CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: August 15, 2022

ITEM:

Motion – Approving Purchase of Wetland Credits (White Fox 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 White Fox Mitigation Bank at a cost of $3,000.00 based upon an approved 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.

City Council previously approved the purchase of 0.04 forested wetland credits ($75,000/each) from the McCorkle Mitigation Bank on May 16, 2022. City Staff were made aware that those forested wetland credits will not be available in time to purchase due to their non-approved status. The attached Nullification of Promise to Purchase Forested Wetland Bank Credits has been provided to document withdrawal of the City's commitment.

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 forested wetlands 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, the City may purchase credits from an approved mitigation bank for wetlands, which are constructed and maintained by a third party. City Staff have negotiated the attached Purchase Agreement with White Fox Mitigation Bank in Wright County for the purchase of 0.04 forested wetland credits. City Staff recommend execution of the attached Purchase Agreement for the purchase of the necessary forested wetland credits from the White Fox Mitigation Bank at a cost of $3,000.00. Jeffrey Dane McCorkle released 4,992 stream credits from the McCorkle Stream Mitigation Bank on June 13, 2022 for the project. The Dallas County Conservation Board released 0.27 emergent wetland credits from the Voas Wetland Mitigation Bank on March 29, 2022 for the project.

OUTSTANDING ISSUES:

None.

RECOMMENDATION:

City Council Adopt:

- Motion Approving Purchase of Wetland Credits (White Fox 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	Public Services		
Date Reviewed	August 8, 2022		
Recommendation	Yes	No	Split

NULLIFICATION OF
PROMISE TO PURCHASE FORESTED WETLAND BANK CREDITS

The City of West Des Moines and McCorkle Wetland Mitigation Bank entered into a Contract to Purchase Forested Wetland Credits on 6/10/22 / 6/13/22, 2022.

Paragraph 1 of the Contract obligated the City of West Des Moines to purchase 0.04 forested wetland credits from the McCorkle Wetland Mitigation Bank if McCorkle Wetland Mitigation Bank was able to procure the necessary credits. Paragraph 2 of the contract stated that if McCorkle Wetland Mitigation Bank was unable to procure the necessary credits, that any obligation of the City of West Des Moines to purchase forested wetland credits would be null and void.

McCorkle Wetland Mitigation Bank was unable to procure the necessary forested wetland credits and therefore acknowledges that any obligations of the City of West Des Moines to purchase forested wetland credits under the contract is hereby null and void.

Dated: 8/9/22

McCorkle Wetland Mitigation Bank

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: 6/13/2022	Dated: 5·16·22
_____ Bank	City of West Des Moines, Iowa
By: _____	By: _____
Jeffrey Dane McCorkle	

August 2, 2022

White Fox Farms, LLC
2254 280th Street
Clarion, Iowa 50525

PURCHASE AGREEMENT

City of West Des Moines
Attention: Brian Hemesath
4200 Mills Civic Parkway
West Des Moines, IA 50265

Re: CEMVR-RD-2021-1061

White Fox Farms, LLC (White Fox) owns and operates the White Fox Mitigation Bank legally described as follows:

> A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 90 NORTH, RANGE 25 WEST OF THE 5TH P.M., WRIGHT COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: REFERRING TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 12, THENCE S89°36'59"W (ASSUMED BEARING) ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 12, 1008.88 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S89°36'59"W ON SAID SOUTH LINE, 1064.79 FEET; THENCE N00°22'08"E, 847.53 FEET; THENCE N26°15'09"E, 1216.76 FEET; THENCE N60°34'13"E, 85.00 FEET; THENCE N37°19'29"E, 195.25 FEET; THENCE N00°25'57"W, 516.56 FEET TO THE NORTH LINE OF SAID SOUTHWEST QUARTER; THENCE N89°36'38"E ON SAID NORTH LINE, 1315.65 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE S00°33'32"E ON THE EAST LINE OF SAID SOUTHWEST QUARTER, 1876.50 FEET; THENCE S86°25'41 "W, 587.59 FEET; THENCE S66°50'59"W, 444.44 FEET; THENCE S00°37'49"W, 566.44 FEET TO THE POINT OF BEGINNING. CONTAINING 90.29 ACRES, MORE OR LESS.

