

PLANO CITY COUNCIL
July 27, 2009

COUNCIL MEMBERS

Phil Dyer, Mayor
Harry LaRosiliere, Mayor Pro Tem
Lee Dunlap, Deputy Mayor Pro Tem
Pat Miner
Ben Harris
Mabrie Jackson
Lissa Smith
Jean Callison

STAFF

Thomas H. Muehlenbeck, City Manager
Frank Turner, Deputy City Manager
Bruce Glasscock, Deputy City Manager
Rod Hogan, Deputy City Manager
Mark Israelson, Assistant City Manager
LaShon Ross, Assistant City Manager
Diane C. Wetherbee, City Attorney
Diane Zucco, City Secretary

Mayor Dyer convened the Council into the Regular Session on Monday, July 27, 2009, at 7:12 p.m. in the Council Chamber of the Plano Municipal Center, 1520 K Avenue. All Council Members were present.

The invocation was led by Father R. James Balint of Prince of Peace Catholic Community and the Pledge of Allegiance was led by Members from Cub Scout Pack 404 and Boy Scout Troop 404 of Prince of Peace Catholic Community.

Mayor Dyer presented Special Recognition to Ben Sater – All-Stars Among Us Winner and Corina Sadler – Outstanding New Volunteer Administrator. He received the Recognition of Designation for Pecan Hollow Golf Course as a Certified Audubon Cooperative Sanctuary and Recognition of an Award for Plano Arts Program presented at the Americans for the Arts Annual Convention. Mayor Dyer recognized Phyllis Jarrell, Director of Planning for 25 Years of Service.

Mayor Dyer presented a Certificate of Appreciation to Shelby Williams III for his service on the Self Sufficiency Committee.

COMMENTS OF PUBLIC INTEREST

Rick Baldelli representing the Historic Downtown Plano Association, spoke to plans for a *Taste of Downtown Plano* event to be held in October and work to be done with the City and Texas Alcoholic Beverage Commission to provide beverages at the event. City Manager Muehlenbeck advised that Staff would gather information.

CONSENT AGENDA

Council Member Jackson and Citizen Richard Simmons requested Consent Agenda Item “D” be removed for individual consideration.

Mayor Dyer requested Consent Agenda Item “E” be removed for individual consideration.

Staff requested Consent Agenda Item “Q” be pulled from the agenda.

Council Member Jackson requested Consent Agenda Item “W” be removed for individual consideration.

Council Member Jackson advised that she would be stepping down on Regular Agenda Item “8” due to a possible conflict of interest.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Miner, the Council voted 8-0 to approve and adopt all remaining items on the Consent Agenda as recommended and as follows:

Approval of Minutes (Consent Agenda Item “A”)
June 22, 2009

Approval of Expenditures

Award/Rejection of Bid/Proposal: (Purchase of products/services through formal procurement process by this agency)

Bid No. 2009-133-B for 2008-09 Arterial Concrete Pavement Rehabilitation Project (Project No. 5982) – Enterprise Drive and Premier Drive to Smith Contracting Inc. in the amount of \$174,102. This project involves the repair of arterial concrete pavement on Enterprise Drive between Park Boulevard and Central Expressway and on Premier Drive between Enterprise Drive and Ruisseau Drive. (Consent Agenda Item “B”)

Bid No. 2009-132-B for 2008-09 Arterial Concrete Pavement Rehab, Plano Parkway and Commerce Drive, Project No. 5975 to Advanced Paving Acquisitions LTD, dba Advanced Paving Company in the amount of \$530,551. This project involves the replacement of arterial street pavement, curb and gutter, sidewalk repair and barrier free ramp construction on Plano Parkway between Commerce Drive and K Avenue and on Commerce Drive between 15th Street and Plano Parkway. (Consent Agenda Item “C”)

Purchase from an Existing Contract

To authorize the purchase and installation of 6780 Sun Storage, in the amount of \$154,940 from Sigma Solutions, Incorporated, through an existing contract/agreement with the Department of Information Resources (DIR) contract, and authorizing the City Manager to execute all necessary documents. (DIR-SDD-503) (Consent Agenda Item “F”)

To approve the purchase of Materials Testing Services for Razor Road from Ohio Drive to S.H. 121, in the amount of \$55,422 from Terracon Consultants, Inc., through an existing contract (Number 2009-6-D), and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “G”)

