scale horizontally and 1" = 5' scale vertically. Other sheets will vary in scale based on type of sheet and information provided on them.

1. Construction plans will consist of the following:
   a. Cover Sheet
   b. General Notes and Typical Sections
   c. Project Layout and Control Sheet
   d. ROW Sheets
   e. Demolition Sheets
   f. Paving Plan and Profile Sheets
   g. Roadway Cross Section Sheets
   h. Drainage Area Map and Calculations
   i. Storm Drain Plan and Profile
   j. Storm Drain Laterals
   k. Traffic Control Sheets
   l. Traffic Signal Plans
   m. Erosion Control (SWPPP to be prepared by contractor)
   n. Town of Flower Mound Standard Details & Miscellaneous Details

2. CONSULTANT will meet with the TOWN as reasonably needed during this phase to gather information and discuss project design issues. This scope anticipates three such meetings.

3. Plans will be prepared on 22”x34” sheets, suitable for reduction to 11”x17”.

4. A TxDOT permit will be required at the connection to FM 407/Justin Road. The Consultant will prepare the TxDOT permit application for submittal by the Town.

5. Consultant will coordinate with the Halff and Associates working on Dixon Lane to verify and coordinate the intersection layout and elevations. Consultant will acquire plans from Halff and Associates to verify their design with Consultant’s design. Consultant assumes that Halff and Associates will not charge the Consultant for a copy of the plans.

Attachment - A – Chinn Chapel Road Paving and Drainage Improvements
6. Consultant assumes that there are calculations for the existing detention facility located on the southwest intersection of FM 407 and Chinn Chapel will not be responsible for recalculating the detention characteristics of this facility or any other detention facility on this project. Consultant is of the understanding that drainage will be based on full flow design and that no detention will be assumed for the design of the storm drain systems in this project.

7. There are three culverts going from the west side of Chinn Chapel at Chapel Hill to the east side of Chinn Chapel. Two of the three culverts have had steel grates placed over them to prevent water from going in them. The consultant will need information regarding the closure to ensure drainage patterns don’t change with this project. The Consultant is of the understanding that this area is located in Double Oak, and the Consultant may require some assistance from the Town in acquiring information regarding this situation. The Consultant will make efforts in acquiring this information from Double Oak without the Town’s involvement. No detention structures or design of detention facilities are included within the scope of the agreement.

8. CONSULTANT will prepare for up to two public meetings, which will include providing a slide show presentation and discussing the project and how the project will be constructed with the residents. The CONSULTANT will send out notifications to the affected residents based on the time, date, and location provided to the CONSULTANT by the Town. The CONSULTANT assumes that the Town will provide the, area of residents to be invited, location, time, and date of the public meeting.

B. 30% Plan Submittal

1. Four sets of 30% plans (11”x17”) will be submitted. This submittal will include a Cover Sheet, General Notes and Typical Sections, ROW Sheets, Paving Plan and Profile Sheets, Cross Sections, Drainage Area Map, Storm Drain (plan view only), and an Opinion of Probable Construction Cost. Specifications will not be included with this submittal. A CD of the submittal (in pdf format) will be provided to the Town at the time of submittal.

2. CONSULTANT will meet with the TOWN to review and discuss the preliminary plan submittal. This scope anticipates one such meeting.

C. 60% Plan Submittal

1. Based on review comments of the 30% plan submittal and subsequent meetings and discussions with the Town Staff, four sets of 60% plans (11”x17”) will be submitted. This submittal will include a Cover Sheet, General Notes and Typical Sections, ROW Sheets, Project Layout and Control Sheet, Demolition Sheet, Paving Plan and Profile Sheets, Cross Sections, Drainage Area Map, Storm Drain Plan and Profile, Traffic Control Sheets, Traffic Signal Sheets, Erosion Control Sheets, Details, and an Opinion of Probable Construction Cost. A non-bound set of specifications will be included with this submittal. CONSULTANT will use Town of Flower Mound standard contract documents as provided by the TOWN. A CD of the submittal (in pdf format) will be provided to the Town at the time of submittal.

2. CONSULTANT will meet with the TOWN to review and discuss the preliminary plan submittal. This scope anticipates one such meeting.

Attachment - A – Chinn Chapel Road Paving and Drainage Improvements
3. CONSULTANT will submit 60% plans to utility companies potentially affected by the proposed design (as necessary) after the Town review. Consultant will develop a list of potential affected utility companies, and communicate with them during the design process. The consultant will inform the utility companies of any potential conflicts that the consultant is aware of, and review any relocation plans to check that their relocations to do not conflict with the proposed improvements or other utility companies. The Consultant does not guarantee the affected utility companies will relocate their utilities in a timely manner or at the location shown on the utility companies relocation plans, however the Consultant will provide plans and communicate with the utility companies in a timely manner to help assist the utility companies. A utility coordination meeting between the utility companies and the consultant is NOT included in the scope of this agreement.

D. 95% Submittal, Final Plans and Bid Documents

1. Based on review comments of the 60% plan submittal, subsequent meetings, and discussions with the Town Staff, final construction documents at approximately 95% completion will be submitted for review. This submittal will include final construction plans, specifications, and bid documents, and an Opinion of Probable Construction Cost; complete pending final review comments by Town Staff.

2. CONSULTANT will submit 95% plans to utility companies potentially affected by the proposed design (as necessary) after the Town review.

3. CONSULTANT will meet with the TOWN to review and discuss the 95% plan submittal. This scope anticipates one such meeting.

4. Based on review comments from the 95% submittal, revisions will be made as necessary. A final submittal of plans complete and ready for construction will be made upon completion of any necessary revisions.

5. CONSULTANT anticipates the following deliverables in this phase:
   - 4 sets of 11x17 plans, 4 sets of specifications, and 2 sets of the opinion of the probable cost of construction. A CD of the submittal (in pdf format) will be provided to the Town at the time of submittal.

E. Bid Administration

1. Assist the TOWN in the advertisement of the project for bid. The TOWN shall bear the cost of advertisement for bid. The CONSULTANT shall provide all necessary printing of construction plans, specifications and contract documents (up to 35 sets of 11x17, 4 sets of 22x34, and 39 sets of specifications) for use in obtaining bids, awarding contracts, and constructing the project. The CONSULTANT will distribute plans and specifications to the plan rooms in the Metroplex. The TOWN shall be responsible for dispersing all plans and specifications from its office to prospective bidders.

2. CONSULTANT anticipates the following deliverables in this phase:
   - For Purchasing: 15 sets of 11x17 plans, 15 sets of specifications, digital copies of the plans in Adobe® Acrobat PDF format, and Specifications in MicroSoft® Word DOC format;

Attachment - A – Chinn Chapel Road Paving and Drainage Improvements
- For Engineering: 4 sets of 22x34 plans, 5 sets 11x17 plans, and 9 sets of specifications (delivered prior to the pre-construction meeting); and

3. CONSULTANT anticipates two meetings with the TOWN during this phase. Per the Town’s request the consultant will attend a pre-bid and pre-construction meeting. Consultant will not attend the bid opening.

4. The Consultant will supply addendums as necessary for the bidding. The consultant will prepare the final set of drawings (those shown above for engineering) with any addendum items as well as any changes to the specifications.

CONSTRUCTION PHASE

A. Construction Contract Administration

Detailed daily construction inspection will be performed by the TOWN. Any construction phase services requested by the TOWN beyond those described below will be provided as Additional Services. Consultant will make site visits to the site as deemed necessary by the Consultant to verify the construction activity.

1. One set of 22x34 Mylar As-Builts will be provided to the client at the end of construction. The client shall provide the engineer with any changes that occurred during the construction as noted by them or their inspector. Along with the Mylar As-Builts the engineer will provide one CD with a copy of the plans in dwg, pdf, and tiff format.

OTHER SERVICES:

DESIGN/BOUNDARY SURVEYS

A. Topographic Survey

1. Perform field design surveys to tie improvements and topographic features horizontally and vertically within the project limits (as described above) which will be required to design and perform the work. The survey will depict existing visible features within the project limits, including pavement, sidewalks, driveways, fences, utilities, trees, buildings, property corners and other features that will affect design and construction. Sufficient data will be obtained to prepare a profile of the proposed project. Surveys will show all visible existing improvements and features from anticipated ROW to anticipated ROW including natural ground shots at least 15’ beyond the anticipated ROW, and finished floor elevations of houses when driveways are connecting to the proposed road improvements is within 30’ of anticipated ROW. Survey will extend up/down existing connecting streets approximately 200-feet in order to verify the existing grades and connection points. Horizontal and vertical control points will be placed for each street based off the Town of Flower Mounds GPS control network.

2. Surveyor will located and mark 6” and larger trees within the area as described above. A Landscape Architect will be called on site after the 60% plans have been submitted and accepted by the Town to determine the size and type of each tree that is located on private property that will be affected by the construction. The size and type of tree will be shown on the plans and be provided to the Town for their use.
3. Utility markings will be located by the use of DigTESS. DigTESS will locate existing utilities who subscribe to the DigTESS service, and the locations will be horizontal only and are generally within a few feet of the actual utility location. Survey will shoot all locates done by DigTESS so that the lines may be included in the plans. The proposed project will be surveyed for location of existing utilities (valves, manholes, hydrants, etc) and storm drainage system components (inlets, junction boxes, pipe outlets, etc). CONSULTANT will rely on the cooperation of the various utility companies and any information they or the TOWN make available.

4. Survey will locate the geotechnical borings and SUE borings to be included within the plans.

5. Locating pot holed utilities is not included in the scope of work, but may be done at the hourly rate shown on attachment D or at the negotiated price to be done at a later date (locating the SUE borings as described below is included in the scope).

6. Horizontal control monumentation and vertical benchmarks will be established based on the Town of Flower Mound’s GPS control network, as necessary.

