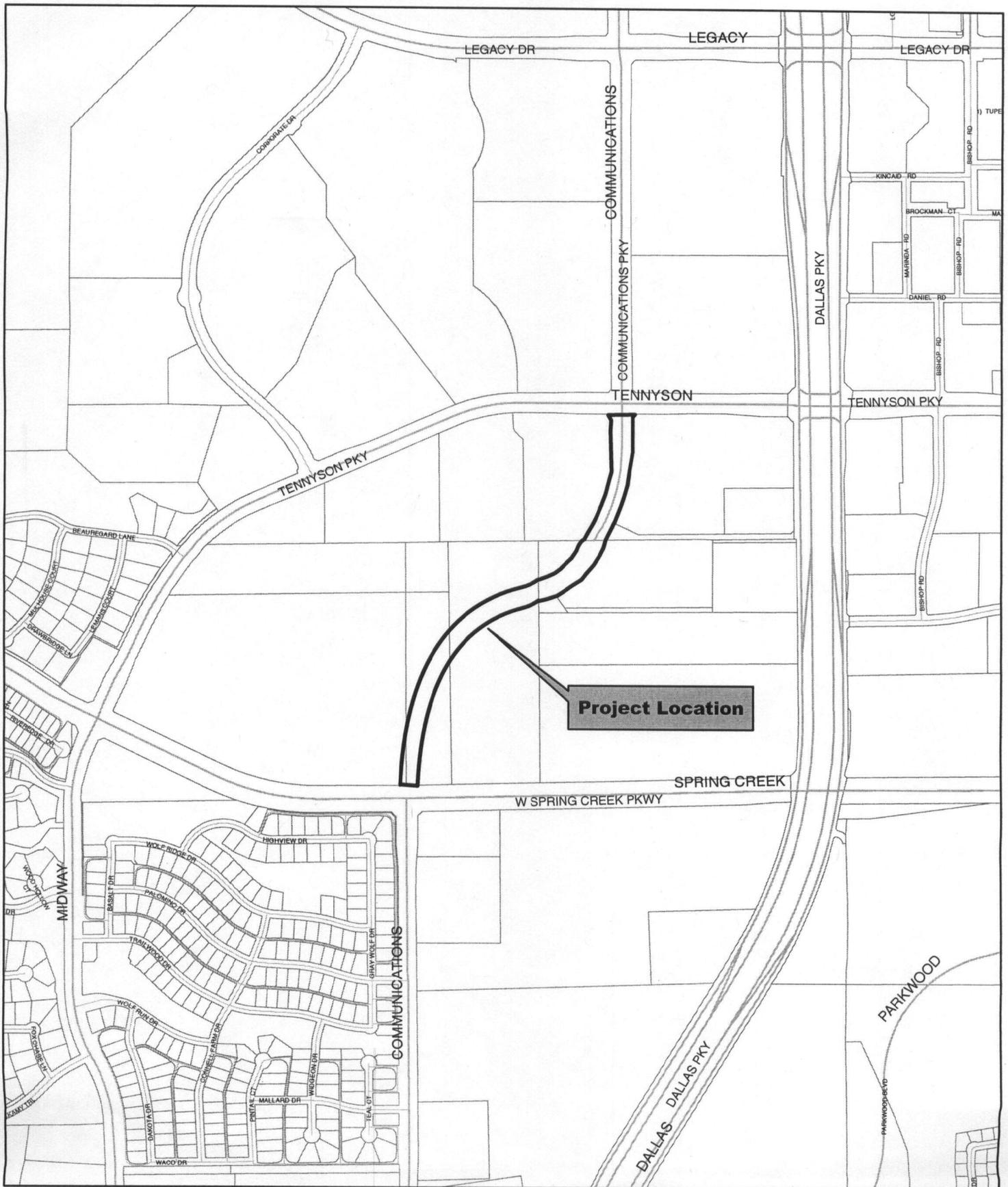




## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>				
<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
<b>CAPTION</b>				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Mitigation Credit Sales Agreement between Wetlands Management, L.P., and the City of Plano, Texas, for the purchase of 1.0 credits required by the United States Army Corps of Engineers for wetlands and open water 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>				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR: <b>2010-11</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	684,678	3,824,322	0	<b>4,509,000</b>
Encumbered/Expended Amount	-684,678	-775,831	0	<b>-1,460,509</b>
This Item	0	-22,500	0	<b>-22,500</b>
<b>BALANCE</b>	<b>0</b>	<b>3,025,991</b>	<b>0</b>	<b>3,025,991</b>
<b>FUND(S):    STREET IMPROVEMENT CIP</b>				
<p><b>COMMENTS:</b> Funds are included in the 2010-11 Street Improvement CIP. This item, in the amount of \$22,500, will leave a current year balance of \$3,025,991 for the Communications - Spring Creek to Tennyson project.</p> <p><b>STRATEGIC PLAN GOAL:</b> Credit sales agreements for street improvement projects relate to the City's Goal of Financially Strong City with Service Excellence.</p>				
<b>SUMMARY OF ITEM</b>				
<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 Wetlands Management, L.P., provides for the City to purchase 1.0 credits for offsite wetland mitigation at a cost of \$22,500.00. There is a similar agreement with Trinity River Mitigation Bank, 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 Mitigation Credit Sales Agreement between Wetlands Management, L.P., and the City of Plano, Texas, for the purchase of 1.0 credits required by the United States Army Corps of Engineers for wetlands and open water 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 Mitigation Credit Sales Agreement by and between the City of Plano, Texas, and Wetlands Management, 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 and open waters associated with the proposed extension of Communications Parkway, from Spring Creek Parkway to Tennyson Parkway; and

**WHEREAS**, Wetlands Management, L.P., has provided the City of Plano with the most economical cost for the purchase of wetland and open water 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

## MITIGATION CREDIT SALES AGREEMENT

This Mitigation Credit Sales Agreement (the "Agreement") is entered into by and between Wetlands Management, L.P., a Texas limited partnership ("Wetlands"), and City of Plano, Texas, a Municipality (the "Purchaser").

### RECITALS:

A. This Agreement is entered into pursuant to that certain Mitigation Banking Instrument Agreement dated April 30, 2008 (the "MBI"), between, among others, Wetlands, as the sponsor, and the U.S. Army Corp of Engineers ("USACE") which established the Bunker Sands Mitigation Bank (BSMB) under Permit Number SWF-2004-00420 (the "Bank").

B. Pursuant to the terms of the MBI, Wetlands intends to develop, restore, enhance, create and preserve wetlands and open water habitat on certain real property described in the MBI in exchange for mitigation bank credits authorized by USACE (the "Credits").

