CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: May 16, 2022

ITEM:

Motion – Approving Purchase of Wetland and Stream Credits (McCorkle Mitigation Bank) Blue Creek Stormwater Detention Facilities (CEMVR-RD-2021-1061)

FINANCIAL IMPACT:

City Staff would like City Council approval to reserve and purchase 0.04 forested wetland credits ($75,000/each) from the McCorkle Wetland Mitigation Bank at a cost of $3,000.00 and 4,992 stream credits ($45/each) from the McCorkle Stream Mitigation Bank at a cost of $224,640.00 for a total cost of $227,640.00 based upon an anticipated U.S. Army Corps of Engineers permit for the Blue Creek Stormwater Detention Facilities. All costs for these credits can be paid from account no. 660.000.000.5250.490 with the ultimate funding intended to come from Stormwater Revenue. The City recently applied for a low interest State Revolving Loan Fund and are awaiting approval, but these credits will not be purchased with loan monies.

BACKGROUND:

The City of West Des Moines entered into a Cooperative Agreement for Primary Road Project with the Iowa Department of Transportation (IDOT) on May 3, 2021 for the design and construction of a series of stormwater detention facilities within or adjacent to the Iowa Department of Transportation (IDOT) right-of-way adjacent to I-235 and along Blue Creek generally from Valley West Drive to just east of 28th Street. The primary goal of the project is to provide regional stormwater detention to better manage runoff and control flooding that exists in the immediate area. The Blue Creek Stormwater Detention Facilities were originally identified in the Westown Parkway PCP Drainage Study completed in June 2019. The City will be responsible for all design, construction, and maintenance with IDOT retaining ownership of the right-of-way. Construction is anticipated to commence in Fall 2022 (previously anticipated in Spring 2022) and extend through most of 2023.

Due to the impacts of existing wetlands and streams anticipated as part of Blue Creek Stormwater Detention Facilities, the City of West Des Moines is required by Federal Law to address the impacts. Rather than construct improvements to existing wetlands and streams, the City may purchase credits from an approved mitigation bank for wetlands and streams, which are constructed and maintained by a third party. City Staff have negotiated the attached Purchase Agreements with McCorkle Mitigation Bank in Webster County for the purchase of 0.04 forested wetland credits and 4,992 stream credits. City Staff recommend execution of the attached Purchase Agreements for the reservation and purchase of the necessary wetland and stream credits from the McCorkle Mitigation Bank at a cost of $227,640.00. If the final issued U.S. Army Corps of Engineers permit requires the purchase of wetland and stream credits in excess of that approved herein, City Staff will bring back to City Council for approval. The Dallas County Conservation Board released 0.27 emergent wetland credits from the Voas Wetland Mitigation Bank on March 29, 2022 for the project.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Motion Approving Purchase of Wetland and Stream Credits (McCorkle Mitigation Bank).

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

OPTION TO PURCHASE STREAM MITIGATION BANK CREDITS

1. This Option to Purchase Stream Mitigation Bank Credits is entered into this 16th day of May, 2022 between Jeffrey Dane McCorkle, as representative of McCorkle Stream Mitigation Bank referred to herein as Optionor and the City of West Des Moines, Iowa, or its assignee, referred to herein as Optionee.

RECITALS

A. Optionor has an approved banking instrument referred to herein as McCorkle Stream Mitigation Bank, issued by the Army Corps of Engineers which authorizes the issuance of mitigation banking credits for stream credits to offset unavoidable adverse impacts on a permitted project, referred to herein as Permitted Project, to be performed pursuant to a 404 Permit, which Permit is referred to herein as Permit.

B. Optionee has been approved for a Permit (CEMVR-RD-2021-1061) from the Army Corp of Engineers which may require mitigation banking credits for stream credits to offset unavoidable adverse impacts that result in performing the work proposed Permitted Project pursuant to the 404 Permit.

C. Optionor and Optionee have agreed to document their agreement regarding certain credits in this Option, all as more specifically set forth below.