7. Boundary survey of each lot will be performed during the field design survey to establish the current ROW/Property lines. The boundary survey will include all necessary field survey to verify the boundary of the parcels along the project.

8. The engineer shall flag for the contractor’s use all major control points used for the project. However, it shall be the contractor’s responsibility to do all other construction staking for this project.

B. Temporary Signs, Traffic Control, Flags, Safety Equipment, Etc.

1. The CONSULTANT will exercise care in completing this surveying assignment by using traffic control devices, flags and safety equipment when necessary.

ROW DOCUMENTS AND EASEMENT DOCUMENTS

1. A strip map will be prepared at the 30% submittal phase to show the proposed right-of-way/easement needed.

2. The Consultant will prepare right-of-way/easement documents for each existing property that will require right-of-way/easement acquisition. Right-of-way/easement documents will include a parcel map, at a legible scale, detailing the acquisition (Exhibit “B”), included with the parcel map will be a Legal description of said acquisition (Exhibit “A”), signed by a Texas Registered Professional Land Surveyor. Exhibit B will break out prescriptive ROW and expanded ROW (as necessary). ROW and Easement documents will be billed at a per parcel rate as shown in Attachment B.

GEOTECHNICAL INVESTIGATION

A. General:

1. The Consultant shall engage a geotechnical sub-consultant to provide sub-surface investigations in the form of borings. Borings shall be of sufficient depth and spacing to
provide general information needed for the design and construction of the project. The
geotechnical sub-consultant will provide pavement design guidelines and earthwork
recommendations, and will conduct soluble sulfate tests. The Town should be contacted for
concurrency of the recommended geotechnical sub-consultant. The Town will pay 110% of
the sub-consultant’s fee to the Consultant.

2. Boring Locations and Depths:
Chinn Chapel Road – 7 borings to 10 feet

SUBSURFACE UTILITY ENGINEERING (S.U.E.)

A. General:

1. The Consultant shall utilize a vacuum truck to excavate down to the existing 20” water main
running parallel to the project. The consultant will first locate the line using an electronic
device, and then use the vacuum truck to remove the soil above the water line. Once the soil
has been excavated the consultant will perform a measure down to determine the depth to top
of pipe from the existing ground. At a later date the consultant will send survey out to shoot
the boring location. The horizontal and vertical location will then be placed within the Auto
Cad files for insertion into the plans. The cost of the SUE will not be based on the amount of
borings, but will be based on per day cost. The consultant assumes one day of use with the
vacuum truck, which should result in approximately 4 to 5 borings. If the Town has as-builts
of the water line this may help the consultant locate the line quicker and enable the
consultant to perform more borings.

2. The consultant will only locate the 20” water main on this project via SUE services (at a
minimum of 4 places). All other utility locates will be done via DIGTESS.

TRAFFIC SIGNAL DESIGN

A. General:

1. The Consultant shall incorporate the design of relocating the signals at the intersection of FM
407 and Chinn Chapel Road. The south side signal mastarm poles, conduit, and wiring will
need to be relocated to accommodate the new footprint of the roadway. The scope may
include relocating north side signal mastarm poles and the controller which is located on the
southeast corner of the intersection. The following items are included in the scope of work:

a. Consultant will review FM 407 permanent signal plans to become familiar with the
design and construction.

b. Consultant will make a site visit to understand existing and proposed conditions

c. Consultant will design modifications to the relocated poles, signal heads, controller,
and conduit/wiring as necessary.

d. Consultant will prepare 22x34 plans and specifications (11x17 for preliminary
submittals) for inclusion into the plan set as specified above.

e. Traffic signal plans will be submitted at the 60%, 95%, and final submittal. Traffic
Signal plans will not be submitted at the 30% submittal since this is typically a
submittal where we are checking alignments and profiles.

f. Consultant will make one field visit with the Town between the 60% and 95%
submittal to discuss the project.

g. Consultant will make appropriate revisions to the plans based on comments received
during the plan reviews.

h. Consultant will meet with the Town after the 95% submittal to ensure all appropriate
comments are discussed and addressed.

ITEMS TO BE PROVIDED BY TOWN TO THE CONSULTANT

The TOWN or the TOWN’s designee will provide or make available to, or assist the Consultant in obtaining the following services, information and materials upon request:

1. Available past studies, correspondence, materials, mapping, and digital aerial images relative to the project.

2. Copies of construction plans and plats for developed property adjacent to the project.

3. Assistance in obtaining data from third party sources which is available to the TOWN at no cost to the Consultant (specifically the Town of Double Oak and Halff and Associates).


6. A description of the round-about to be designed at the intersection of Chinn Chapel and Dixon Lane.

7. Town to provide signal plans from current design of FM 407.

ADDITIONAL SERVICES

Additional Services will include any additional items not specifically included in the Itemized Scope Services outlined above. The Consultant will perform Additional Services at the hourly rates shown on the attached Attachment ‘D’ or at fixed fees as agreed upon by the TOWN. No Additional Services will commence without written authorization from the TOWN. Additional Services could include, but are not limited to, Detention Design, attending meetings during the bidding and construction process, attending Public Meetings, Town Council briefings, etc.
ATTACHMENT “B”

COMPENSATION

For the work performed by the Engineer within the scope defined above, the engineer shall be reimbursed as described below:

The following fixed fees shall be paid to the Engineer for labor involved in the various items of work within the scope of Basic Services described above:

**DESIGN SERVICES**

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Phase</td>
<td>$204,000</td>
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<tr>
<td>Bidding Phase</td>
<td>$2,000</td>
</tr>
<tr>
<td>Direct Expenses (NTE)</td>
<td>$1,500</td>
</tr>
<tr>
<td>As-Builts</td>
<td>$1,500</td>
</tr>
<tr>
<td><strong>Total Design Services</strong></td>
<td><strong>$212,000</strong></td>
</tr>
</tbody>
</table>

The following fixed fees shall be paid to the Engineer for labor involved in the various items of work within the scope of Special Services described above:

**OTHER SERVICES**

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Design/Boundary Survey</td>
<td>$36,800</td>
</tr>
<tr>
<td>ROW Documents ($1,200/parcel up to 21 parcels)</td>
<td>$25,200</td>
</tr>
<tr>
<td>Temp Easement Documents ($600/parcel up to 10 parcels)</td>
<td>$6,000</td>
</tr>
<tr>
<td>Geotechnical Services</td>
<td>$6,700</td>
</tr>
<tr>
<td>Traffic Signal Design</td>
<td>$12,800</td>
</tr>
<tr>
<td>S.U.E. Services</td>
<td>$2,500</td>
</tr>
<tr>
<td><strong>Total Other Services</strong></td>
<td><strong>$87,000</strong></td>
</tr>
</tbody>
</table>

**TOTAL PROJECT FEE**

$299,000

Progress payments for these Special Services shall be paid to the Engineer by the Town on a monthly basis based on the estimated percentage (%) of the total work effort completed during that month less any payments for previously invoiced services.

**ADDITIONAL SERVICES:**

Work performed by the ENGINEER outside that scope identified in EXHIBIT A, Itemized Scope of Services, shall be considered Additional Services. No Additional Services are anticipated for this project. The ENGINEER will be reimbursed for Additional Services, should they be requested, as described below:

1. **Labor**

   ENGINEER shall be reimbursed on the basis of negotiated fees for each item of service provided, as mutually agreed to by the ENGINEER and TOWN; or labor of personnel employed by the ENGINEER will be reimbursed on an hourly basis in accordance with EXHIBIT D, Standard Rate Schedule.
2. Direct Expenses

Direct Expenses such as printing, reproductions, automobile mileage, and/or delivery/courier will be reimbursed on an hourly basis in accordance with EXHIBIT D, Standard Rate Schedule.
ATTACHMENT “C”

TIME OF COMPLETION

**SCHEDULE:** The proposed services shall be begin upon receipt of written authorization to proceed, and receipt of background information, including any available electronic drawing files and/or as-builts associated with the project.

<table>
<thead>
<tr>
<th>Items</th>
<th>Approx. Duration</th>
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</thead>
<tbody>
<tr>
<td>Design/Boundary Survey</td>
<td>5 weeks after Notice to Proceed</td>
</tr>
<tr>
<td>Geotechnical Services</td>
<td>10 weeks after Notice to Proceed</td>
</tr>
<tr>
<td>S.U.E. Services</td>
<td>10 weeks after Notice to Proceed</td>
</tr>
<tr>
<td>30% Plan Submittal</td>
<td>9 weeks after survey is complete</td>
</tr>
<tr>
<td>Plan Review – TOFM</td>
<td>2 weeks estimated</td>
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<tr>
<td>60% Plan Submittal</td>
<td>8 weeks after Town review complete</td>
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<tr>
<td>Plan Review – TOFM</td>
<td>2 weeks estimated</td>
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<tr>
<td>Final Plans-95%</td>
<td>8 weeks after Town review complete</td>
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<tr>
<td>Plan Review – TOFM</td>
<td>2 weeks estimated</td>
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<tr>
<td>Final Bid Documents (100%)</td>
<td>3 weeks after Town review complete</td>
</tr>
<tr>
<td>ROW Documents</td>
<td>4 weeks after 30% plan review &amp; revisions are complete</td>
</tr>
</tbody>
</table>
TOWN COUNCIL MEETING
AGENDA ITEM NO: 11
August 16, 2010

<table>
<thead>
<tr>
<th>[ ] CONSENT ITEM</th>
<th>[ ] REGULAR ITEM</th>
<th>[ ] WORK SESSION ITEM</th>
</tr>
</thead>
</table>
FROM: Robert Pegg, P.E., Senior Project Engineer

THROUGH: Harlan Jefferson, Town Manager
Kent Collins, P.E., Assistant Town Manager

PRESENTER: Kent Collins, P.E., Assistant Town Manager

ITEM: Consider approval of the award of Bid No. 76-10-B, with JRJ Paving, L.P., for the construction of Dixon Lane (FM 2499 to Crestside Dr.), in the amount of $2,638,111.57; determining the presumptive low bidder Felix Associates of Florida, Inc., doing business as Lone Star Civil Construction Inc., to be nonresponsible for this project; and authorizing the Mayor to execute the contract documents with JRJ Paving, L.P., on behalf of the Town.

