



# City of Rowlett Meeting Minutes City Council

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***City of Rowlett City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at 972-412-6109 or write PO Box 99, Rowlett, Texas, 75030-0099, at least 48 hours in advance of the meeting.***

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Tuesday, November 4, 2008

5:30 PM

Municipal Building - 4000 Main Street

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As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

## 1. CALL TO ORDER

*Mayor Harper called the meeting to order at 5:30 p.m.*

**Present:** Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

## CONVENE INTO EXECUTIVE SESSION

*The City Council convened into closed session at 5:30 p.m.*

## 2. EXECUTIVE SESSION

- 2-A The City Council shall convene into executive session pursuant to the TEXAS GOVERNMENT CODE, §551.071 and §551.072 to discuss with the City Attorney potential litigation, real property deliberations and acquisition of property to wit: Elgin B. Robertson Park. (10 minutes)
- 2-B The City Council shall convene into executive session pursuant to the TEXAS GOVERNMENT CODE, §551.071 and §551.087 to seek legal advice and to deliberate on economic development incentives and financial prospects for property located at or around Pecan Grove Park. (20 minutes)
- 2-C The City Council shall convene into a closed executive session pursuant to the Texas Local Government Code, Section 551.074(a)(1), Personnel, to deliberate and perform the annual evaluation of the Municipal Court Judge and the Municipal Court Prosecutor in accordance with the Home Rule Charter of the City of Rowlett. (30 minutes)

## RECONVENE INTO OPEN SESSION

*Convened into open session at 6:32 p.m.*

**3. WORK SESSION ITEMS (6:15 P.M.)****3-A** Hear Quarterly Investment Report for period ended September, 2008. (10 minutes)

*Staff brought for the brief overview of the Quarterly Investment Report.*

*Council asked if the decision to seek longer maturity was done by the City or the advisory firm.*

*Staff stated the advisors give staff options but are not given discretionary ability to make those decisions. Stated staff generally goes with the recommendation of the advisory firm.*

*Council asked for a brief overview from staff as to what the financial advisors do for the City.*

*Staff gave Council examples of what the financial advisors provide to the City.*

**3-B** Discuss a service rate adjustment of 3.8% to the IESI Corporation solid waste collection contract. (10 minutes)

*The CPI for the year of September 2007 through September 2008 was 4.9%. The second most quoted CPI component was (less food and energy) 2.5%. IESI received a fuel surcharge increase on June 17, 2008.*

*A member of Council stated that through the contract, IESI has received their energy costs, and that leaves the only non-energy portion of the CPI or 2.5%. Requested some demonstration that would show that IESI incurred expenses, other than energy increases, that would justify the 2.5% raise.*

*Staff stated it is the job of IESI to defend their asking for an increase.*

*Dick Demien, Municipal Marketing Manager for IESI brought forth information showing revenue increases, operating expenses, and Sales, General and Administrative (SG&A) expenses. Stated the effective difference of the increases and expenses shows their margins eroding in the area of 4%.*

*A member of Council asked if the numbers represent the operations strictly in Rowlett.*

*Mr. Demien answered in the negative; it is a corporate-wide analysis.*

*A member of Council asked if IESI received equivalent fuel surcharge increases from the other municipalities.*

*Mr. Demien stated IESI has received fuel surcharges in most of the municipalities they service and they are captured in the numbers.*

*A member of Council asked if the operating expenses include the fuel expenses.*

*Mr. Demien answered in the affirmative. Stated IESI is absorbing many price increases*

*and that is why the price adjustment methodology (CPI) is in the contract.*

*A member of Council suggested they cap the increase to 2.5% based on the remaining part of the CPI that has already been given to IESI.*

- 3-C** Discuss the water distribution system study, findings, and recommended improvements as an update to the City's Water Master Plan from the engineering firm of Freese & Nichols, Incorporated. (15 minutes)

*Members of Freese & Nichols, Incorporated presented Council with a brief overview of their recommendations for the City's Water Master Plan.*

*Council asked about the water pressure in the Kenwood Heights neighborhood.*

*Spoke concerning overflow pressures, transmission improvements, elevated tanks, and other issues.*

- 3-D** Hear and discuss the findings and recommendations of the traffic analysis study and alignment study for Chaha Road from Rowlett Road to Kirby. (15 minutes)

*This item was not discussed during the Work Session.*

- 3-E** Discuss matching the funds of \$31,500 to the North Texas Soccer Association for a grant issued to the Rowlett Youth Soccer Association to be used in the construction and development of one full sized league soccer field. (5 minutes)

*This item was not discussed during the Work Session.*

**4. DISCUSS REGULAR SESSION ITEMS**

*Items 9B, 9C, 9E, 9Q, 9R, 9S, and 9U were removed from the Consent Agenda to be considered individually.*

*Mayor Harper filed a Conflict of Interest form for Item 10B.*

**CONVENE INTO THE COUNCIL CHAMBERS (7:30 P.M.)**

*Convened into Chambers at 7:35 p.m.*

**5. INVOCATION**

*The invocation was led by Bishop Miller Johnson, New Life Fellowship Church of Rowlett.*

**6. PLEDGE OF ALLEGIANCE**

*The Pledge of Allegiance was led by Mayor Harper.*

**7. PRESENTATIONS AND PROCLAMATIONS**

7-A

Proclamation presented to the Community Emergency Response Team (CERT) for winning medals at the CERT Olympics.

