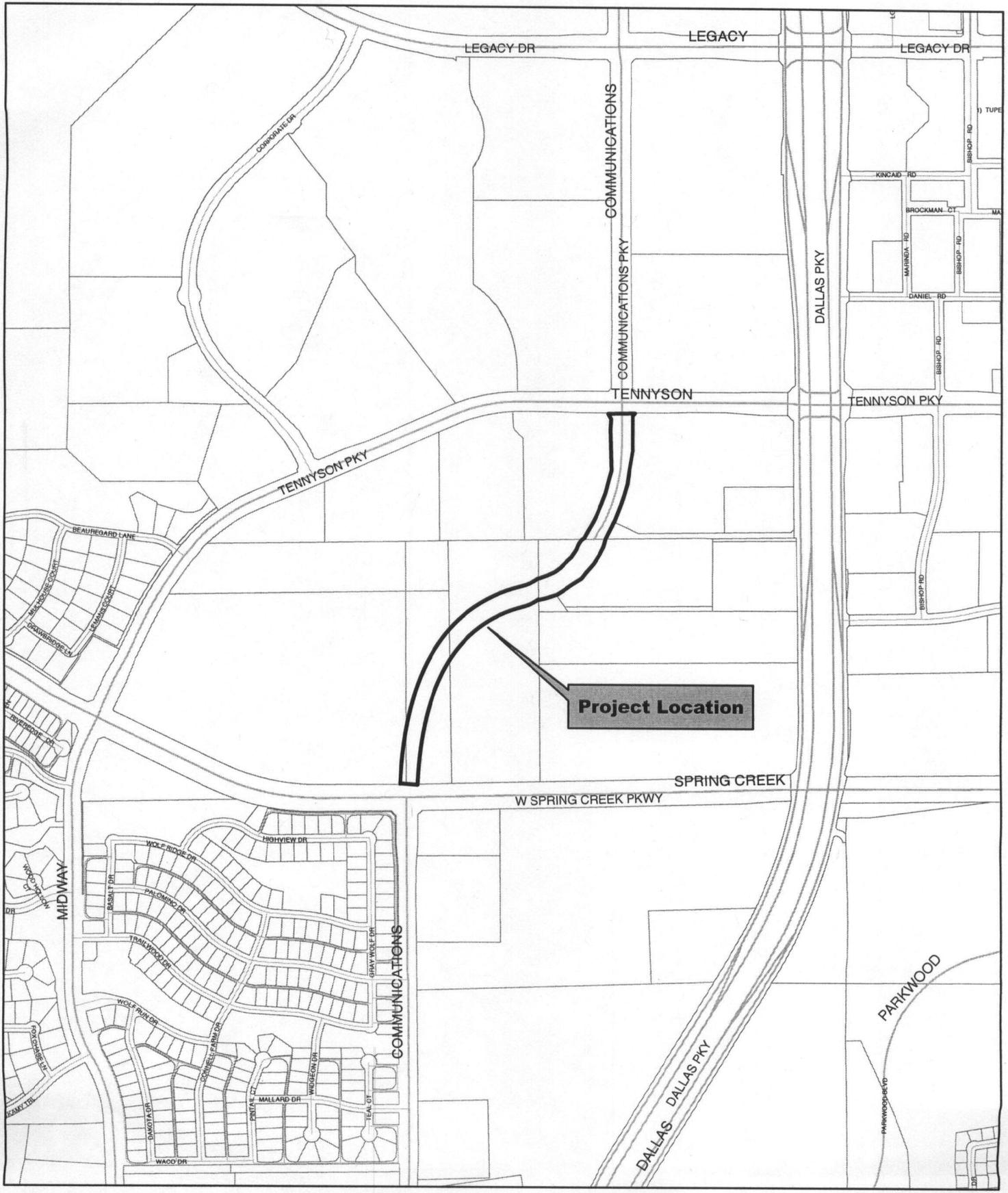




CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:	1/24/11			
Department:	Public Works & Engineering			
Department Head:	Alan L. Upchurch			
Agenda Coordinator (include phone #):	Irene Pegues (7198)			Project No. 5625
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Credit Sales Agreement between Trinity River Mitigation Bank, L.P., and the City of Plano, Texas, for the purchase of 9.7 credits required by the United States Army Corps of Engineers for offsite wetlands mitigation associated with Communications Parkway, between Spring Creek Parkway and Tennyson Parkway; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: 2010-11	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	684,678	3,824,322	0	4,509,000
Encumbered/Expended Amount	-684,678	-775,831	0	-1,460,509
This Item	0	-87,300	0	-87,300
BALANCE	0	2,961,191	0	2,961,191
FUND(S): STREET IMPROVEMENT CIP				
<p>COMMENTS: Funds are included in the 2010-11 Street Improvement CIP. This item, in the amount of \$87,300, will leave a current year balance of \$2,961,191 for the Communications - Spring Creek to Tennyson project.</p> <p>STRATEGIC PLAN GOAL: Credit sales agreements for street improvement projects relate to the City's Goal of Financially Strong City with Service Excellence.</p>				
SUMMARY OF ITEM				
<p>The proposed alignment of Communications Parkway, north of Spring Creek Parkway, goes through an existing stock tank and drainage channel. The Corps of Engineers determined the area to be wetlands that would be destroyed with the project. This required a 404 Permit for which we must mitigate the loss of wetlands. The attached agreement with Trinity River Mitigation Bank, L.P., provides for the City to purchase 9.7 credits for offsite wetland mitigation at a cost of \$87,300.00. There is a similar agreement with Wetlands Mitigation, L.P., that will complete our mitigation obligations for the project.</p>				
List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies			
Map	N/A			

Communications Parkway



Project Location

Location Map

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Credit Sales Agreement between Trinity River Mitigation Bank, L.P., and the City of Plano, Texas, for the purchase of 9.7 credits required by the United States Army Corps of Engineers for offsite wetlands mitigation associated with Communications Parkway, between Spring Creek Parkway and Tennyson Parkway; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a Credit Sales Agreement by and between the City of Plano, Texas, and Trinity River Mitigation Bank, L.P., a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, the United States Army Corps of Engineers has determined that the City of Plano must mitigate damage to wetlands associated with the proposed extension of Communications Parkway, from Spring Creek Parkway to Tennyson Parkway; and