<table>
<thead>
<tr>
<th>[ ] Ordinance</th>
<th>[ ] Resolution</th>
<th>[ X ] Motion</th>
<th>[ ] Direction</th>
</tr>
</thead>
</table>

I. SUMMARY:

On July 1, 2010, bids were received and opened for the construction of Dixon Lane (FM 2499 to Crestside Dr.). JRJ Paving, L.P. submitted a base bid of $2,638,111.57 and was the lowest responsible bid of the eight bids received. One bid placed was lower than the bid submitted by JRJ Paving, L.P., however, the presumptive low bidder was found to be unqualified.

II. BACKGROUND INFORMATION:

The Dixon Lane project (FM 2499 to Crestside Dr.) is included in the five-year Capital Improvement Program. Dixon Lane is included in the Town’s Master Thoroughfare Plan as an Urban Minor Arterial roadway. The design for the project was completed in June 2010 by Halff Associates, Inc.

The western section of Dixon Lane from Chinn Chapel Road to FM 2499 is complete. This project provides for construction of the remaining two-lane asphalt section of Dixon Lane from FM 2499 to Crestside to a four-lane-divided concrete roadway. The phasing of the project is such that one lane of traffic in each direction will be maintained at all times during construction and, therefore, no detour will be necessary for the project. The temporary reduction of lanes at Dixon Lane and FM 2499 due to this construction will likely increase congestion at this intersection.
Felix Associates of Florida, Inc., doing business as Lone Star Civil Construction Inc., ("Felix Inc.") submitted a bid that was $43,511.57 lower than the bid submitted by JRJ Paving, L.P. Despite this difference in bid amount, staff requests that the Town Council determine that Felix Associates of Florida, Inc., doing business as Lone Star Civil Construction Inc., be found nonresponsible for purposes of this project and award the bid to JRJ Paving, L.P. for the following reasons.

Felix Inc., identified several projects it purportedly performed in Florida in response to the Town’s proposal questionnaire regarding qualifications. However, all of the projects identified in the Felix Inc., proposal as having been performed by Felix Inc., were in fact performed by Felix Associates, LLC. The Texas Comptroller’s Office indicates that Felix Associates, LLC is not in good standing and as such is not authorized to conduct business in the State of Texas. Consequently, Felix Inc.’s representation that it performed such work is not accurate. While there may be some connection between Felix Inc., and Felix Associates, LLC, staff cannot attribute the performance of work by Felix Associates, LLC to Felix Inc., particularly given the fact that Felix Associates, LLC is for some reason not in good standing.

III. FISCAL IMPACT:

Proposed Expenditure: $2,638,111.57

Proposed Funding:

<table>
<thead>
<tr>
<th>Account No./Description</th>
<th>Amount</th>
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<tbody>
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<td>Dixon Lane</td>
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<tr>
<td>506-520-7046</td>
<td>2,055,000.00</td>
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<tr>
<td>550-517-7046</td>
<td>144,474.00</td>
</tr>
<tr>
<td>Dixon Lane Collector</td>
<td>81,892.62</td>
</tr>
<tr>
<td>610-598-9883</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$2,638,111.57</td>
</tr>
</tbody>
</table>

These projects are included in the Capital Improvement Program plan, with a currently funded Dixon Lane budget of $5,593,000.00 and a total Dixon Lane Collector budget of $130,000.00. Upon approval of this item, the projects will have the following funds available:

| Dixon Lane                  | $210,257.72 |
|                            |            |
| 308-503-7046                |             |
| Dixon Lane Collector        | $37,487.38  |
| 610-598-9883                |             |

Finance Review by: Chuck Springer, Assistant Town Manager/CFO
IV. LEGAL REVIEW:

Alan Latham, of Brown & Hofmeister, L.L.P., has reviewed the contract agreement as to form and legality.

V. ATTACHMENTS:

1. Bid Tabulation
2. Contract Agreement

VI. RECOMMENDED MOTION OR ACTION:

Move to approve the award of Bid No. 76-10-B, with JRJ Paving, L.P., for the construction of Dixon Lane (FM 2499 to Crestside Dr.), in the amount of $2,638,111.57; determining the presumptive low bidder Felix Associates of Florida, Inc., doing business as Lone Star Civil Construction Inc., to be nonresponsible for this project; and authorize the Mayor to execute the contract documents with JRJ Paving, L.P., on behalf of the Town.
TOWN OF FLOWER MOUND
BID TABULATION

Bid No: 76-10-B Dixon Lane (Crestside Dr. to FM 2499)
Bid Opening: 7/1/10 at 2:00 PM

<table>
<thead>
<tr>
<th>Bidders</th>
<th>Total Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felix Associates of Florida, Inc.</td>
<td>$2,594,600.00</td>
</tr>
<tr>
<td>dba Lone Star Civil Construction, Inc.</td>
<td></td>
</tr>
<tr>
<td>JRJ Paving, LP</td>
<td>$2,638,111.57</td>
</tr>
<tr>
<td>Glenn Thurman, Inc.</td>
<td>$2,676,073.55</td>
</tr>
<tr>
<td>XIT Paving and Construction, Inc.</td>
<td>$2,694,951.85</td>
</tr>
<tr>
<td>McMahon Contracting, LP</td>
<td>$2,795,637.05</td>
</tr>
<tr>
<td>L.H. Lacy Company, Ltd.</td>
<td>$2,800,000.00</td>
</tr>
<tr>
<td>Mario Sinacola &amp; Sons Excavating, Inc.</td>
<td>$2,807,722.50</td>
</tr>
<tr>
<td>Tiseo Paving Company</td>
<td>$2,843,104.00</td>
</tr>
<tr>
<td>Ed Bell Construction Company</td>
<td>$2,866,600.00</td>
</tr>
</tbody>
</table>

**All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.**

Certified By: January M. Cook, CPPO, CPPB
Purchasing Agent
Town of Flower Mound, Texas

Date: July 1, 2010
Attachment 2

TOWN OF FLOWER MOUND

DIXON LANE

Bid # 76-10-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 16th day of August, 2010, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town”, and JRJ Paving, L.P., a limited partnership, hereinafter referred to as the “Contractor.” For and in consideration of the payment, agreements and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

Dixon Lane, Bid # 76-10-B

in the Town of Flower Mound, Texas, and all extra work in connection therewith, under the terms as stated in this Agreement, and under the terms of the Contract Documents; and at his, her or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools and other accessories and services necessary to complete the said construction in accordance with all the Contract Documents, incorporated herein as if written word for word, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the Conditions and Specifications as prepared by the Town of Flower Mound or its consultant hereinafter called Engineer, who has been identified by the endorsement of the Contractor’s written proposal, and the General Conditions, Supplemental Conditions and Special Provisions of this Agreement, and the payment, performance, and maintenance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Agreement.

ARTICLE 1. The Contract Documents shall consist of the following documents:

A. The Construction Agreement;

B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;

C. Any listed and numbered addenda;

D. Special Provisions;

E. Supplementary Conditions;

F. Construction Drawings or Plans;

G. Technical Specifications;

H. Town’s Standard Construction Details;
I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);

J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);

K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);

L. The General Conditions;

M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);

N. Notice to Bidders;

O. Instructions to Bidders;

P. The Town's written notice to proceed to Contractor;

Q. The Contractor’s Bid Proposal;

R. The Performance Bond, Payment Bond and Maintenance Bond; and

S. Bid materials distributed by the Town that relate to the Project.

These Contract Documents are incorporated by reference into this Agreement as if set out in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings it shall be the Contractor’s obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the project.

**ARTICLE 2.** For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Two Million Six Hundred Thirty Eight Thousand One Hundred Eleven Dollars and Fifty Seven cents ($2,638,111.57)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and substantial manner, ready for use, within the specified time for completion of three hundred and sixty five (365) calendar days, and final completion of three hundred and ninety five (395) calendar days ready for final payment from the date that Notice to Proceed is issued. The work shall be in strict accordance with this...
Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

ARTICLE 3. Before commencing work, the Contractor shall, at its own expense, procure, pay for and maintain the insurance coverage required by the Contract Documents written by companies approved by the State of Texas and acceptable to the Town of Flower Mound. The Contractor shall furnish to the Town of Flower Mound Purchasing Manager certificates of insurance executed by the insurer or its authorized agent stating the type of coverages, limits of each such coverage, expiration dates and compliance with all applicable required provisions of the Contract Documents.

ARTICLE 4. The Contractor shall procure and pay for performance and payment bonds applicable to the work in the amount of the total bid price. The Contractor shall also procure and pay for a maintenance bond applicable to the work in the amount of the total bid price. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in the Special Conditions. The performance, payment and maintenance bonds shall be issued in the form attached to this Construction Agreement as Exhibits B, C and D. Other performance, payment and maintenance bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

The performance, payment and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment and maintenance bonds upon Town request. In addition to the foregoing requirements, if the amount of the bond exceeds One Hundred Thousand Dollars ($100,000) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety’s name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars ($100,000) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety’s or reinsurer’s name in the current U.S. Treasury Department Circular 570.

ARTICLE 5. It is hereby further agreed that in consideration of the faithful performance of the work by the Contractor, the Town shall pay the Contractor the compensation due him by reason of said faithful performance of the work in accordance with the provisions of this Agreement. As it completes portions of the Work, the Contractor may request progress payments from the Town. Progress payments shall be made by the Town based on the Town's estimate of the value of the Work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site only if the Contractor provides to the Town satisfactory evidence that material suppliers have been paid for these materials.