White Fox Mitigation Bank is operating in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks; Notice published in the Tuesday, November 28, 1995 Federal Register, Volume 60, No. 228.

The White Fox Mitigation Bank offers stream and wetland credits to a primary service area for the Upper Des Moines River Basin as defined within the Iowa Mitigation Banking document (Last revised: July 2019).

August 2, 2022

The White Fox Mitigation Bank is in compliance with the Banking Instrument.

- The required Conservation Easement, (White Fox, Grantor; Iowa Natural Heritage Foundation, Grantee) is filed with the Wright County Recorder.
- The required long-term maintenance account has been created.
- Construction has been completed.
- Credits will be within sufficient quantities and qualities for debit to meet the City of West Des Moines requirements.

It is our understanding that City of West Des Moines will require 0.04 forested wetland credits to satisfy unavoidable impacts described in the above referenced Section 404 Application. Upon the USACE permit approval and the signing of this Purchase Agreement, and the payment $3,000.00 for the purchase of 0.04 forested wetland credits to White Fox Farms, LLC, White Fox Farms, LLC will debit 0.04 forested wetland credits from the White Fox Mitigation Bank's credit ledger to the appropriate project.

General Provisions:

PRICE: The Purchase Price for 0.04 forested wetland credits will be $3,000.00 payable to White Fox Farms, LLC upon approval of permit CEMVR-RD-2021-1061.

TIME FOR ACCEPTANCE: When accepted, this Agreement shall become a binding contract. If payment in full is not received within 30 days of the permit approval, this Purchase Agreement shall become Null and Void.

Immediately upon receiving payment and two signed originals, White Fox Farms, LLC will execute the documents, return a signed original to you, and by regular mail deliver a copy and proof of payment to:

Matt Zehr
Regulatory Project Manager
Rock Island District Corps of Engineers
Clock Tower Building – PO Box 2004
Rock Island, IL 51204-2004

Ms. Christine Schwake
Iowa DNR Section 401 WQC
Wallace State Office Building
502 East 9th Street
Des Moines, IA 50319-0034

August 2, 2022

Credits are not reserved until this document is fully executed and returned.

Date: August 2, 2022

Date:_____

White Fox Farms, LLC
2254 280th Street.
Clarion, Iowa 50525

City of West Des Moines
Attention: Brian Hemesath
4200 Mills Civic Parkway
West Des Moines, IA 50265

For White Fox Farms, LLC:

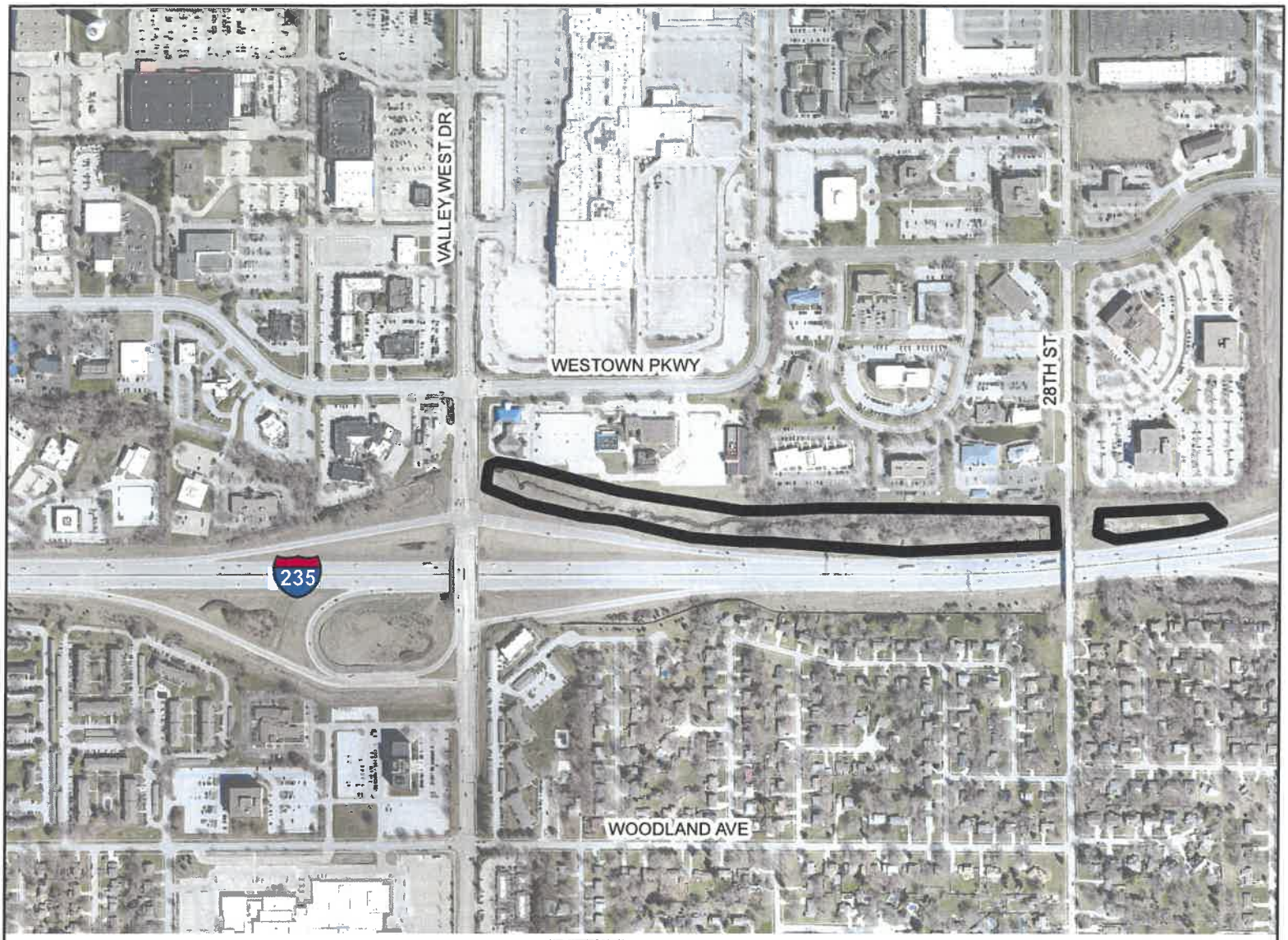
Larry Anderson

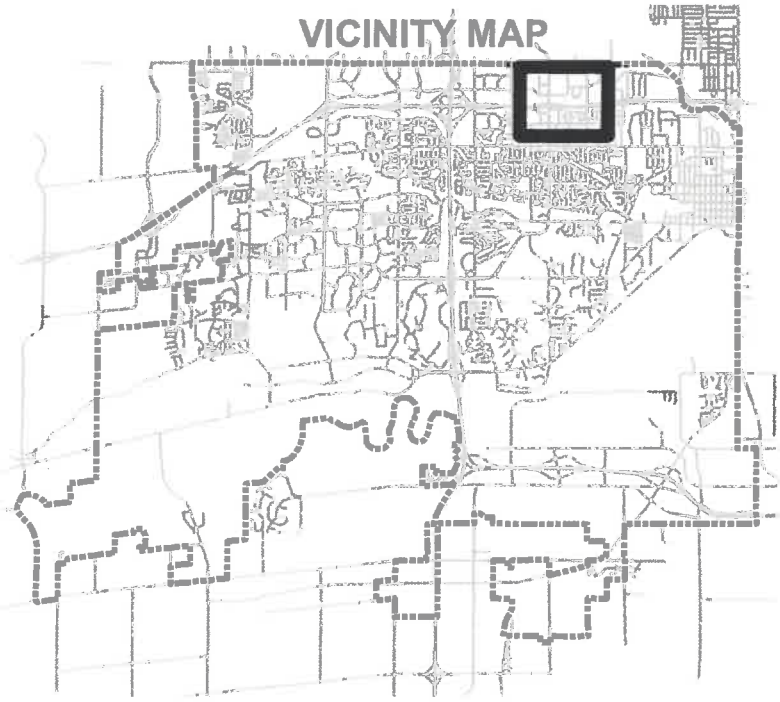
Larry Anderson, Owner
White Fox Farms, LLC

City of West Des Moines

_____

Brian Hemesath
City of West Des Moines





LEGEND

PROJECT LOCATION

N
W E
S

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