*Councilmember Rushing presented members of the CERT team with a proclamation for their achievement.*

*Each CERT team member came forward and described the skill they performed to win their medals.*

7-B

Hear presentation of the Fourth Quarter Financial Report for Fiscal Year 2007-2008 from the City Manager.

*George Harris, Interim City Manager presented a PowerPoint presentation of the Fourth Quarter Financial Report for Fiscal Year 2007-2008 (13 slides).*

*City of Rowlett - Quarterly Financial Report  
September 30, 2008*

*Highlights of September 30, 2008 - Quarterly Financial Report*

- *Overview*
- *Revenue Trends*
- *Budget Matters*
- *Reserves*

*Overview*

- *City has earned \$74.5 million through the fourth quarter, representing 98.1% of the amended operating budget of \$75.9 million.*
- *City has spent \$75.4 million for the year, representing 96.5% of the amended operating budget of \$78.1 million.*
- *City has spent \$23.6 million in capital improvements and has \$12.2 million committed off the amended capital budget of \$78.3 million.*

*Revenue Trend*

- *Sales taxes have earned \$4.0 million, an increase of 3.2% compared to FY 06-07 but 3.7% below target for the first eleven months of the year.*
- *These results are reported net of sales tax rebates.*
- *Property taxes totaled \$24.8 million, an increase of 5.9% compared to FY 06-07 and 0.8% above target thru the fourth quarter of the year.*
- *Water revenues totaled \$10.3 million, an increase of 13.2% over FY 06-07 but 5.9% below target thru the fourth quarter of the year.*
- *Consumption from June-Sep helped make up much of the year's shortfall.*
- *Sewer revenues totaled \$8.9 million, an increase of 1.4% over FY 06-07 but 2.9% below target thru the fourth quarter of the year.*

*Budget Matters*

- *Revenues are \$1.4 million or 1.9% lower than the target thru September 30th primarily due reduced water/sewer sales net of higher property tax collections.*
- *Expenditures are \$2.7 million or 3.5% lower than the target thru September 30th primarily due to lower operating costs in the Water & Sewer Fund net of higher costs in the Fleet Services Fund.*
- *Monthly Revenue Target - Fiscal Year 2007-2008*

- *Monthly Expenditure Target - Fiscal Year 2007-2008*
- *FY 2007-08 was a challenging year as the City responded to revenue shortfalls from red light camera fines, recreation fees and water & sewer sales.*
- *Employee attrition and other operational savings helped make up much of the shortfall.*
- *The single biggest challenge for FY 2008-09 is the economy. The City is already experiencing slowing sales tax revenues and will need to monitor both revenues and expenses very closely in the coming months.*

#### *Reserves*

- *It is estimated that the ending reserve projections indicate that the City will end the year with approximately \$11.0 million in ending reserves, or about 14.7% of expenditures, excluding capital project funds and transfers.*

*Mayor Harper asked if the City had an operating surplus or an operating deficit for the ending twelve months.*

*Brian Funderburk, Director of Financial Services stated it is anticipated that every fund will make their reserve target. Stated it looks as though the financial statements will have a shortfall; however, much of the shortfall is from a 5-year prior year carryover of projects and programs from the previous year; stated if the carryover projects and programs were taken out of the equation, the current year activity would actually show a small surplus.*

*Mayor Harper questioned staff regarding the General Fund reserve percentage at the end of the year.*

*Mr. Funderburk stated he is projecting the General Fund reserve to be around 10.0% - 10.2%.*

*Mayor Harper questioned staff regarding sales tax collections and property tax collections.*

*Mr. Funderburk spoke concerning the budget for the sales tax and the collection of property taxes and foreclosures. He stated the City's electricity energy savings will help with the City's possible shortfall in sales tax.*

## **8. CITIZENS' INPUT**

1. *Jeff Thomas, 8302 Bristol Court, Rowlett - Spoke concerning his decline for the reappointment to the Planning and Zoning Commission.*
2. *Chuck Knickerbocker, 8206 Paul Place, Rowlett - Spoke concerning Item 9C.*

## **9. CONSENT AGENDA**

*Mayor Harper explained the procedure regarding the Consent Agenda and the rights of each Councilmember and each citizen to have any consent agenda item removed to be considered individually.*

*Items 9B, 9C, 9E, 9O, 9Q, 9R, 9S, and 9U were removed from the Consent Agenda to be considered individually.*

*City Secretary read items into the record.*

**9-A**

**Consider approving minutes from the October 21, 2008 Regular Council Meeting and the October 22, 2009 Special Council Meeting.**

**This Matter was approved on the Consent Agenda.**

9-B

Consider a resolution approving funding in the amount of thirty-one thousand five hundred dollars (\$31,500) as matching funds to the North Texas Soccer Association for a grant issued to the Rowlett Youth Soccer Association in the amount of thirty-one thousand five hundred dollars (\$31,500) to be used in the construction and development of one full sized league soccer field.