WHEREAS, Trinity River Mitigation Bank, L.P., has provided the City of Plano with the most economical cost for the purchase of offsite wetland mitigation credits; and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED the 24th day of January, 2011.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

CREDIT SALES AGREEMENT

This Credit Sales Agreement (the "Agreement") is entered into by and between Trinity River Mitigation Bank, L.P., a Texas limited partnership ("TRMB"), and The City of Plano, a Texas Home-Rule Municipal Corporation (the "Purchaser").

RECITALS:

A. Pursuant to that certain Mitigation Banking Instrument Agreement dated April, 2001 (the "MBI") between, among others, Wetland Partners, L.P., a Texas limited partnership ("Wetland Partners"), as the sponsor, West Fork Partners, L.P., a Texas limited partnership ("West Fork") and the U.S. Army Corp of Engineers ("USACE"), Wetland Partners, as Sponsor of the Bank, and West Fork established the Trinity River Mitigation Bank under Permit Number 199800370 (the "Bank").

B. TRMB is the successor in interest to West Fork's rights under the MBI, although West Fork remains the owner of the surface of real property subject to the MBI.

C. Pursuant to the terms of the MBI, TRMB and Wetland Partners, as Sponsor of the Bank, intend to develop, restore, enhance, create and preserve wetlands, open water and riparian habitat on certain real property described in the MBI in exchange for mitigation bank credits authorized by USACE (the "Credits").

D. The Purchaser is developing certain real property, and in conjunction with such development, USACE has required that the Purchaser provide off-site wetland mitigation to compensate for impacts to USACE jurisdictional wetlands.

E. The Purchaser desires to purchase nine and seven-tenths (9.7) Credits to satisfy the Purchaser's mitigation obligation.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration described in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Purchaser and TRMB agree as follows:

1. **Sale of the Credits.** TRMB hereby agrees to sell and assign, and does hereby sell, assign, transfer and convey to the Purchaser, and the Purchaser hereby agrees to purchase and accept, and does hereby purchase, accept, acquire and receive from TRMB, nine and seven-tenths (9.7) Credits.

2. **Payment for Credits.** In consideration of the delivery of the Credits, the Purchaser agrees to pay to TRMB the sum of Eighty-Seven Thousand Three Hundred Dollars and No/100 for all of the Credits purchased pursuant to this Agreement.