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

D. The Purchaser desires to purchase 1.0 credits (the "Credits") to satisfy the Purchaser's mitigation obligation for permanent impact to low quality wetland and open water habitat.

### AGREEMENT:

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

1. **Sale the Credits.** Wetlands 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 Wetlands, the Credits.

2. **Payment for Credits.** In consideration of the delivery of the Credits, the Purchaser agrees to pay to Wetlands the sum of Twenty Two Thousand Five Hundred Dollars (\$22,500.00) for all of the Credits purchased pursuant to this Agreement.

3. **Representations.**

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

(i) The Credits are free and clear of all liens, pledges, security interests or other encumbrances other than those imposed by the MBI.

(ii) Wetlands 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.

(iii) this Agreement, and all other agreements executed in connection with this Agreement, are the legal, valid and binding obligations of Wetlands, 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.

(iv) Wetlands is operating and will continue to operate the Bank in accordance with all applicable USACE laws, regulations, orders, permit requirements, agreements and guidance, including, without limitation, the MBI and Permit Number SWF-2004-00420.

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

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

(i) 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.

(ii) 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, the Purchaser does not make any representations or warranties to Wetlands.

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 prepaid, 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 Wetlands or the Purchaser without the written consent of the other.

7. **Final Agreement.** This Agreement embodies the whole agreement of the Purchaser and Wetlands. This Agreement shall supersede all previous communications, discussions, representations, advertisements, proposals or agreements, either oral or written, between the Purchaser and Wetlands 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 Wetlands.

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 lie in Dallas, Dallas County, Texas.

11. **Partial Invalidity.** Should any part of this Agreement be rendered void, invalid or unenforceable by any court 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.

*(the remainder of this page intentionally left blank)*

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

**WETLANDS:**

WETLANDS MANAGEMENT, L.P.,  
a Texas limited partnership

By: Wetlands Management GP, L.L.C.,  
a Delaware limited liability company,  
general partner

By: \_\_\_\_\_  
John M. Dziminski  
President

Address: 2101 Cedar Springs Road  
Suite 1600  
Dallas, Texas 75201

Telephone: 214-849-9144

**PURCHASER:**

City of Plano, Texas  
a Municipality

By: \_\_\_\_\_  
Name: Thomas H. Muehlenbeck  
Title: City Manager

Address: 1520 K Ave  
Plano, Texas 75086-0358

Telephone: 972-941-7121