*Mayor Harper stated "This is to be deferred. Mr. Gottel, do you have a motion?"*

*Mayor Pro Tem Gottel replied "Yes, Mayor, I do."*

**A motion was made by Mayor Pro Tem Gottel, seconded by Councilmember Jackson, that this matter be postponed. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

9-C

Consider an ordinance approving the use of alternate building materials for ALDI Food Stores for an existing 17,368± square foot building on Revised Safeway Addition No. 16, located at 3500 Lakeview Parkway. [DP08-384]

*Mayor Harper read the item into the record.*

*Mayor Harper stated "We heard comments from one of our citizens, who also is on the Planning and Zoning Commission, with regard to the exterior of that building. Do we need another presentation? Council, any questions?"*

*Councilmember Rushing replied "Yes, Mayor, I have a question. I guess I would ask this of Ms. Samford. And again, this was probably answered in my questions this afternoon but I didn't get a chance to go back and look at my email. Does Aldi Food, are they purchasing the building or leasing the building? And if they are leasing it, do you know the time period of their lease?"*

*Keri Samford, Director of Planning and Community Development, replied "Yes, ma'am. The owner is still out of New York. It would be a lease with Aldi Food Stores; the initial lease is for ten (10) years with four (4) five (5) year extensions after that. So potentially a thirty (30) year lease for that building."*

*Councilmember Rushing stated "Okay, ten (10) years is what Brookshires had, was it not?"*

*Ms. Samford replied "I don't know that answer."*

*Councilmember Rushing stated "So they will pay the landowner for ten (10) years whether they stay in this building or not?"*

*Ms. Samford replied "That is correct."*

Councilmember Rushing stated "Okay, are the improvements at the cost of Aldi or at the cost of the property owner...or do you not know?"

Ms. Samford replied "I don't know; I do know that the other half of the building, we've had communication with the building owner and we were hoping to have a letter from him saying he would do improvements to that side at the same time knowing he would have to go through the process if he wanted the same variances. But that side definitely would be through the owner. As for the Aldi, I don't know if that's part of a tenant finish out agreement or if it's at their expense."

Councilmember Rushing replied "Okay, thank you."

Mayor Harper stated "I also asked that this be taken off consent, as I had similar kinds of questions. For me, the major concern that I have is the recommendation that was made by first, you as staff, and then secondly the Commissioners. Refresh my memory, what do the Commissioners say and what do you say about this agenda item?"

Ms. Samford replied "We, as staff, do not make a recommendation although we write our reports with guidance to the Planning and Zoning Commission. But their recommendation was to allow the...let me get that so I don't misquote. It was...approve the alternate building materials requests with the exception of the painting of the existing exposed aggregate walls. Which means you would not allow the white over the exposed aggregate and you would allow the variance for the twenty percent (20%) accent on the building."

Mayor Harper asked "And was that a unanimous vote?"

Ms. Samford replied "Yes, it was seven (7) to zero (0)."

Mayor Harper stated "Okay. Any other questions, Mr. Maggiotto?"

Deputy Mayor Pro Tem Maggiotto replied "No, Mayor, just a motion."

Mayor Harper stated "All right, sir."

Deputy Mayor Pro Tem Maggiotto stated "Thank you, Mayor. I'd like to recommend that the ordinance be approved as written to include the Planning and Zoning Commission's recommendation as just having been recently read by Ms. Samford, which disallows the painting of the aggregate. The basis for that Mayor is we've got something like two-thirds (2/3) of that building that is not yet developed and has the rest of the aggregate. I think what we're looking for is a consistency."

Mayor Harper replied "Sure."

Deputy Mayor Pro Tem Maggiotto continued "I think going forward if someone were to completely remove the aggregate that would be in the positive direction but simply to paint over the aggregate leaves, I think, the rest of that building in some question as to how it's going to look."

Mayor Harper stated "Mr. Berman, let me get a second and then I'll come back to you if you don't mind. Is there a second for this motion? Mr. Phillips. Mr. Berman, you have a comment?"

David Berman, City Attorney, replied "Yes, actually I just want to kind of ask Councilmember Maggiotto real quickly before it was seconded. You made a recommendation, my

assumption is that you're making a motion to approve the ordinance with those limitations, is that right?"

Deputy Mayor Pro Tem Maggiotto replied "That is correct."