Approval of Contract: (Purchase of products/services exempt from State of Texas Competitive Bid Laws)

To approve an Engineering Contract by and between the City of Plano and Wier & Associates, Inc., in the amount of \$184,000 for the Cross Bend and Deerfield Culverts project, and authorizing the City Manager to execute all necessary documents. (Consent Agenda Item “H”)

Approval of Change Order

To Tiseo Paving Company increasing the contract by \$36,804 for the Independence Parkway Paving Improvements – McDermott Road to SH 121, Change Order No. 2 (Bid No. 2009-21-B). This is to modify the portion of pavement that falls inside and adjacent to the State Highway right of way so as to conform with the TxDOT specifications. This portion is located south of the intersection of Independence Parkway and SH 121. (Consent Agenda Item “I”)

Approval of Modification

To consider a Modification to the Substantial Amendment to the 2008-09 City of Plano Action Plan for the Community Development Block Grant Recovery Program. (Consent Agenda Item “J”)

Adoption of Resolutions

Resolution No. 2009-7-1(R): To authorize continued participation with the Atmos Cities Steering Committee; authorizing the payment of 2 cents per capita to the Atmos Cities Steering Committee to fund regulatory and related activities related to Atmos Energy Corporation; and providing an effective date. (Consent Agenda Item “K”)

Resolution No. 2009-7-2(R): To ratify the additional expenditure of \$23,100 from the Buffington Community Services Fund to increase the number of meals delivered to at-risk Plano seniors and to increase the individual seniors being served weekday meals by 50 people; authorizing the execution of any and all documents in connection therewith by the City Manager; and providing an effective date. (Consent Agenda Item “L”)

Resolution No. 2009-7-3(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano, Texas and the City of Murphy, Texas to allow City of Murphy’s employees to take classes offered by City of Plano Professional Development Center; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “M”)

Resolution No. 2009-7-4(R): To approve the terms and conditions of a Software Maintenance Agreement by and between the City of Plano and Northrop Grumman Information Technology, Inc., the sole source provider of the Records Management System and Automated Field Reporting System, in an amount not to exceed \$246,993; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “N”)

Resolution No. 2009-7-5(R): To ratify the Takeover Agreement by and between Liberty Mutual Insurance Company and the City of Plano for completion of Plano Centre Storage Expansion; approving its execution by the City Manager; and providing an effective date. (Consent Agenda Item “O”)

Resolution No. 2009-7-6(R): To approve the dedication of four tracts of land, a 0.371 acre tract, a 1.173 acre tract, a 1.302 acre tract, and a 3.575 acre tract, owned by the City of Plano, Texas designated as park property but not yet utilized as park for dedication as a public right-of-way for Chaparral Road, said tracts being situated in the Jeremiah Muncy Survey, Abstract No. 621 and the R.C. Whisenant Survey, Abstract No. 1012, in the City of Plano, Collin County, Texas, and providing an effective date. (Consent Agenda Item “P”)

To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, for Intersection Improvements at McDermott Road and Robinson Road; authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item “Q”) (Item pulled.)

Resolution No. 2009-7-7(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, concerning the Design and Right of Way Acquisitions for the Parker Road and US 75 Interchange and repealing Resolution No. 2004-9-25(R); authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "R")

Resolution No. 2009-7-8(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, for the Widening of Communications Parkway from Parker Road to Spring Creek Parkway and repealing Resolution No. 2009-3-6(R); authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "S")

Resolution No. 2009-7-9(R): To approve the terms and conditions of an Interlocal Cooperation Agreement by and between the City of Plano and Collin County, Texas, for Ridgeview Drive Widening from Coit Road to Independence Parkway and repealing Resolution No. 2009-5-22(R); authorizing its execution by the City Manager; and providing an effective date. (Consent Agenda Item "T")

Adoption of Ordinances

Ordinance No. 2009-7-10: To approve a Negotiated Resolution between the Atmos Cities Steering Committee ("ACSC" or "Steering Committee") and Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company") regarding the Company's Rate Review Mechanism filing in all cities exercising original jurisdiction; declaring existing rates to be unreasonable; requiring the Company to reimburse cities' reasonable ratemaking expenses; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement and finding the rates to be set by the attached tariffs to be just and reasonable; approving Atmos' Proof of Revenues; adopting a savings clause; determining that this ordinance was passed in accordance with the requirements of the Texas Open Meetings Act; declaring an effective date; and requiring delivery of this Ordinance to the Company and the steering committee's legal counsel. (Consent Agenda Item "U")