AGREEMENT

1. Grant of Option. Optionee hereby acquires an option from Optionor and Optionor hereby grants an option to Optionee to purchase 4992 mitigation banking credits for stream credits from the McCorkle Stream Mitigation Bank to offset unavoidable adverse impacts resulting from Optionee performing the work on the Permitted Project.

2. Term. Optionee may exercise this option, by delivering written notice to the Optionor of such exercise at any time beginning on the full execution of this Option and ending on a date that is up to six months later. The written notice to exercise this Option must be delivered in person with a signed receipt or by US certified mail with a return receipt.

3. Purchase Price. The purchase price for the credits is $224,640.00, referred to herein as the Purchase Price, of which $44,928.00 (20% of the Purchase Price) must be paid to the Optionor by the Optionee in immediately available US currency upon the signing of this Option with the remainder of the purchase price due by Optionee to Optionor upon assignment of the Optionor and the acquisition of the credits by Optionee.

4. Certificate. If Optionee exercises this Option, the Optionee must sign a Stream Mitigation Bank Credit Purchase Agreement with Optionor concerning the stream mitigation credits within ten days of the exercise of the option, which agreement shall provide that the Optionor will transfer to the Optionee a certificate for the Purchase Price 4,992 stream mitigation banking credits, as evidenced by a certificate documenting the price paid for the credits, upon Optionee's payment of the Purchase Price in full.

5. Failure to Exercise. If the Optionee does not give the written notice to the Optionor within the six month period specified, this Option shall lapse and the Optionee will have not rights or interest in the mitigation banking credits at the McCorkle Stream Mitigation Bank and the $44,928.00 (20% of the Purchase Price) paid with this option shall be forfeited to Optionor.

6. Assignment. Neither the Optionor or Optionee shall assign or in any manner transfer their rights and obligations of this Option without prior written consent of the Optionor and Optionee as evidenced by a written amendment to this Option.

7. Complete Agreement. The parties agree that this agreement represents their entire agreement and incorporates and supersedes any or all agreements or discussions and cannot be changed orally.

OPTIONOR	OPTIONEE
Dated: _____	Dated: _____
McCorkle Stream Mitigation Bank	City of West Des Moines, Iowa
By: _____	By: _____
Jeffrey Dane McCorkle	

PROMISE TO PURCHASE FORESTED WETLAND CREDITS

1. This Contract to Purchase Forested Wetland Credits is entered into this 16th day of May, 2022 between Jeffrey Dane McCorkle, as representative of McCorkle Wetland Mitigation Bank referred to herein as Seller and the City of West Des Moines, Iowa, or its assignee, referred to herein as Buyer.

RECITALS

A. Seller has an approved banking instrument referred to herein as the McCorkle Wetland Mitigation Bank, issued by the Army Corps of Engineers, Permit No. CMVR-OD-P-2016-0023 authorized to issue mitigation banking credits for Forested Wetland credits to offset unavoidable adverse impacts on a permitted project, referred to herein as Permitted Project, to be performed pursuant to a 404 Permit, CEMVR-RD-2021-1061, which Permit is referred to herein as Permit.

B. Buyer has obtained a Permit from the Army Corp of Engineers which requires 0.04 forested wetland banking credits to offset unavoidable adverse impacts that result in performing the work proposed Permitted Project pursuant to the 404 Permit.

C. The Seller is procuring the Forested Wetland credits in reliance on Buyer's subsequent purchase of the Forested Wetland credits as more specifically detailed herein.

D. Seller and Buyer have agreed to document their agreement regarding certain credits, all as more specifically set forth below.

AGREEMENT

1. Promise to Purchase. Buyer hereby agrees to purchase the credits as outlined in this Section 1 of the Agreement from Seller and Buyer and Seller hereby create an irrevocable obligation for Buyer to purchase 0.04 Forested Wetland credits upon Seller's acquisition and procurement thereof from the McCorkle Wetland Mitigation Bank to offset unavoidable adverse impacts resulting from Buyer performing the work on the Permitted Project pursuant to permit CEMVR-RD-2021-1061 issued by the Army Corp of Engineers.