Mayor Harper stated "And are those limitations added just for clarification?"

Deputy Mayor Pro Tem Maggiotto replied "They were by Ms. Samford's oration."

Mayor Harper stated "Right, that's my interpretation as well, Council."

Mr. Berman stated "And the second is consistent with the motion, not the recommendation."

Mayor Harper replied "You're absolutely right. Any other questions or comments to be made on this? We have a motion and a second. Do...we have one more question."

Councilmember Kilgore stated "I have a question on the waiver on the assent material. That's only for the east and south elevations, is it not?"

Ms. Samford replied "Yes, that is correct."

Councilmember Kilgore stated "And the only comment I have is that this whole thing makes me nervous, the piece-meal development of this section of the building because I think the roadway we're headed down is this thing's not going to look much different at the end of the day when we're done."

Mayor Harper stated "Do you have an alternate motion that you'd like to make?"

Councilmember Kilgore replied "I do not."

Mayor Harper stated "All right, sir. We have a motion and a second. Any more discussion?"

**A motion was made by Deputy Mayor Pro Tem Maggiotto, seconded by Councilmember Phillips, that this matter be approved as amended to approve the alternate building materials requests with the exception of the painting of the existing exposed aggregate walls, as approved by the Planning and Zoning Commission as ORD-049-08. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottle, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

9-D Consider amending the Code of Ordinances, Article III ("Codes and Standards") of Chapter 26 ("International Fire Code adopted") to replace Sections 26-101 and 26-102, adopting the 2006 International Fire Code.

**This Matter was approved as ORD-042-08 on the Consent Agenda.**

9-E Consider amending the Code of Ordinances, Article II ("Building Regulations") of Chapter 78 ("International Building Code adopted") to replace Sections 78-51 and 78-52, adopting the 2006 International Building Code.

Mayor Harper read the item into record.

Mayor Harper stated "Mr. Harris, I think you had something you wanted to say about this."

George Harris, Interim City Manager, replied "Yes, thank you, Mayor. There is a correction to be made on Item 9E. On page 8 of 9E, actually section 903.2.10.6 should read '5,000 square feet' instead of '6,000 square feet'. So I'd ask that the motion include that change to amend that from 6,000 square feet to 5,000 square feet to be consistent with the rest of the Code."

Mayor Harper stated "Just for clarification, will this agenda item as written suffice with that clarification? Or do we need to adjust the agenda resolution?"

Mr. Harris replied "I believe it will suffice as written with the correction of that one (1) item."

Mr. Berman stated "As long as the motion recognizes, acknowledges, and accepts that recommendation."

Mayor Harper stated "We don't have a motion yet. Ms. Rushing."

Councilmember Rushing stated "If I make a motion, do I need to include the section number and everything?"

Mr. Berman replied "What I would recommend is that you make a motion to approve the ordinance as written with the exception of the change to section 903.2.10.6. I would reference the section and say '5,000 square feet'."

Mayor Harper stated "Are you clear on that Ms. Rushing?"

Councilmember Rushing replied "I think Doug's going to do it."

Councilmember Kilgore stated "It's as clear as mud."

Mayor Harper stated "Well, let's try it and see what we do. Let's start with a motion. Who has a motion and what is it?"

Councilmember Phillips stated "I move we accept agenda Item 9E as written with the amendment to section 903.2.10.6 making the change from 6,000 square feet to 5,000 square feet."

**A motion was made by Councilmember Phillips, seconded by Councilmember Rushing, that this matter be approved as amended by correcting the square footage listed as 6,000 square feet to 5,000 square feet to be in agreement with the other ordinances as ORD-051-08. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

9-F

Consider amending the Code of Ordinances amending Division 3 ("Residential Code") of Article II ("Building Regulations") of Chapter 78 ("Buildings and Building Regulations") to replace Sections 78-71 and 78-72, adopting the 2006 Edition of the International Residential Code.

**This Matter was approved as ORD-043-08 on the Consent Agenda.**

- 9-G** Consider amending the Code of Ordinances amending Article III ("Electrical Code") of Chapter 78 ("National Electric Code") to replace sections 78-141 and 78-142, adopting the 2005 Edition of the National Electrical Code.

**This Matter was approved as ORD-044-08 on the Consent Agenda.**

- 9-H** Consider amending the Code of Ordinances amending Article IV ("Mechanical Code") of Chapter 78 ("Buildings and Building Regulations") to replace Sections 78-171 and 78-172, adopting the 2006 Edition of the International Mechanical Code.

**This Matter was approved as ORD-045-08 on the Consent Agenda.**

- 9-I** Consider amending the Code of Ordinances amending Article V ("Plumbing Code") of Chapter 78 ("Buildings and Building Regulations") to replace Sections 78-201 and 78-202, adopting the 2006 Edition of the International Plumbing Code.