Ordinance No. 2009-7-11: To amend Article I of Chapter 18, Solid Waste of the Code of Ordinances of the City of Plano, Texas to add certain definitions to Section 18-1 and adding Section 18-25 Downtown Collection Accommodation and rates to create accommodation for the collection of solid waste for specified downtown properties including a rate structure; and providing a penalty clause, a repealer clause, a savings clause, a severability clause, and an effective date. (Consent Agenda Item "V")

Ordinance No. 2009-7-12: To amend Section 12-101 of Chapter 12 (Traffic Code) of the City of Plano Code of Ordinances to temporarily prohibit until February 1, 2010 the stopping, standing, or parking of motor vehicles on certain sections of Buckboard Drive and Windmill Lane, within the City limits of the City of Plano; declaring it unlawful and a misdemeanor to park motor vehicles upon such sections of such roadway within the limits herein defined; providing a fine for criminal penalties not to exceed \$200.00 for each offense; and providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date. (Consent Agenda Item "X")

END OF CONSENT

Bid No. 2009-34-B for Preston Road at Legacy Drive Intersection Improvements to McMahon Contracting, LP, in the amount of \$1,292,753. The project consists of construction to provide modified median left turn improvements at Preston Road and Legacy Drive. (Consent Agenda Item "D")

Transportation Engineering Manager Neal responded to Council Member Jackson, advising that the public will be notified of the changes in the roadway through a wide-ranging marketing strategy. Mayor Dyer spoke to possible interim steps that could be taken to improve traffic at the intersection.

Bid No. 2009-34-B (cont'd)

Director of Public Works and Engineering Upchurch advised that the project is funded 90% from economic stimulus monies with the remainder reimbursed by Collin County funding. He advised that TxDOT chose the project and if it proved unsuccessful there could be changes in markings and signs paid by the City to reconfigure. Mr. Upchurch advised against rejecting the project as it would result in a loss of stimulus monies.

A motion was made by Mayor Pro Tem LaRosiliere and seconded by Council Member Callison to approve Bid No. 2009-34-B for Preston Road at Legacy Drive Intersection Improvements. The Council voted 6-2 with Mayor Dyer and Council Member Jackson voting in opposition. The motion passed.

Rejection of Bid No. 2009-122-B for the Legacy Greenbelt Extension, Denbury to YMCA from all bidders. The project is for construction of concrete recreational trail along White Rock Creek (Legacy Trail) from Tennyson Parkway north through the current YMCA property on the west side of the creek. (Consent Agenda Item "E")

Director of Parks and Recreation Fortenberry spoke to unit pricing not provided by the low bidder and Staff's recommendation to reject and rebid the project. Mayor Dyer stated concern that other bidders will be impacted by the actions of one firm, spoke to preserving a sense of fairness in the process, and selecting the second lowest bidder. City Attorney Wetherbee advised that the item is presented as a rejection. The Council discussed having Staff bring forward alternatives.

Upon a motion made by Deputy Mayor Pro Tem Dunlap and seconded by Council Member Jackson, the Council vote 8-0 to table consideration of Rejection of Bid No. 2009-122-B for the Legacy Greenbelt Extension until the August 10, 2009 Council meeting.

Ordinance No. 2009-7-13: To transfer the sum of \$183,610 from the General Fund Operating Appropriation for Fiscal Year 2008-09 to the Grant Fund Operating Appropriation to repay HUD for Plano International Preschool's failure to fully comply with the national objectives during the relevant periods; amending the budget of the City and Ordinance 2008-9-15, as amended, to reflect the actions taken herein; declaring this action to be a case of public necessity; and providing an effective date. (Consent Agenda Item "W")

City Attorney Wetherbee responded to Council Member Jackson, stating that the City is obligated to spending in a particular manner and purpose and that one recipient did not meet objectives. She advised that the City rather than the individual is responsible and that failure to make payment may result in penalties

Upon a motion made by Council Member Jackson and seconded by Deputy Mayor Pro Tem Dunlap, the Council voted 8-0 to approve the transfer the sum of \$183,610 from the General Fund Operating Appropriation for Fiscal Year 2008-09 to the Grant Fund Operating Appropriation and further to adopt Ordinance No. 2009-7-13.