2. Term. The term of this Contract is two years from the date this Agreement is signed; Buyer's obligation to purchase the credits does not terminate until Seller has procured and acquired the credits and Buyer has paid Seller the Purchase Price for the credits. In the event Seller is unable to procure the credits within the term set forth in this Agreement, this Agreement and any obligation of the Buyer to purchase credits shall be null and void.

3. Purchase Price. The Buyer agrees to the purchase price for the credits is $75,000 per credit or $3,000 for 0.04 credits to be purchased by Buyer, referred to herein as the Purchase Price, which must be paid to the Seller in immediately available US currency upon Seller's procurement and acquisition of the credits by Seller.

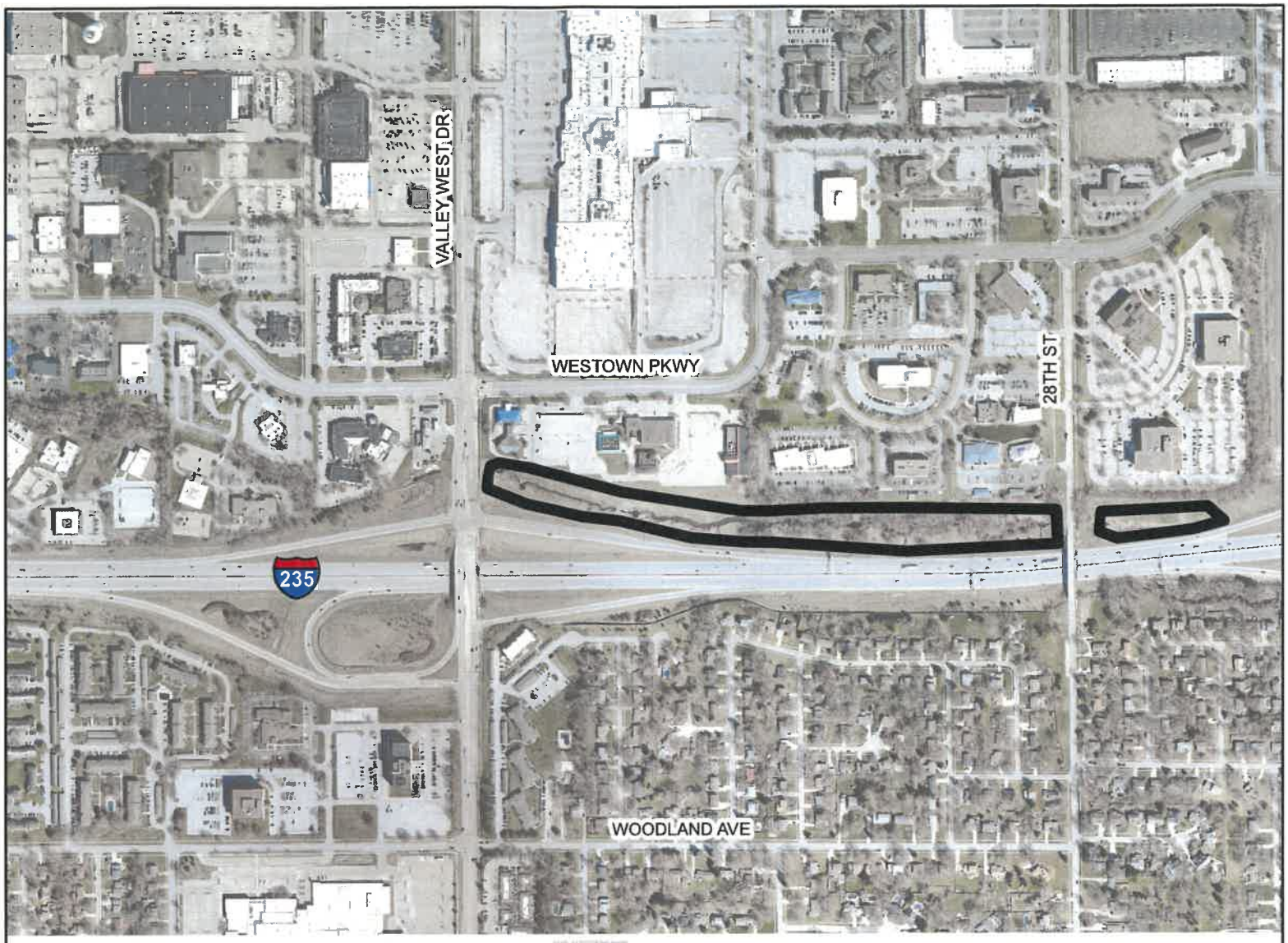
4. Certificate. Upon Seller's procurement and acquisition of the credits, the Buyer must sign a Wetland Mitigation Bank Credit Purchase Agreement with Seller concerning the forested wetland mitigation credits within ten days of the Seller's procurement and acquisition of the credits, which agreement shall provide that the Seller will transfer to the Buyer a certificate for the purchase price, 0.04 forested wetland mitigation credits, as evidenced by a certificate documenting the price paid for the credits.