No progress payment shall be due to the Contractor until the Contractor furnishes to the Town:
1. copies of documents reasonably necessary to aid the Town in preparing an estimate of the value of Work properly completed;

2. full releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to the Town releasing all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment;

3. an updated and current schedule clearly detailing the project’s critical path elements; and

4. any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Town determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the Town determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Town the overpayment amount specified by the Town within thirty (30) calendar days after it receives written demand from the Town.

The fact that the Town makes a progress payment shall not be deemed to be an admission by the Town concerning the quantity, quality or sufficiency of the Contractor’s work. Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the Town shall withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each progress payment shall be set depending upon the value of the Contract Work on the effective date of the Contract:

<table>
<thead>
<tr>
<th>Contract Amount</th>
<th>Retainage Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to $25,000</td>
<td>15%</td>
</tr>
<tr>
<td>$25,000 to $400,000</td>
<td>10%</td>
</tr>
<tr>
<td>Over $400,000</td>
<td>5%</td>
</tr>
</tbody>
</table>

Retainage shall be withheld and may be paid to:

a. ensure proper completion of the Work. The Town may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;

b. ensure timely completion of the Work. The Town may use retained funds to pay liquidated damages; and

c. provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents.
Retained funds shall be held by the Town in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

ARTICLE 6. The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that the Work has not been performed in accordance with the Contract Documents. The Town may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work.

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents.

Amounts withheld under this section shall be in addition to any retainage.

ARTICLE 7. When the erosion control measures have been completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents and per TPDES General Construction Permit, it shall issue a written Notice of Acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents or TPDES General Construction Permit, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

ARTICLE 8. When the Work is completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents, then it shall provide the Contractor with a written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that Work shall be deemed accepted on the date specified in the Town’s written notice of acceptance of the Work. The Work shall not be deemed to be accepted based on “substantial completion” of the Work, use or occupancy of the Work, or for any reason other than the Town’s written Notice of Acceptance. Further, the issuance of a certificate of occupancy for all or any part of the Work shall not constitute a Notice of Acceptance for that Work.

In its discretion, the Town may issue a Notice of Acceptance covering only a portion of the Work. In this event, the notice shall state specifically what portion of the Work is accepted.

ARTICLE 9. After all Work required under the Contract Documents has been completed, inspected, and accepted, the Town shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

1. include the estimate of the value of Work properly completed since the date of the most recent previous progress payment;

2. correct prior progress payments; and
3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the Town copies of all documents that the Town determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that the Town has satisfied its obligation to administer the Agreement in accordance with applicable law.

Subject to the requirements of the Contract Documents, the Town shall pay the Final Payment within thirty (30) calendar days after the date specified in the Notice of Acceptance. This provision shall apply only after all Work called for by the Contract Documents has been accepted.

ARTICLE 10. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE TOWN, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS").

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven (7) business days after receiving written notice from the Town that it is invoking its right to indemnification under this Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay these attorneys' fees and expenses.

The Town retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so. To the extent that Town elects to provide and pay for any such costs, Contractor shall indemnify and reimburse Town for such costs.
ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Five Hundred Dollars ($500.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Fifty Dollars ($250.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

ARTICLE 12. For a two-year period after the date specified in a written notice of acceptance of Work and authorization to make final payment by the Flower Mound Town Council, Contractor shall provide and pay for all labor and materials that the Town determines are necessary to correct all defects in the Work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor. This shall also include areas of vegetation that did meet TPDES General Construction Permit during final close out but have since become noncompliant.

Forty-five (45) to sixty (60) calendar days before the end of the two-year warranty period, the Town may make a warranty inspection of the Work. The Town shall notify the Contractor of the date and time of this inspection so that a Contractor representative may be present. After the warranty inspection, and before the end of the two-year warranty period, the Town shall mail to the Contractor a written notice that specifies the defects in the Work that are to be corrected.

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the Town. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Town may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the performance bond surety, or both.

If the Town determines that a hazard exists because of defective materials and workmanship, then the Town may take steps to alleviate the hazard, including making repairs. These steps may be taken without prior notice either to the Contractor or its surety. Expenses incurred by the Town to alleviate the hazard shall be paid by the Contractor, the performance bond surety, or both.

Any Work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that Work performed during the warranty period is performed with required insurance and the performance and payment bonds still in effect.

Work performed during the two-year warranty period shall itself be subject to a one-year warranty. This warranty shall be the same as described in this section.

The Town may make as many warranty inspections as it deems appropriate.
ARTICLE 13. The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the Work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

Ancillary/Integral Professional Services: In selecting an architect, engineer, land surveyor, or other professional to provide professional services, if any, that are required by the Contract Documents, Contractor shall not do so on the basis of competitive bids but shall make such selection on the basis of demonstrated competence and qualifications to perform the services in the manner provided by Section 2254.004 of the Texas Government Code and shall so certify to the Town the Contractor's agreement to comply with this provision with Contractor's bid.

ARTICLE 14. The Contractor shall sign the Construction Agreement, and deliver signed performance, payment and maintenance bonds and proper insurance policy endorsements (and/or other evidence of coverage) within ten (10) calendar days after the Town makes available to the Contractor copies of the Contract Documents for signature. Six (6) copies of the Contract Documents shall be signed by an authorized representative of the Contractor and returned to the Town.

The Construction Agreement "effective date" shall be the date on which the Town Council acts to approve the award of the Contract for the Work to Contractor. It is expressly provided, however, that the Town Council delegates the authority to the Town Manager or his designee to rescind the Contract award to Contractor at any time before the Town delivers to the Contractor a copy of this Construction Agreement that bears the signature of the Mayor or Town Manager and Town Secretary or their authorized designees. The purpose of this provision is to ensure:

1. that Contractor timely delivers to the Town all bonds and insurance documents; and

2. that the Town retains the discretion not to proceed if the Town Manager or his designee determines that information indicates that the Contractor was not the lowest responsible bidder or that the Contractor cannot perform all of its obligations under the Contract Documents.

THE CONTRACTOR AGREES THAT IT SHALL HAVE NO CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST TOWN, INCLUDING A CLAIM FOR BREACH OF CONTRACT, NOR SHALL THE TOWN BE REQUIRED TO PERFORM UNDER THE CONTRACT DOCUMENTS, UNTIL THE DATE THE TOWN DELIVERS TO THE CONTRACTOR A COPY OF THE CONSTRUCTION AGREEMENT BEARING THE SIGNATURES JUST SPECIFIED.

The Contract Documents shall be construed and interpreted by applying Texas law. Exclusive venue for any litigation concerning the Contract Documents shall be Denton County, Texas.

Although the Construction Agreement has been drafted by the Town, should any portion of the Construction Agreement be disputed, the Town and Contractor agree that it shall not be construed more favorably for either party.

The Contract Documents are binding upon the Town and Contractor and shall inure to their benefit and as well as that of their respective successors and assigns.
If Town Council approval is not required for the Construction Agreement under applicable law, then the Construction Agreement "effective date" shall be the date on which the Mayor or Town Manager and Town Secretary or their designees have signed the Construction Agreement. If the Mayor or Town Manager and Town Secretary sign on different dates, then the later date shall be the effective date.

IN WITNESS WHEREOF, the Town and the Contractor, respectively, have caused this Agreement to be duly executed in the day and year first herein written in six copies, all of which to all intents and purposes shall be considered as the original.

This Agreement will be effective on the 16th day of August, 2010.

TOWN OF FLOWER MOUND

__________________________
Melissa D. Northern, MAYOR

__________________________
(Printed Name)

ATTEST:

__________________________
(Position)

Paula J. Paschal, TOWN SECRETARY

(CORPORATE SEAL)

APPROVED AS TO FORM AND LEGALITY:

__________________________
Attest:

__________________________
(Position)

Terrence S. Welch, TOWN ATTORNEY

__________________________
(Position)
TOWN COUNCIL MEETING
AGENDA ITEM NO: 12
August 16, 2010

[ ] CONSENT ITEM  [ X ] REGULAR ITEM  [ ] WORK SESSION ITEM

FROM: Doug Powell, Executive Director of Development Services

THROUGH: Harlan Jefferson, Town Manager
          Kent Collins, P.E., Assistant Town Manager

PRESENTER: Doug Powell, Executive Director of Development Services

ITEM: The second of two public hearings to consider approval of an ordinance for annexation (ANX 01-10 - Extra Territorial Jurisdiction Annexation) of land within the Town’s extraterritorial jurisdiction, and adjacent and contiguous to the Town, in accordance with Chapter 43 of the Texas Local Government Code. The subject properties are generally located north and northwest of Tour 18 in the Town’s existing extraterritorial jurisdiction, generally adjacent to the jurisdictional boundaries of the Towns of Argyle and Bartonville.

[ X ] Ordinance  [ ] Resolution  [ ] Motion  [ ] Direction

I. SUMMARY:

This item is to complete the annexation of the remaining extraterritorial jurisdiction (ETJ) of the Town of Flower Mound.

II. BACKGROUND INFORMATION:

The property to be annexed is identified in Attachment A, and generally west of the Tour 18 development. The land includes a portion of the Montalcino Estates development which came before the Town Council for zoning and development plan approval in March of this year.

With the completion of this annexation, the Town of Flower Mound will have no remaining ETJ. The service plan for the area, which details the public services to be provided, is contained in Attachment B.

The process is to hold two public hearings regarding the annexation, the first one was held on August 2, 2010. This item is to hold the second public hearing to receive public comment. The annexation is anticipated to be finalized at the Town Council meeting to be held on September 7, 2010.