CSP No. 2009-90-B for the construction of the Environmental Education Complex – Project No. 5119, in the amount of \$1,185,314 to Turner Construction Company, and authorizing the City Manager to execute all necessary documents. (Regular Agenda Item "1")

Director of Sustainability Nevil spoke to the project, originally proposed in 2000, to provide enclosed building space for the environmental education program. She advised that the facility would be energy efficient and demonstrate renewable energy technology, include a "living" roof, interactive programming and the ability to increase activities for implementation in citizen's homes.

CSP No. 2009-90-B (cont'd)

City Manager Muehlenbeck spoke to Water/Sewer funding for the building and to the operating cost of \$26,500 which will come from that fund as well. Ms. Nevil responded to Council Member Jackson regarding the large number of citizens who come to the site for education and the benefits to be derived. She advised that the level of education offered is much greater than that of the private sector and is presented to a wide age range. Ms. Nevil responded to Council Member Smith regarding the benefits of hands-on education. Facilities Manager Razhina advised that figures related to maintenance are conservatively high and that it is expected the building will be even more efficient in operation. Mayor Dyer spoke in support of the project but requested more detailed information regarding bid selection be provided in the future. Mr. Razhina spoke to the decision-making process and to this firm having the highest technical ability, lead experience and shortest time of project completion.

A motion was made by Mayor Pro Tem LaRosiliere and seconded by Council Member Jackson to approve CSP No. 2009-90-B for the construction of the Environmental Education Complex. The Council voted 7-1 with Council Member Smith voting in opposition. The motion passed.

To Rescind an Award for Median Right of Way Landscape Maintenance (Proposal #2009-94-C) (Regular Agenda Item "2")

Chief Purchasing Official Ryan defined the competitive proposal process in which cost and other factors provide areas of consideration to determine the best overall provider. He advised that in this case, evaluation was done by committee rather than individually and to Staff's recommendation to rescind the proposal and bring it back as bids of several project sizes. Mr. Ryan advised that the contract is one-year in length with renewals. Park Services Manager Fox spoke regarding landscape maintenance contracts being planned for eight month periods based on the growing cycle and stated that the contractors are authorized to proceed for each cycle. City Manager Muehlenbeck spoke to the slow-down in mowing of City building lawns. Ken Lambert, representing Texas, Tree and Turf, advised that his client is currently available, has provided excellent service to other areas of the City and is being impacted by a flaw in the process. Mr. Ryan advised the Council that consideration of these contracts are staggered throughout the year to lessen the impact on the Purchasing Department and spoke to including definition of the mowing season.

Upon a motion made by Council Member Jackson and seconded by Mayor Pro Tem LaRosiliere, the Council voted 8-0 to rescind an Award for Median Right of Way Landscape Maintenance.

Resolution No. 2009-7-14(R): To approve the terms and conditions of an Amendment to Tax Abatement Agreement by and between the City of Plano, Texas and The Shops at Legacy (North) LLC; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item "3")

Director of Finance Tacke advised that this amendment revises the date of occupancy from August 1, 2009 to February 1, 2010.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Jackson, the Council voted 8-0 to approve the terms and conditions of an Amendment to Tax Abatement Agreement by and between the City of Plano, Texas and The Shops at Legacy (North) LLC and further to adopt Resolution No. 2009-7-14(R).

Public Hearing and adoption of Ordinance No. 2009-7-15 to designate a certain area within the City of Plano as Reinvestment Zone No. 119 for a Tax Abatement consisting of a 14.36 acre tract of land located at the southwest corner of East Plano Parkway and Shiloh Road, in the City of Plano, Texas establishing the boundaries of such zone; ordaining other matters relating thereto; and providing an effective date. (Regular Agenda Item “4”)

Director of Finance Tacke advised that if created, the abatement will be based on a value of not less than \$4.7 million in real property improvements and \$5.8 million in business personal property by December 31, 2009, and further stated that the abatement will be for ten years from January 1, 2010 through December 31, 2019 based on amounts equal to 50% for real property (saving \$11,177 annually) and 50% for business personal property (saving \$13,732 annually) at the current tax rate.