**This Matter was approved as ORD-046-08 on the Consent Agenda.**

- 9-J** Consider amending the Code of Ordinances amending Article VI ("Energy Conservation Code") of Chapter 78 ("Buildings and Building Regulations") to replace Sections 78-211 and 78-212, adopting the 2006 Edition of the International Energy Conservation Code.

**This Matter was approved as ORD-047-08 on the Consent Agenda.**

- 9-K** Consider amending the Code of Ordinances amending Article VII ("International Fuel Gas Code") of Chapter 78 ("Buildings and Building Regulations") to replace Sections 78-221 and 78-222, adopting the 2006 Edition of the International Fuel Gas Code.

**This Matter was approved as ORD-048-08 on the Consent Agenda.**

- 9-L** Consider a resolution awarding a proposal and authorizing the City Manager to enter into an agreement with MSB Government Services for collection services of delinquent utility bills through the inter-local cooperative purchase agreement with the City of Garland.

**This Matter was approved as RES-135-08 on the Consent Agenda.**

9-M

Consider a resolution awarding a proposal to PFM Asset Management LLC to provide investment advisory services for the City of Rowlett for an estimated amount not to exceed forty thousand seven hundred fifty dollars (\$40,750) and authorizing the City Manager to execute such documents necessary to enter into such agreement.

**This Matter was approved as RES-136-08 on the Consent Agenda.**

9-N

Consider a resolution authorizing the Mayor to execute the 2007-2008 Annual Report to the Texas Commission on Environmental Quality (TCEQ) for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4) under the Texas Pollutant Discharge Elimination System (TPDES) Phase II MS4 General Permit.

**This Matter was approved as RES-137-08 on the Consent Agenda.**

9-O

Consider a resolution accepting a water distribution system study, findings, and recommended improvements as an update to the City's Water Master Plan from the engineering firm of Freese & Nichols, Incorporated.

*Mayor Harper stated "Mr. Gottel, do you have a motion on that please."*

*Mayor Pro Tem Gottel replied "Yes, Mayor, I would like to make a motion that we defer Item 9O; that we table it."*

**A motion was made by Mayor Pro Tem Gottel, seconded by Councilmember Jackson, that this matter be postponed. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

9-P

Consider a resolution authorizing the final acceptance of the improvements and release of the retainage to A & M Construction Utilities, Inc. in the amount of seven thousand three hundred eighty-five dollars and ninety-four cents (\$7,385.94) for the installation of an 8-inch sanitary sewer line along and across the DART right-of-way at Gordon Smith Drive.

**This Matter was approved as RES-138-08 on the Consent Agenda.**

9-Q

Consider a resolution authorizing the final acceptance of the improvements for the Miscellaneous Asphalt Reconstruction project and approving the final payment and release of retainage in the amount of two hundred eighty-nine thousand nine hundred one dollars and fifty-two cents (\$289,901.52) to Reynolds Asphalt and Construction Company.

*Mayor Harper read the item into the record.*

*Mayor Harper stated "Who is going to make a presentation? Mr. Baugh, if you are present, I'd like you to come forward for just a few moments, please sir. I presume that the Reynolds Asphalt and Construction Company is one of those companies or perhaps the company that did the asphalt overlays. Is that correct?"*

*Patrick Baugh, Director of Public Works and Utilities, replied "They are the company that did the reconstructions, sir."*

*Mayor Harper stated "Okay. My only question is on the asphalt overlays, I've expressed concerns about the splitting that is taking place. Is this company responsible for fixing those splits or are we responsible for those splits?"*

*Mr. Baugh replied "Actually, most of the longitudinal cracking that you're seeing along the roads are the roadways that were just overlaid; they were not reconstructed. And without effecting a lot of repair or remixing or recompacting of the base, then those existing cracks continue to telegraph through and those are separate and apart from this contractor."*

*Mayor Harper stated "Okay, good."*

*Mr. Baugh continued "But, regardless, those contractors do have a little bit of responsibility to come back but we are filling those as normal practice."*

*Mayor Harper stated "Council, I really express a great deal of concern to our City Manager about the asphalt overlays and the cracking that we're seeing in it. I'm concerned because winter is coming on; a little water in there and a little expansion from freezing and we've got some major issues with our maintenance. That's the reason I raised those issues, Pat."*

*Mr. Baugh replied "And it's a good issue to raise; and we are on top of those if not monthly then more frequently to make sure we don't allow the water in there. We understand that, sir."*

*Mayor Harper stated "Thank you very much."*

*Councilmember Phillips stated "I've have a question, Mayor."*

*Mayor Harper replied "Yes, please go ahead, Mr. Phillips."*

*Councilmember Phillips stated "Another one of those reconstruction projects that was undertaken as part of this is my understanding, is Dalrock from Princeton to Liberty Grove. And that was a complete reconstruction. Is that correct?"*

*Mr. Baugh answered in the affirmative.*

Councilmember Phillips stated "It seems like we're having a lot of trouble with that particular stretch. I drive that a fair amount and there have been some fairly significant potholes that appears in that particular piece. Is this a contractor looking at that as well?"