III. FISCAL IMPACT:

N/A
IV. LEGAL REVIEW:

N/A

V. ATTACHMENTS:

A. Annexation Map
B. Service Plan

VI. RECOMMENDED MOTION OR ACTION:

This item is only to receive public input; no action will be taken by the Town Council.
Annexation Map

Surrounding Zoning Districts:

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Agricultural</td>
</tr>
<tr>
<td>IH</td>
<td>Interim Holding</td>
</tr>
<tr>
<td>SF-10</td>
<td>Single Family District 10</td>
</tr>
<tr>
<td>SFE</td>
<td>Single Family Estate</td>
</tr>
<tr>
<td>WR</td>
<td>Water Recreation</td>
</tr>
</tbody>
</table>

Indicates Zoning Boundary

Indicates ETJ Properties

Indicates Town Limit

Not to Scale
INTRODUCTION

The Town of Flower Mound is currently in the process of annexing the remaining extraterritorial jurisdiction (ETJ) of the Town of Flower Mound. The property to be annexed is identified by the map below, and is generally west of the Tour 18 development. The land includes a portion of the Montalcino Estates development which came before the Town Council for zoning and development plan approval in March of this year.

With the completion of this annexation, the Town of Flower Mound will have no remaining ETJ. The service plan for the area, which details the public services to be provided, is contained herein below.

The process is to hold two public hearings regarding the annexation, one on August 2, 2010, and another on August 16, 2010. The annexation is anticipated to be finalized at the Town Council meeting to be held on September 7, 2010.

SERVICES

Upon annexation into the Town of Flower Mound, the areas being annexed will be provided with the following services. Also, the annexation will not impact the school district boundaries currently in place.

A. POLICE PROTECTION:

Police personnel and equipment from the Flower Mound Police Department shall be provided to the areas annexed, at a level consistent with current methods and procedures provided to similar areas, on the effective date of this ordinance.

B. FIRE PROTECTION / EMERGENCY MEDICAL SERVICES:

1. Fire protection and Emergency Medical Services (EMS) from the Town shall be provided to the areas annexed, at a level consistent with current methods and procedures provided to similar areas, on the effective date of this ordinance.

2. The Flower Mound Fire and Emergency Services Department, by interlocal contract with Denton County, currently provides emergency response to the unincorporated area of Tour 18. Emergency response coverage will be a seamless transition. Emergency services will be provided from fire station #2 located at 4401 Shiloh Road. Additional units and personnel required to provide enhanced services will respond from the other two existing fire stations.

C. FIRE PREVENTION / INVESTIGATION:

The services of the Town of Flower Mound Fire Department shall be provided to the areas on the effective date of this ordinance. The non-emergency services of fire
prevention and fire investigation will be added to the list of services provided by the department.

D. **SOLID WASTE COLLECTION:**

Solid waste collection shall be provided to the areas annexed upon request beginning on the effective date of this ordinance up to the second anniversary of the annexation. After that time, residents will be required to use the Town's solid waste collection company. The collection of refuse from individual properties shall be made in accordance with the usual solid waste collection scheduling.

E. **WATER SERVICE:**

1. This area is currently serviced by the Town's water distribution system, future expansion of the Town's Water Distribution System will provide better flow rates and line pressures.

2. Although fire hydrants are already in place in this area, future expansion of the Town's Water Distribution System will provide better fire protection by increasing flow rates and line pressures.

3. Maintenance of private lines will continue to be the responsibility of the owner or occupant.

F. **SANITARY SEWER SERVICE:**

1. The annexed area will become part of the Cross Timbers Conservation Development District. As such, the Town's Wastewater Master Plan does not provide for extension of sewer service into this district.

2. Operation and maintenance of private wastewater facilities in the annexed area will continue to be the responsibility of the owner.

G. **STREETS:**

1. Operation and maintenance of private streets in the annexed area will continue to be the responsibility of the owner.

H. **PARKS AND RECREATION:**

Residents within the areas annexed may utilize all existing park and recreation facilities on the effective date of this ordinance. Fees for such usage shall be in accordance with current fees established by ordinance.

I. **ENVIRONMENTAL HEALTH AND CODE ENFORCEMENT SERVICES:**

1. Enforcement of current environmental health ordinances and regulations, including but not limited to, weed and brush ordinances, junked and abandoned vehicles
2. Inspection services, including but not limited to, the review of building plans, the issuance of permits and the inspection of all buildings, plumbing, mechanical, and electrical work to ensure compliance with Town codes and ordinances will be provided within sixty (60) days of the effective date of the annexation.

J. MISCELLANEOUS:

Any publicly owned facility, building, or service located within the annexed area shall be maintained by the Town on the effective date of the annexation ordinance.

CONTACT INFORMATION

Harlan Jefferson, Town Manager
972.874.6089
harlan.jefferson@flower-mound.com

Doug Powell, Executive Director of Development Services
972.874.6351
doug.powell@flower-mound.com
ANNEXATION MAP

Annexation Map

Surrounding Zoning Districts:

<table>
<thead>
<tr>
<th>Code</th>
<th>Zoning District</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Agricultural</td>
</tr>
<tr>
<td>IH</td>
<td>Interim Holding</td>
</tr>
<tr>
<td>SF-10</td>
<td>Single Family District 10</td>
</tr>
<tr>
<td>SFE</td>
<td>Single Family Estate</td>
</tr>
<tr>
<td>WR</td>
<td>Water Recreation</td>
</tr>
</tbody>
</table>

 Indicates Zoning Boundary

 Indicates ETJ Properties

 Indicates Town Limit

Comments or questions regarding this notification can be made at 1001 Cross Timbers, Suite 2330, Flower Mound TX 75028, by calling Doug Powell (972) 874-6351, or by fax (972) 874-6377.
TOWN COUNCIL MEETING
AGENDA ITEM NO: 13
August 16, 2010

[ ] CONSENT ITEM  [X] REGULAR ITEM  [ ] WORK SESSION ITEM

FROM: Matthew Woods, Director of Environmental Services

THROUGH: Harlan Jefferson, Town Manager  
          Kent Collins, P.E., Assistant Town Manager

PRESENTER: Matthew Woods, Director of Environmental Services

ITEM: Discuss and consider the possible appointment and replacement of members serving on the Oil and Gas Advisory Board.

[ ] Ordinance  [ ] Resolution  [ ] Motion  [X] Direction

I. SUMMARY:

On July 6, 2010, the Town Council appointed twelve regular members and four alternates to the Oil and Gas Advisory Board. The Oil and Gas Advisory Board was established by Ordinance 38-10 which was approved by the Town Council on June 7, 2010.

II. BACKGROUND INFORMATION:

Ordinance 38-10 adopted an ordinance submitted by petition that declared a moratorium on the issuance of certain permits for oil and natural gas operations, and established an Oil and Gas Advisory Board to conduct a review of the Town’s natural gas well drilling and production operation regulations.

The Town Council appointed twelve regular and four alternate board members at the July 6 Town Council Special Meeting. Since the appointments on July 6, one alternate member has resigned from the board, and the Town became aware of potential conflicts of interests that may affect the ability of some of the regular board members to serve.

The potential conflict of interest for board members arises out of the recent lawsuit filed against the Town by a member or members of the board. The lawsuit was filed regarding the possible permitting of the proposed Hilliard 1-H gas well pad site, upon compliance with all Town regulations, and was served on the Town on August 2, 2010. At least one member appointed to the board is a named plaintiff in the lawsuit and it has been brought to the Town’s attention that an additional member(s) of the Oil and Gas Advisory Board may have involvement with the lawsuit.

Based on the one current alternate vacancy on the board and depending on the action taken by the Town Council relative to the potential conflicts of interests,
additional appointments and/or appointing alternate members as regular members may be necessary.

Alternatives or Options:

This agenda item provides the Town Council the opportunity to discuss the appointments to the Oil and Gas Advisory Board and any conflicts of interests that may affect the members currently serving on the board. Members currently serving may be replaced with alternate members, new members may be appointed, or the current board members may remain in place.

III. FISCAL IMPACT:

N/A

IV. LEGAL REVIEW:

Alan Lathrom, of Brown and Hofmeister, L.L.P., has reviewed the agenda item.

V. ATTACHMENTS:

1. Oil and Gas Advisory Board Appointees
2. Ordinance 38-10
3. Town of Flower Mound Code of Ethics
4. Oil and Gas Advisory Board Acknowledgement Form

VI. RECOMMENDED MOTION OR ACTION:

Discuss and consider the possible appointment and replacement of members serving on the Oil and Gas Advisory Board.
OIL AND GAS ADVISORY BOARD

Resident Board Appointees:

Dennis McKaige
Tammi Vajda

Eric Jellison
Al Sanchez

Eric Barsam
Rob Marcoe

Jennifer Rogers
Prakash Parameswaran

Remaining Board Appointees (Mineral Lessors, Independent Experts representing surface owners, and neutral third party mediator):

Virginia Moore
Brent Halldorson

Deborah Hempel-Medina
John Roheim

Alternate Board Appointees:

Erin Bouck
Frankie Arthur

Craig Bromley
Amy Yaeger
TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. 38-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING AN ORDINANCE, SUBMITTED TO THE TOWN OF FLOWER MOUND, TEXAS, ON OR ABOUT MARCH 31, 2010, DECLARING A MORATORIUM ON THE ISSUANCE OF PERMITS FOR CERTAIN OIL AND GAS PIPELINES AND NATURAL GAS CENTRALIZED FACILITIES AND RELATED MATTERS; MAKING CERTAIN FINDINGS; PROVIDING AN INTERPRETATION OF SAID SUBMITTED ORDINANCE; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on or about March 31, 2010, the Town of Flower Mound, Texas, received an ordinance ("Ordinance") submitted by petition; and

WHEREAS, said Ordinance generally declares a moratorium on the Town’s issuance of permits for certain oil and gas pipelines and natural gas centralized facilities, and addresses related matters; and

WHEREAS, on or about April 9, 2010, the Town Secretary’s Office certified that a sufficient number of signatures of qualified voters were attached to the petition and on April 19, 2010, the Town Council voted to receive the Town Secretary’s certification; and

WHEREAS, according to Article VII of the Town’s Charter, upon certification, the Town Council shall either (1) pass said Ordinance without alteration within 45 days after the attachment of the Town Secretary’s certificate of sufficiency to the accompanying petition; or (2) proceed to call a special election at which the Ordinance, without alteration, shall be submitted to a vote of the people; and

WHEREAS, after it was initially determined to call a special election, the Town Council since has determined that it is in the Town’s best interests to adopt the Ordinance as submitted without alteration.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

All of the above premises are hereby found to be true and correct factual and legislative determinations of the Town of Flower Mound and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.
SECTION 2

From and after the effective date of this Ordinance, the attached Ordinance is hereby in full force and effect and shall be binding upon the Town, pursuant to the applicable provisions of Article VII of the Town Charter.