Mayor Dyer opened the Public Hearing. No one spoke either for or against the request. The Public Hearing was closed.

Upon a motion made by Council Member Miner and seconded by Council Member Harris the Council voted 8-0 to designate an area within the City of Plano as Reinvestment Zone No. 119 for a Tax Abatement and further to adopt Ordinance No. 2009-7-15.

Resolution No. 2009-7-16(R): To approve the terms and conditions of an Agreement by and between the City of Plano, Texas, Lineage Power Corporation, a Nevada corporation, and Plano Tech Center Partners, Ltd., a Texas limited partnership; providing for a Real and Business Personal Property Tax Abatement, and authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item “5”)

Director of Finance Tacke advised that the agreement provides for real property improvements to 100,000 square feet of space and runs for ten years based on 50% abatement for both business and personal property.

Upon a motion made by Council Member Callison and seconded by Council Member Smith, the Council voted 8-0 to approve the terms and conditions of an Agreement by and between the City of Plano, Texas, Lineage Power Corporation, and Plano Tech Center Partners, Ltd. for a Real and Business Personal Property Tax Abatement, and further to adopt Resolution No. 2009-7-16(R).

Resolution No. 2009-7-17(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Lineage Power Corporation, a Nevada corporation; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item “6”)

Director of Finance Tacke advised that Lineage Power Corporation would occupy no less than 100,000 square feet of office space and retain, transfer or create 185 full-time jobs by September 1, 2009. She advised that the terms of the agreement run from September 1, 2009 – August 31, 2019 for a grant in the amount of \$277,500.

Upon a motion made by Council Member Harris and seconded by Council Member Miner, the Council voted 8-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Lineage Power Corporation, and further to adopt Resolution No. 2009-7-17(R).

Resolution No. 2009-7-18(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Atos Origin, Inc., a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item “7”)

Director of Finance Tacke advised that Atos Origin, Inc., would occupy no less than 12,000 square feet of office space and retain, transfer or create 34 full-time jobs by August 1, 2009. She advised that the terms of the agreement run from August 1, 2009 – July 31, 2013 for a grant in the amount of \$50,000.

Upon a motion made by Council Member Jackson and seconded by Council Member Harris, the Council voted 8-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Atos Origin, Inc., and further to adopt Resolution No. 2009-7-18(R).

Due to a possible conflict of interest Council Member Jackson stepped down from the bench on the following item.

Resolution No. 2009-7-19(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Enterprise Mobile, Inc., a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item “8”)

Director of Finance Tacke advised that Enterprise Mobile Inc. would occupy no less than 22,000 square feet of office space and retain, transfer or create 28 full-time jobs by October 1, 2009 with an additional 52 full-time jobs by December 31, 2010. She advised that the terms of the agreement run from October 1, 2009 – September 30, 2014 for a grant in the amount of \$64,000.

Upon a motion made by Council Member Callison and seconded by Mayor Pro Tem LaRosiliere, the Council voted 7-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Enterprise Mobile, Inc., and further to adopt Resolution No. 2009-7-19(R).

Council Member Jackson resumed her place at the bench.

Resolution No. 2009-7-20(R): To approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Publicis Inc., a Delaware corporation; authorizing its execution by the City Manager; and providing an effective date. (Regular Agenda Item “9”)

Director of Finance Tacke advised that Publicis would occupy no less than 58,000 square feet of office space and retain, transfer or create 110 full-time jobs by February 1, 2010 with an additional 55 full-time jobs by September 1, 2010. She advised that the terms of the agreement run from February 1, 2010 – January 31, 2020 for a grant in the amount of \$110,000.

Upon a motion made by Mayor Pro Tem LaRosiliere and seconded by Council Member Jackson, the Council voted 8-0 to approve the terms and conditions of an Economic Development Incentive Agreement by and between the City of Plano, Texas and Publicis Inc., and further to adopt Resolution No. 2009-7-20(R).

Mayor Dyer spoke to the next Council meeting to be held on July 29 when the budget will be presented. There being no further discussion, he adjourned the meeting at 8:49 p.m.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, City Secretary