Mr. Baugh answered in the affirmative.

Councilmember Phillips continued "Since that was a complete reconstruction?"

Mr. Baugh replied "Yes, yes."

Councilmember Phillips stated "Okay, thank you."

Mr. Baugh stated "And that roadway does take a lot of truck traffic even though they're not supposed to go that way."

Councilmember Phillips stated "Okay, but the contractor is looking at making those repairs?"

Mr. Baugh answered in the affirmative.

Mayor Harper stated "All right, this agenda item had been read into the record, is there a motion?"

**A motion was made by Mayor Pro Tem Gottel, seconded by Councilmember Phillips, that this matter be approved as RES-140-08. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

9-R

Consider a resolution directing City staff to proceed with the design of Chaha Road from east of Rowlett Road to south of Kirby Road.

*This item followed Item 9S.*

*Mayor Pro Tem Gottel stated "Mayor, I'd like to make a motion to that we defer or table Item 9R."*

**A motion was made by Mayor Pro Tem Gottel, seconded by Councilmember Phillips, that this matter be postponed. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

9-S

Consider a resolution awarding a bid and authorizing the Mayor to enter into an agreement with Nortex Concrete Lift and Stabilization, Inc. for pavement leveling services in the amount of \$265,000 through the inter-local cooperative purchase agreement with the City of Grand Prairie.

Mayor Harper read the item into the record.

Mayor Harper stated "Pat, again, a very quick question for you, if you don't mind. What I'm interested in is the amounts of dollars that we reallocated from the Operating budget to the Capital budget for the purposes of improving some of our thoroughfares and our neighborhood streets, roads and connectors. Is this part of that? Is the funding for this coming out of that \$3M?"

Mr. Baugh replied "Yes, it is."

Mayor Harper stated "Okay, good. Mr. Maggiotto, I was thinking of you especially as I reviewed this one to be sure that you were aware that in fact that \$3M was going towards this particular contract, as well as, others. Are you okay with it?"

Deputy Mayor Pro Tem Maggiotto replied "I'd just like to...want more."

Mr. Baugh replied "I understand that. This is one of the quickest delivery methods that we have by tagging onto another contract."

Deputy Mayor Pro Tem Maggiotto replied "Thank you."

Mayor Harper stated "For those of you in the audience and watching this at home, the real champion of improving our neighborhood roads and streets is Councilmember Maggiotto. He is due a lot of praise and recognition for taking a very strong stand and convincing the Council, not only last year, but again this year to continue the investment in our roads. And the reason for doing that is not just aesthetic, there is a real business decision associated with that and the business decision is that we're trying to get all of our roads to a certain index level indicating their quality. And if we can do that then our maintenance costs go down dramatically. Now what that means is we do a form of triage and that is to say we're going to emphasize certain roads that have not too badly deteriorated and we'll invest in them first quickly bringing them up to a high standard eliminating much future maintenance and then being able to focus on those worse roads later. And again, Mr. Maggiotto, without your direction and championship, I'm not sure we'd be there. So, thank you very much for that."

**A motion was made by Mayor Pro Tem Gottel, seconded by Councilmember Jackson, that this matter be approved as RES-141-08. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

9-T

Consider a resolution awarding a bid to APAC-Texas, Inc. for the purchase of hot mix asphalt in the unit amounts bid for an annual estimated amount not to exceed seventy-five thousand dollars (\$75,000) through the inter-local cooperative purchasing agreement with Dallas County.

**This Matter was approved as RES-139-08 on the Consent Agenda.**

**Passed The Consent Agenda**

A motion was made by Mayor Pro Tem Gottel, seconded by Councilmember Rushing, including all the preceding items marked as having been adopted on the Consent Agenda. The motion carried by the following vote:

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

9-U

Consider a resolution to approve a service rate adjustment of 2.5% to the IESI Corporation solid waste collection contract.

*This item followed Item 9R.*

*Mayor Harper read the item into the record.*

*Mayor Harper stated "And we've had some discussion of this in the Worksession. Mr. Gottel, do you have a motion?"*

*Mayor Pro Tem Gottel stated "Mayor, yes, under Item 9U, I'd like to make a motion that we approve the agenda item as read."*

*Mayor Harper stated "Is there a second to that motion? Second by Mr. Jackson. We have a motion to approve, a second, is there any discussion beyond what we had in Worksession?"*

*Councilmember Kilgore stated "How was that read?"*

*Mayor Harper replied "The motion is to approve the agenda item as presented."*

*Councilmember Kilgore stated "I'm sorry, I wanted to make sure I understood the percentage as 3.8%."*

*Mayor Harper replied "Three point eight percent (3.8%). Is that right, Mr. Jackson?"*