SECTION 3

For purposes of interpretation, since there is no existing Section 33-454 in the Town’s Code of Ordinances, the first sentence of Section 2(A) of the Ordinance shall be interpreted to read as follows: “The acceptance and processing of applications for oil and gas and/or produced water pipeline permits pursuant to the provisions of Sec. 34-454 of the Code of Ordinances of the Town of Flower Mound are hereby temporarily suspended, effective immediately upon passage of this Ordinance.” Further, since there is no definitive time period referenced in Section 2(C) of the Ordinance, the first sentence of said Section 2(C) shall be interpreted to read as follows: “The aforesaid suspensions shall continue in effect until the completion of the review process and Council action upon any regulatory amendments found to be appropriate, provided such suspension shall terminate 180 days after the passage of this Ordinance unless the Town Council has not then completed its review and acted upon any amendments to such regulations.”

SECTION 4

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance and the attached Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance or the attached Ordinance shall be declared unconstitutional by any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance and the attached Ordinance, since the same would have been enacted by the Town Council without the incorporation in this Ordinance and the attached Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section, and said remaining portions shall remain in full force and effect.

SECTION 5

This Ordinance shall take effect and be in full force immediately upon passage.
ORDINANCE NO. 38-10

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF 4 TO 0, ON THIS THE 7TH DAY OF JUNE, 2010.

APPROVED:

[Signature]
Melissa D. Northern, MAYOR

ATTEST:

[Signature]
Paula J. Pascal, TOWN SECRETARY

APPROVED AS TO FORM:

[Signature]
Terrence S. Welch, TOWN ATTORNEY
ORDINANCE NO. 38/10

An Ordinance of the Town of Flower Mound, Texas, declaring a 180 day moratorium on the acceptance or processing of applications for (1) any specific use permit for any Centralized Natural Gas Compression Facility, Centralized Natural Gas Lift Facility or Centralized Natural Gas Produced Water Storage Facility as those uses are defined in Section 98-2 of the Code of Ordinances of the Town of Flower Mound ("Code"); declaring a 180 day moratorium on the acceptance and processing of applications for any permit for an oil and gas pipeline to be issued pursuant to Section 34-454(a) of Article VIII "Oil and Gas Pipeline Standards" of the Code; providing for a 60 day extension; establishing a Oil and Gas Advisory Board ("Board") whose members shall be appointed by the Town Council; directing the Board to initiate a review of the Town’s ordinances regulating such facilities and pipelines; providing a procedure for a variance from this moratorium; providing a severability clause; and providing that this ordinance shall take effect immediately upon passage.

WHEREAS, the Town of Flower Mound is located in the Barnett Shale Gas Field in the Fort Worth Basin; and

WHEREAS, oil and natural gas exploration and production in the Barnett Shale Gas Field within the corporate limits of the Town of Flower Mound is steadily increasing and now involves the use of centralized facilities for natural gas production operations including compression and storage of natural gas and produced water containing hazardous fluids at centralized locations and transmission of gas and hazardous fluids through pipelines dispersed throughout the Town; and

WHEREAS, recent studies have provided additional information regarding public health and safety risks associated with such facilities and pipelines including but not limited to possible leakage, contamination of air and/or ground water and soil and damage to underground utility lines; and

WHEREAS, the Lake Grapevine watershed, in which Flower Mound is located in part, has unique and precious environmental features that will or may also be impacted by such facilities and pipelines; and

WHEREAS, there is widespread concern among citizens of the Town of Flower Mound that recent amendments to the Code of Ordinances of the Town relating to regulation of such facilities and pipelines were enacted without sufficient consideration of all available information concerning appropriate safeguards for public health and safety in connection with such facilities and pipelines;
ORDINANCE NO. 38-1D

and

WHEREAS, it is prudent to allow additional time for study and public comment relative to the concerns of the voters on such issues; and

WHEREAS, this ordinance was submitted by petition to the Town Council and was either passed by the Town Council or was submitted to the voters of the Town of Flower Mound at an election held pursuant to Article VII, Sections 7.02 through 7.12 of the Charter of the Town of Flower Mound, and was duly adopted by the voters at said election; Now, therefore,

BE IT ORDAINED BY THE TOWN COUNCIL OR CITIZENS OF THE TOWN OF FLOWER MOUND:

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual findings of the Town of Flower Mound and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2

(A) The acceptance and processing of applications for oil and gas and/or produced water pipeline permits pursuant to the provisions of Sec. 33-454 of the Code of Ordinances of the Town of Flower Mound are hereby temporarily suspended, effective immediately upon passage of this Ordinance.

(B) The acceptance and processing of applications for Specific Use Permits pursuant to Section 98-273 “Specific Uses” of the Code of Ordinances of the Town of Flower Mound for the construction of any “Centralized Natural Gas Compression Facility,” “Centralized Natural Gas Lift Facility,” or “Centralized Natural Gas Produced Water Storage Facility” as those uses are defined in Section 98-2 “Definitions” of the Code are hereby temporarily suspended, effective immediately upon passage of this Ordinance.

(C) The aforesaid suspensions shall continue in effect until the completion of the review process and Council action upon any regulatory amendments found to be appropriate, provided such suspension shall terminate 180 after the passage of this Ordinance unless the Town Council has not then completed its review and acted upon any amendments to such regulations. In that event the
suspension shall be extended once for a period of sixty days by action of the Town Council.

SECTION 3

(A) There is hereby established the Town of Flower Mound Oil and Gas Advisory Board (hereinafter the “Oil and Gas Board” or “Board.”). Within 30 days after the passage of this Ordinance, the Town Council of the Town of Flower Mound shall appoint 12 persons to serve on the Board. Each member shall serve for a term of one year. Members shall serve without compensation. The Members shall elect a Chairperson to preside at meetings. Membership of the Board shall be comprised of the following:

(1) Eight Board members shall be individuals residents of the Town of Flower Mound who own real property situated in the corporate limits of the Town. These eight members shall be chosen so that the number of members owning mineral rights bears approximately the same proportion to the number of members who own only surface rights as the number of all persons owning mineral rights in the Town of Flower Mound bears to all persons owning only surface rights in the Town. Members may consult experts but may not delegate their responsibilities or authority to any expert or other third party.

(2) The remaining four members shall be comprised of mineral lessors, independent experts to represent the surface owners and a neutral third party mediator without any financial or professional ties to the Town of Flower Mound or the oil and gas industry.

(B) The Board shall conduct public hearings to identify the concerns of the citizens of the Town regarding (1) Centralized Natural Gas Compression Facilities, Centralized Natural Gas Lift Facilities, and Centralized Natural Gas Produced Water Storage Facilities (hereinafter referred to collectively as “centralized processing facilities”) and (2) oil and gas and/or produced water pipelines (hereinafter referred to as “pipelines”).

(B) Upon completion of such public hearings, the Board shall assess the Town’s existing ordinances regulating centralized processing facilities and oil and gas pipelines with the objectives of (1) addressing the concerns of the citizens identified in public hearings; (2) recognizing any appropriate restrictions on the location of such facilities and pipelines and (3) balancing the rights of surface owners with rights of mineral rights owners while preserving the integrity of Flower Mound’s Master Plan and Smart Growth principles. Other factors which may be considered are impacts on the following: economic development, tax receipts, property values, air quality and
surface and subsurface water flows. Particular matters may be delegated to appropriate boards and commissions and/or staff to develop recommendations for referral back to the Board and/or Town Council.

(C) Upon completion of the aforesaid review, the Board shall by majority vote adopt and promulgate (1) findings regarding the need for any amendments to Ordinances regulating centralized gas processing facilities and oil and gas pipelines and (2) recommendations as to any amendments to the Code of Ordinances of the Town. At least one hearing shall be held to receive public comment on any such findings and recommendations. Any such hearing or hearings shall be held at least 30 days prior to the date such recommendations are placed on the Council agenda for action by the Town Council. The Town Council may hold such additional public hearings as it deems necessary prior to acting upon any recommendations of the Board.

(D) The Council may expand the scope of the review as it deems appropriate.

SECTION 4

Any and all ordinances, orders, resolutions, rules, regulations, policies or provisions in conflict with the provisions of this Ordinance are hereby suspended to the extent of any conflict herewith.

SECTION 5

Any property owner who believes that the moratorium imposed by this Ordinance causes a unique and unreasonable hardship upon his or her property or business shall have the right to request a variance and shall submit a written request to the Board of Adjustment of the Town of Flower Mound by transmitting same to the Town Secretary's office. The request must provide the following information:

(1) A description of the property to be covered by the variance.

(2) An explanation as to why the application of the moratorium is unreasonable as applied to the applicant's property.

(3) A description of any negative impacts created by the moratorium provision.