5. Failure to Exercise. If the Buyer does not pay the Purchase Price to the Seller within the time period specified, the Buyer agrees that the lack of payment to Seller shall be deemed a material breach of this Agreement and any and all remedies available to McCorkle Wetland Mitigation Bank as the Seller, including but not limited to temporary and permanent injunctive relief, shall be vested in the Seller.

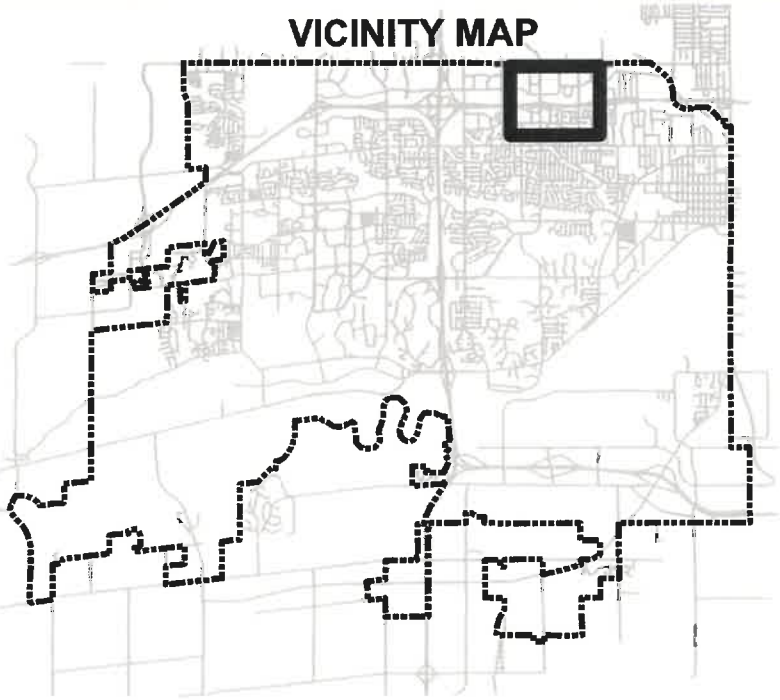
6. Assignment. Neither the Seller or Buyer shall assign or in any manner transfer their rights and obligations of this Contract without prior written consent of the Seller and Buyer as evidenced by a written amendment to this Option.

7. Complete Agreement. The parties agree that this agreement represents their entire agreement and incorporates and supersedes any or all agreements or discussions and cannot be changed orally.

SELLER	BUYER
Dated: _____	Dated: _____
_____Bank	City of West Des Moines, Iowa
By: _____	By: _____
Jeffrey Dane McCorkle	



VICINITY MAP



LEGEND

PROJECT LOCATION

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W E
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THE CITY OF WEST DES MOINES

PROJECT:

Blue Creek Detention Facilities

LOCATION:

Exhibit "A"

DRAWN BY: JPM	DATE: 5/11/2022	PROJECT NUMBER/NAME: 0510-048-2019	SHT. 1 of 1