*Councilmember Jackson replied "That's correct, sir."*

*Mayor Harper stated "Mr. Gottel, 3.8%?"*

*Mayor Pro Tem Gottel replied "Yes."*

*Mayor Harper stated "Mr. Maggiotto, please. Are you looking to vote or are you looking to speak?"*

*Deputy Mayor Pro Tem Maggiotto stated "A couple of things. I think we do have a motion that's on the floor and has been seconded so it will require a vote except for a friendly amendment."*

*Mayor Harper stated "Absolutely."*

*Deputy Mayor Pro Tem Maggiotto continued "I'd like to make a friendly amendment for Councilmember Gottel to consider a resolution to approve a service rate adjustment of 2.5% to the IESI Corporation solid waste collection contract."*

*Mayor Harper replied "All right. Mr. Berman, you'll need to help me to be sure that we do*

*our friendly amendment correctly. I believe Mr. Gottel has to accept that friendly amendment?"*

*Mr. Berman answered "Yes, he does."*

*Mayor Harper stated "Mr. Gottel, do you accept that friendly amendment?"*

*Mayor Pro Tem Gottel replied "As discussed, Mayor, yes I do."*

*Mr. Berman stated "Both the party who made the motion, as well as, the one that seconded the motion must accept it."*

*Mayor Harper stated "Mr. Gottel, do you accept...this amounts to a substitute motion, does it not?"*

*Mr. Berman replied "It's not. It's amending the original motion to accept the item as read."*

*Mayor Harper stated "By that, a level of 2.5%?"*

*Mr. Berman answered in the affirmative.*

*Mayor Harper stated "Mr. Jackson, do you accept that?"*

*Councilmember Jackson answered in the affirmative.*

*Mayor Harper stated "So what we have, Mr. Maggiotto is your friendly amendment at 2.5% accepted by the first motion and the second motion. Anymore discussion on that before we actually call for a vote? Now this is on the friendly motion that we're voting on. I want to be clear that everyone understands that. And this will be 2.5%."*

**A motion was made by Mayor Pro Tem Gottel, seconded by Councilmember Jackson, that this matter be adopted as amended reducing the 3.8% to 2.5% as RES-142-08. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

## 10. ITEMS FOR INDIVIDUAL CONSIDERATION

### 10-A

Conduct a public hearing and approve an ordinance for a request to amend previously approved Planned Development (PD) # 2006-336 for a 4,997± square foot convenience store. The subject property is located on the northwest corner of Chiesa Road and Lakeview Parkway, being 2.67 ± acres in the James Hobbs survey, abstract number 571. (ZAM08-382)

*Mayor Harper read the item into the record.*

*Mayor Harper stated "So we'll first do a public hearing and then after that, we'll approve an ordinance. So we'll start off with your presentation Ms. Samford."*

*Ms. Samford stated "Thank you Mayor and Council. The Planning and Zoning Commission considered the amendment of this planned development at their October 14, 2008 regular meeting at which time the Planning and Zoning Commission recommended approval of the*

request subject to the applicant moving the trees that would typically be required in the Atmos easement, which is the gas easement along the southern part of the property. And move those trees that would be required to another location on the property. That passed 7 - 0. Notifications were sent out at the time of the Council packet, we received two (2) notices in opposition and three (3) in favor of the request."

Mayor Harper stated "How many in opposition?"

Ms. Samford replied "Two (2) in opposition and three (3) in favor."

Mayor Harper replied "Thank you."

Ms. Samford continued "They also asked that the planned development remain under the 2001 Code which was in place when they initially applied and they have been working with Atmos on this property for several years to get this to work. They ended up having to buy some additional property just to make sure they could get this configuration. And our standards on landscaping and parking were more stringent under that Code."

Mayor Harper stated "Council, before I open the public hearing, are there any questions or comments you want from Ms. Samford?"

Councilmember Rushing replied "Yes, Mayor. If I could ask please, just with your finger, can you draw out where the Atmos line is in its new location? Is it along the curb line or is it that section up through the middle where it says easement?"

Ms. Samford indicated on the projector where the Atmos line is located.

Councilmember Rushing stated "The new one is right there and it goes over towards Chiesa and then up beside the road? Or does it go directly through the center of the development?"

Ms. Samford replied "You may be able to better..."

Councilmember Rushing stated "Because this map shows it right there. It shows it right through the center which I don't think it is."

Anita James, representing RaceTrac replied "It goes all along Lakeview here and then all the way up Chiesa here and then it goes back to its original location back on the property."

Mayor Harper stated "Does everyone see that?"

Councilmember Rushing stated "Okay, so this section right here is showing as the easement but that's the old easement."

Ms. James and Ms. Samford replied "Correct."