The application shall be placed upon the agenda of the Board of Adjustment for consideration in accordance with procedures governing applications for variances. The applicant shall receive written notice of the date of the proposed hearing on the variance request. On the date that the
application is set for hearing, the Board of Adjustment shall conduct a public hearing on the variance request giving any individual who desires to present information or evidence on the appropriateness or inappropriateness of the variance the opportunity to appear and present such information. At the conclusion of the hearing, the Board, by majority vote, may approve a variance to the provisions of this moratorium ordinance or may deny the request for variance.

SECTION 6

If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstances, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases or provisions of this Ordinance, or the application thereof to any person or circumstances, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 7

In the event this ordinance is adopted by the Town Council, it shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the Town of Flower Mound, and in the event this ordinance is adopted by the citizens of the Town of Flower Mound in an election for that purpose, it shall take effect immediately after the canvass of the election in which it is adopted, in accordance with the provisions of the Charter of the Town of Flower Mound, and it is accordingly so ordained.
ARTICLE VIII. CODE OF ETHICS*


Sec. 2-411. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Compensation means any economic benefit received in return for services, property or investment.

Discretionary authority means the power to exercise any judgment in a decision or action.

Economic benefit means any money, real or personal property, purchase, sale, lease, contract, option, credit, loan, discount, service or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated.

Employee means any person employed by the town, including those individuals employed on a part-time or seasonal basis, but such term shall not be extended to apply to any independent contractor.

Entity means a sole proprietorship, partnership, limited partnership, firm, corporation, professional corporation, holding company, joint stock company, receivership, trust or any other entity recognized by law through which business may be conducted.

Gift means a favor, hospitality or economic benefit, other than compensation.

Officer or official means any member of the town council and any appointive member of a board, commission, authority or committee set up by ordinance, the Charter, state law or otherwise on a temporary or permanent basis, but not members of a board, commission, authority or committee which functions only in an advisory or study capacity and which has no discretionary, governmental, quasijudicial or administrative authority.

Relative means any person related to an officer, official or employee within the first degree by consanguinity or affinity and shall include a spouse, father, mother, son, daughter, brother or sister.

Remote interest means an interest of a person or entity, including an official, who or which would be affected in the same way as the general public. The interest of a councilmember in the property tax rate, general town fees, town utility charges or a
comprehensive zoning ordinance or other similar decision is a remote interest to the extent that the councilmember is affected in common with the general public.

**Substantial interest** means an interest in another person or an entity if:

(1) The interest is ownership of ten percent or more of the voting stock, shares or equity of the entity or ownership of $5,000.00 or more of the equity or market value of the entity;

(2) Funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equalled or exceeded $5,000.00 in salary, bonuses, commissions or professional fees or $20,000.00 in payment for goods, products or nonprofessional services, or ten percent of the person's gross income during that period, whichever is less;

(3) The person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity, other than a corporate entity owned or created by the town council; or

(4) The person is a creditor, debtor or guarantor of the other person or entity in an amount of $5,000.00 or more.

**Substantial interest in real property** means an interest in real property which is an equitable or legal ownership with a market value of $5,000.00 or more.

**Substantial interest in partnerships, professional corporations and other entities** means if a town officer, official or employee is a member of a partnership or professional corporation, or conducts business through another entity, a substantial interest of the partnership, professional corporation or entity shall be deemed to be a substantial interest of the town officer, official or employee if:

(1) The partnership or professional corporation has fewer than 20 partners or shareholders;

(2) Regardless of the number of partners or shareholders, the officer, official or employee has an equity interest, share of draw equal to or greater than five percent of the capital or revenues of the partnership, professional corporation or other entity; or

(3) With regard to the partnership, professional corporation or other entity's substantial interest in a particular client, the officer, official or employee has personally acted within the preceding 24 months in a professional or fiduciary capacity for that client.

(Code 1989, ch. 1, § 13.01)

**Cross references:** Definitions generally, § 1-2.
Sec. 2-412. Adoption of state statute.

V.T.C.A., Local Government Code § 171.001 et seq., the statute which regulates conflicts of interest of officers of municipalities, is hereby adopted and made a part of this code of ethics for all purposes, with the proviso that in case of a conflict between the provisions of this code of ethics and V.T.C.A., Local Government Code § 171.001 et seq., the more restrictive provision shall govern.

(Code 1989, ch. 1, § 13.06)

Sec. 2-413. Cumulative legal effect.

In its legal effect, this article is cumulative of all provisions of the town Charter, this Code or federal and state statutes, law or regulations defining and prohibiting conflicts of interest.

(Code 1989, ch. 1, § 13.07)

Sec. 2-414. Policy and purpose of article.

(a) It is hereby declared to be the policy of the town that the proper operation of democratic government requires that:

(1) Town officers, officials and employees are independent, impartial and responsible only to the people of the town.

(2) Governmental decisions and policies are made using the proper procedures of the governmental structure.

(3) No town officer, official or employee shall have any interest, direct or indirect, nor engage in any business transaction or professional activity nor incur any obligation of any nature which is in conflict with the proper discharge of his duties in the public interest.

(4) Public office shall not be used for personal gain.

(5) The town council shall be maintained as a nonpartisan body.

(6) Town officers, officials and employees shall fully comply with any federal and state statutes, laws and regulations, as amended, concerning conflicts of interest.

(b) In furtherance of this policy, the town council has hereby determined that it is advisable to enact this code of ethics for all town officers, officials and employees, whether elected or appointed, paid or unpaid, advisory or administrative, to serve not only as a guide for official conduct of the town's public servants, but also as a basis for discipline for those who refuse to abide by its terms and provisions.
Sec. 2-415. Unethical activity.

No officer, official or employee of the town shall:

(1) Accept any gift or economic benefit of more than $20.00 in value from any person or entity which gift or economic benefit might reasonably tend to influence such officer, official or employee in the discharge of official duties, or grant in the discharge of official duties any improper gift, economic benefit, service or thing of value; however, the provisions of this section shall not apply to any political contribution made pursuant to the Texas Election Code.

(2) Use his official position to solicit or secure special privileges or exemptions for himself or others.

(3) Directly or indirectly disclose or use any information gained solely by reason of his official position or employment for his own personal gain or benefit or for the private interest of others.

(4) Transact any business on behalf of the town in his official capacity with any business entity of which he is an officer, agent or member or in which he owns a substantial interest. If such a circumstance should arise, then in the case of an officer or official, he shall make known such interest and abstain from voting on the matter, or in the case of an employee, he shall turn the matter over to his supervisor for reassignment, state the reasons for doing so and have nothing further to do with the matter involved.

(5) Engage in any outside activities which will conflict with his assigned duties in the employment of the town, or which his employment with the town will give him an advantage over others engaged in a similar business, vocation or activity.

(6) Accept other employment or engage in outside activities incompatible with the full and proper discharge of his duties and responsibilities with the town, or which might impair his independent judgment in the performance of his public duties.

(7) Receive any fee or compensation for his services as an officer, official or employee of the town from any source other than the town, except as may otherwise be provided by law. This shall not prohibit an officer, official or employee from performing the same or other services that he performs for the town for a private organization if there is no conflict with his town duties and responsibilities.

(8) Represent, directly or indirectly, or appear on behalf of the private interests of others before any agency, board, commission, authority or committee of the town, or accept any retainer or compensation that is contingent upon a specific action being taken by the town or any of its agencies, boards, commissions, authorities or committees, unless such officer, official or employee of the town has made full disclosure of such
representation, retainer or compensation. For purposes of this subsection, the term "full disclosure" shall mean:

a. The filing of an affidavit with the town secretary describing such representation, retainer or compensation;

b. Disclosure, either orally or in writing, to the other members of the town agency, board, commission, authority or committee;

c. Refraining from any other discussion of the matter with other members of the town agency, board, commission, authority or committee; and

d. Refraining from voting on or participating in the consideration of such matter by the town agency, board, commission, authority or committee.

(9) Use the prestige of his position on behalf of any political party or engage in any political activity which does not maintain the nonpartisan policy of the town; provided, however, that all employees are encouraged to register and vote as they may choose in all local, state and national elections.

(10) Knowingly perform or refuse to perform any act in order to deliberately hinder the execution and implementation of any town ordinances, rules or regulations or the achievement of official town programs;

(11) Have a substantial interest, direct or indirect, in any contract with the town or a substantial interest, direct or indirect, in the sale of the town of any land, or rights or interest in any land, materials, supplies or service;

(12) Participate in a vote or decision on any matter in which the officer, official or employee has a direct or indirect substantial interest or in which a relative of the officer, official or employee has a direct or indirect substantial interest;

(13) Grant any special consideration, treatment or advantage to any individual, business organization or group beyond that which is normally available to every other individual, business organization or group. This shall not prevent the granting of fringe benefits to town employees as an element of their employment or as an added incentive to the securing or retention of employees;

(14) Knowingly disclose information deemed confidential by law; or

(15) Participate in any vote or decision relative to any amendment to the town's comprehensive master plan or any change in the zoning classification of property if the officer, official, employee or a relative of the officer, official or employee has any interest in any property within 200 feet of the property which is the subject of the amendment to the town's comprehensive master plan or on which the change in zoning classification is proposed. Further, any officer, official or employee who has any such
interest in property shall be legally disqualified from participating in any vote or decision relative to the comprehensive master plan amendment or change in zoning classification.

(Code 1989, ch. 1, § 13.03; Ord. No. 51-98, § 1, 9-14-1998)

Sec. 2-416. Disclosure of interest.

Any officer or employee of the town who has a prohibited or substantial interest in any matter pending before the town, shall disclose such interest to other members of the town council, committee, commission or board of which he is a member or, in the case of an employee, to a supervisor, and shall refrain from further discussion of the matter; shall not be physically present when the subject is discussed in open or executive session; and shall not vote on or participate further in any such matter.