3. **Representations.**

(a) Representations of TRMB. TRMB represents to the Purchaser the following:

- (i) TRMB is a Texas limited partnership, duly formed and validly existing;
- (ii) the Credits are free and clear of all liens, pledges, security interests or other encumbrances other than those imposed by the MBI;
- (iii) TRMB has duly taken all action necessary to authorize its execution and delivery of this Agreement and to authorize the consummation and performance of the transactions contemplated by this Agreement; and
- (iv) this Agreement, and all other agreements executed in connection with this Agreement, are the legal, valid and binding obligations of TRMB, enforceable in accordance with their terms except as such enforcement may be limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights.
- (v) The Bank is operated, and will continue to be operated, in accordance with all applicable USACE laws, regulations, orders, permit requirements, agreements and guidance, including, without limitation, the MBI and Permit Number 199800370.

Other than as expressly set forth above, TRMB does not make any representations or warranties to Purchaser, including, without limitation, the suitability of the Credits or whether or not the Credits will satisfy, in whole or part, any mitigation obligation of the Purchaser.

(b) Representations of Purchaser. The Purchaser represents to TRMB the following:

- (i) the Purchaser is a Texas Home-Rule Municipal Corporation, duly formed and validly existing;
- (ii) the Purchaser has duly taken all action necessary to authorize its execution and delivery of this Agreement and to authorize the consummation and performance of the transactions contemplated by this Agreement; and
- (iii) this Agreement, and all other agreements executed in connection with this Agreement, are the legal, valid and binding obligations of the Purchaser, enforceable in accordance with their terms except as such enforcement may be limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights.

Other than as expressly set forth above, Purchaser does not make any representations or warranties to TRMB.

4. **Confidentiality.** The Purchaser shall keep absolutely confidential the existence of this Agreement, its terms, and all information regarding the MBI, TRMB, the Credits and the Bank that the Purchaser learned, was provided or was otherwise disclosed to Purchaser in connection with the negotiation, execution and consummation of this Agreement, except for the disclosure of those items that are already in the public domain, where disclosure is otherwise required by law, or the disclosure is approved by TRMB in writing.

5. **Notices.** Notices or other communications under this Agreement by either party to the other shall be given or delivered sufficiently if they are in writing and are delivered personally, or are dispatched by registered or certified mail, postage pre-paid, or facsimile, addressed or delivered to the other party as set forth on the signature pages to this Agreement.

6. **Binding Agreement; Assignment.** This Agreement, and its benefits and obligations, shall inure to and bind the respective heirs, executors, administrators, successors and assigns of the parties hereto. This Agreement may not be assigned by TRMB or the Purchaser without the written consent of the other.

7. **Final Agreement.** This Agreement embodies the whole agreement of the Purchaser and TRMB. This Agreement shall supersede all previous communications, discussions, representations, advertisements, proposals or agreements either verbal or written, between the Purchaser and TRMB not otherwise contained in this Agreement.

8. **Captions.** The captions in this Agreement are included for convenience only and shall be given no legal effect whatsoever.

9. **Modification.** This Agreement may not be modified except by written instrument executed by both the Purchaser and TRMB.

10. **Choice of Laws: Venue.** This Agreement shall be governed by the laws of the State of Texas, and the venue for all disputes with respect to this Agreement shall be in Dallas, Dallas County, Texas.

11. **Partial Invalidity.** Should any part of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such a determination shall not render void, invalid or unenforceable any other part of this Agreement, provided, however, that the parties receive the full consideration bargained for hereunder.

12. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Purchaser and TRMB have executed this Agreement effective for all purposes as of the _____ day of _____, 2011.

TRMB:

TRINITY RIVER
MITIGATION BANK, L.P.
a Texas limited partnership

By: Wetland Partners, L.P.
Its: General Partner

By: WF Investments, Inc.
Its: General Partner

By: _____
Wallace L. Hall, Jr.
Its: President

Address: 5956 Sherry Lane, Suite 1810
Dallas, Texas 75225

Telephone: 214/891-0920

Facsimile: 214/891-9855

THE PURCHASER:

The City of Plano
a Texas Home-Rule Municipal Corporation

By: _____
Thomas H. Muehlenbeck

Its: City Manager

Address: 1520 K Ave
Plano, Texas 75086-0358

Telephone: 972-941-7121

Facsimile: 972-423-9587