Mayor Harper stated "Any other questions or comments before we go to a public hearing? All right, let me open the public hearing (8:41 p.m.). This is the opportunity for anyone in the audience to speak for or against the proposal. Is there anyone who wishes to come forward and speak either for or against? Not hearing or seeing anyone, we'll close the public hearing (8:41 p.m.). At this point and time we'll now consider to approve the ordinance. Now I've read it for the record, does everyone understand the ordinance? What we'll be voting on is to approve this ordinance as presented. Are there any comments or questions? Mr. Maggiotto, you looked like you had a question."

Deputy Mayor Pro Tem Maggiotto replied "Thank you, Mayor. Just to make sure that the motion does include that the applicant is moving the trees that would typically be required in the Atmos easement to another location on the property, correct? So that's an affirmative by Ms. Samford, so my motion is to approve as read."

Mayor Harper stated "Any other? Ms. Rushing."

Councilmember Rushing replied "Yes, Mayor. I have one other question. In the past in our packets when we received the citizens' input for or against, we've seen a map as to where those were mailed out to and which ones answered back. Some of the addresses on this are nowhere near the affected property. Were they just people that commented or do they actually own property close to it and they're listing their address as another property?"

Ms. Samford replied "We typically say whether they're outside the two hundred (200) foot buffer. I don't have those in front of me so I would assume if they're in there it would be noted as to whether they're within the two hundred (200) foot buffer or not. But in the future, we can make sure we reference whether they are in that buffer."

Councilmember Rushing stated "Yeah, because we have one that lists their address as Miller Road, which of course would not be anywhere near it."

Ms. Samford replied "I have a feeling that's probably somebody who owns property in that buffer."

Councilmember Rushing stated "Same with another one on Kirby Road."

Ms. Samford replied "Yes, ma'am."

Councilmember Rushing stated "Okay, it was helpful in the past. It would be helpful if we did it like we did in the past where we showed the buffer and which houses were notified and which ones were yes or no."

Ms. Samford replied "Yes, ma'am. That's usually in the Planning and Zoning Commission packet so I'll make sure that's included."

Mayor Harper stated "Thank you, Ms. Samford. All right, Council, we have this agenda item before us. We've had a discussion, is there a motion to approve? I'm sorry, did I overlook you? I need a second?"

**A motion was made by Deputy Mayor Pro Tem Maggiotto, seconded by Councilmember Jackson, that this matter be approved as ORD-050-08. The motion carried by the following vote:**

**Ayes:** 7 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

10-B

Receive public comment and consider a resolution approving a Community Facilities License Agreement with Verizon Wireless for the installation and operation of antennas and cables to provide telecommunication services at the Chiesa Road Water Tower, and authorizing the City Manager to sign.

Ladies and gentlemen, I have to excuse myself. My spouse works for Verizon and therefore there is a conflict of interest for me to preside at this time given that Verizon Wireless is involved with the agenda item. As a result, Mr. Gottel will be presiding from this point on."

Mayor Pro Tem Gottel stated "Thank you, Mayor."

Mayor Pro Tem Gottel read the item into the record.

Katie Corder, Assistant City Manager stated "Good evening and thank you. As Deputy Mayor Pro Tem Gottel said, this agenda item is for telecommunication equipment to be located on the Chiesa Road Water Tower which is located at 2901 Chiesa Road. This is approving the license agreement; the license agreement does include flush-mounted antennas that will attach just below the base of the water tower and they will be painted to match the color of the water tower to improve the aesthetics. The monthly rent that's included in the license agreement is two thousand five hundred dollars (\$2,500) which is thirty thousand dollars (\$30,000) annually. This agreement is contingent on City staff's final review of the construction drawings during the development review process. Latham Jones, a representative from Verizon is in the audience if the Council has any questions and this agenda item does require a public comment period."

Mayor Pro Tem Gottel stated "We'll open up for Council comment or questions before we open up for comments? Council, any questions or comments? With that, I'll close the comment section and we'd like to open public comments at this point (8:44 p.m.). Is there anyone who wishes to speak for or against or have any questions that we can answer? Not seeing or hearing anyone, I will close the public comment section (8:44 p.m.) and at this point we'd like to call for a motion? Do I have a motion?"

Councilmember Jackson stated "I want to move that we accept agenda Item 10B as read."

**A motion was made by Councilmember Jackson, seconded by Councilmember Phillips, that this matter be approved as RES-143-08. The motion carried by the following vote:**

**Ayes:** 6 - Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

**Abstentions:** 1 - Mayor Harper

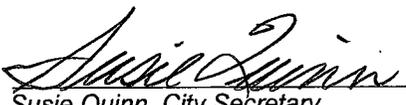
## TAKE ANY NECESSARY OR APPROPRIATE ACTION ON CLOSED/EXECUTIVE SESSION MATTERS

*No actions were taken during the Executive Session.*

### 11. ADJOURNMENT

Mayor Pro Tem Gottel adjourned the meeting at 8:45 p.m.

  
John E. Harper, Mayor

  
Susie Quinn, City Secretary

Date Approved: November 18, 2008