(Code 1989, ch. 1, § 13.04)

Sec. 2-417. Penalty for violation of article.

(a) Any town officer, official or employee knowingly violating any provision of this code of ethics shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine as provided in section 1-13 of this Code.

(b) The penalty prescribed in this section shall not limit the power of the town council to discipline its members pursuant to applicable provisions of the town Charter, this Code, state statutes or other laws defining and prohibiting conflicts of interest.

(c) The penalty prescribed in this section shall not limit the power of the town manager to discipline those employees under the town manager's supervision, pursuant to applicable provisions of the town Charter, this Code, the adopted personnel policies of the town, state statutes or other laws defining and prohibiting conflicts of interest.

(Code 1989, ch. 1, § 13.05)
ACKNOWLEDGMENT

I have been appointed to serve on the Town’s Oil and Gas Advisory Board, created pursuant to Ordinance No. 38-10, approved by the Town Council on June 7, 2010. As a member, I understand and agree to the following:

* I have been provided a copy of a memorandum entitled Conflict of Interest Issues. I understand and agree to be bound by it as well as Chapter 171 of the Texas Local Government Code and the Town’s Code of Ethics Ordinance.

* I understand and agree that I serve at the pleasure of the Town Council and that I am subject to removal from the Oil and Gas Advisory Board at the Town Council’s discretion, which may include, but is not limited to, unexcused absence for two or more scheduled meetings, not being prepared to participate or have not done the requisite preparation for one or more meetings, inappropriate conduct at meetings, and/or activities outside of scheduled meetings that are or may be perceived as a conflict (or potential) conflict of interest.

* I understand and agree that as a Board member, I am bound to follow and uphold the Constitutions of the United States and the State of Texas as well as the laws of the United States, the State of Texas and the Town of Flower Mound.

* I understand and agree that if there is a question about whether I have or may have a conflict of interest, I may submit that matter to the Town Attorney for a determination and I agree to be bound by that determination.

* I understand and agree that the length of my term is of a limited duration, namely one (1) year from date of my appointment, and that as of July 6, 2011, the Oil and Gas Advisory Board will cease to exist. On or before that date, however, and solely at the discretion of the Town Council, the Oil and Gas Advisory Board may be authorized to continue its duties and in that event, my appointment may be extended in 30-day increments or until such time that the Town Council determines that the mission of the Oil and Gas Advisory Board has been fulfilled.

______________  ______________
Signature Date

________________________________________
Name (Typed or Printed)
August 26, 2010 Special Meeting, Fire Control, Prevention, and Emergency Medical Services District Special Meeting, and Crime Control and Prevention District Special Meeting

1. Public Hearing to consider the proposed budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011.

2. Public Hearing by the Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider the Flower Mound Fire Control, Prevention, and Emergency Medical Services District proposed budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011.

3. Public Hearing by the Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider the Flower Mound Crime Control and Prevention District proposed budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011.

September 6, 2010 Regular Meeting (will be cancelled)

September 7, 2010 Special Meeting

1. Consider approval of minutes from a budget work session of the Town Council held on August 12, 2010.

2. Consider approval of minutes from a regular meeting of the Town Council held on August 16, 2010.

3. Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Appendix A “Fee Schedule” by deleting and replacing Sections --------, ---------, ------- and -------- relative to the charges for 1---------, 2---------, 3---------, 4---------.

4. Consider approval of Change Order No. 2 and final acceptance of the Hilltop Walkways and Wilkerson Park Parking Lot projects, amending the contract with Jay Davis Co., Inc., dba JDC Construction Co., for an increase in the amount of $x,xxx.xx, a final payment to Jay Davis Co. Inc., of $x,xxx.xx and authorization for the Mayor to execute same on behalf of the Town.

5. Justin Car Wash Sewer Pro-Rata.

6. Consider approval of an advance funding agreement with the Texas Department of Transportation for voluntary local government contributions associated with FM 2499 Section 2 & 3 Sound Wall project, in the amount of $18,139.85, and authorization for the Mayor to execute same on behalf of the Town.

7. Consider approval of Amendment #1 to the Municipal Maintenance Agreement with the State of Texas, for continued assistance with the maintenance and operation of state highways within the Town, and authorization for the Mayor to execute the same on behalf of the Town.
8. Consider approval of Amendment No. 5 to the Fiscal Year 2009-2010 Capital Improvement Program.


10. Morriss Gerault Amendment Resolution 20-09.

11. Consider approval of Change Order No. 2 for construction of the Morriss/Gerault Road Improvement Phase I project, amending the contract with TISEO Paving Company, for an increase in the amount of $37,704.54, and authorization for the Mayor to execute same on behalf of the Town.

12. Consider approval of the award of Competitive Sealed Bid No. 79-10-B for the construction of Community Activity Center Drainage Improvements to __________, in the amount of $________, and authorization for the Mayor to execute same on behalf of the Town.

13. Morriss Gerault Phase 1 Addendum 3.

14. Flower Mound Road CO 1.

15. Consider approval of a Professional Services Agreement with Fugro Consultants, Inc., to provide geotechnical and material testing services associated with the construction of the Dixon Lane (Crestside to FM 2499) project, in the amount of $47,178.00, and authorization for the Mayor to execute same on behalf of the Town.

Regular Items

16. **ANX 01-10 - Extra Territorial Jurisdiction Annexation**

Consider approval of an ordinance for annexation (ANX 01-10 – Extra Territorial Jurisdiction Annexation) of land within the Town’s extraterritorial jurisdiction, and adjacent and contiguous to the Town, in accordance with Chapter 43 of the Texas Local Government Code. The subject properties are generally located north and northwest of Tour 18 in the Town’s existing extraterritorial jurisdiction, generally adjacent to the jurisdictional boundaries of the Towns of Argyle and Bartonville.

**September 20, 2010 Regular Meeting, Fire Control, Prevention, and Emergency Medical Services District Special Meeting, and Crime Control and Prevention District Special Meeting**

Presentations

- Fall Prevention Awareness Week

1. Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011, and making appropriations for each fund and department.

2. Consider approval of an ordinance fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011, and for each fiscal year thereafter until otherwise provided, at the rate of $0.____ per $100
assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2010.

3. Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011.

4. Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2010, and ending on September 30, 2011.

5. FM 2499 & Sagebrush Signal CO & Final Acceptance.

6. Oak Street Lift Station – Interim Expansion Final Acceptance.

7. 2008 Street Reconstruction (Dover, Homestead, Savannah) – CO 8 & Final Acceptance.

8. Fire Station No. 5 Final Acceptance & CO 1.

9. Consider approval of renewing the SPAN contract to provide bus transportation for senior citizens.


Regular Items

11. **SP 04-10 - Western Elevated Storage Tank**
   Consider a request for a Site Plan (SP 04-10 - Western Elevated Storage Tank) to construct an elevated storage tank. The property is located at 4400 Freeman Road. *(Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its July 12, 2010 meeting.)*

**October 4, 2010 Regular Meeting**

1. Consider approval of an ordinance adopting the 2010 tax rolls for the Town of Flower Mound.

2. Consider approval of the first reading of an ordinance to replace the existing gas franchise ordinance between the Town of Flower Mound and Atmos Mid-Tex.

3. CDBG – Sunrise Circle Ph IV Paving Construction Award.

4. Consider approval of Amendment No. 1 with Freese and Nichols, Inc., to provide professional engineering services associated with the relocation of the existing water and sanitary sewer lines along FM 1171 from FM 2499 to Pochontas Drive in the amount of
$     , and authorization for the Mayor to execute same on behalf of the Town.

5. Equestrian Trail Head / Dunham Construction Award.

6. Lake Forest Trail Construction Award.

7. 2499 Sound Wall Ph II – Final Acceptance.

8. FM 1171 to 377 Water Line Construction Award– Tour 18 to Roanoke Hills.

9. Interlocal Agreement for the W. Windsor Extension

**October 18, 2010 Regular Meeting**

1. Consider approval of the second reading and adoption of an ordinance to replace the existing gas franchise ordinance between the Town of Flower Mound and Atmos Mid-Tex.

2. Consider approval of a resolution declaring expectation to reimburse expenditures with proceeds of future certificates of obligation and authorizing the preparation of the documents associated with the issuance, sale and delivery of the debt obligations.

3. Leash Law Ordinance.

4. LPAFA 407 & Chinn Chapel Signal.

5. CDBG – Sunrise Circle Ph IV Testing Award.


7. Lake Forest Trail Testing Award.

8. Equestrian Trail Head / Dunham Testing Award.


**November 1, 2010 Regular Meeting**


2. Assimilation of Water Supply Corp. – Roanoke Hills & North Lake Highlands Construction Award.

3. West Windsor Dr. Design Award.

**November 15, 2010 Regular Meeting**

1. Temporary Senior Center – Construction Award.

2. Western Elevated Tank Construction Award.


5. Assimilation of Water Supply Corp. - Roanoke Hills & North Lake Highlands Testing Award.

**FUTURE ITEMS - TBD**

**Presentations**
- Lewisville Independent School District - Your Kids, Your Money, Your Schools

1. School Resource Officer Agreements.

2. Upper Timber Creek Interceptor Construction Award.

3. Lease agreement with the Corps of Engineers for Twin Coves Park.


5. Professional Services Agreement to complete a Library Master Plan.

6. Consider approval of a name for the Temporary Senior Center.

7. Consider approval of naming a wild flower area in memory of former PALS Board member John Thomas.

8. Wilson Carmel Park Ph I Construction Award.

9. Quiet Zone for Canyon Falls Railroad.

10. Wilson Carmel Park Ph I Testing Award.

11. Flower Mound Road CO 2.

12. Wellington Interceptor Design.

13. Valley Ridge / Timber Creek 20” WL Construction Award.

14. 1st Amendment to the ICA FOR wDixon Road