

## MEMORANDUM

DATE: September 30, 2015

TO: William Stowe, CEO and General Manager

FROM: Ted Corrigan, Chief Operating Officer

SUBJECT: Bishop Farms Care and Maintenance Agreement

### Background

Des Moines Water Works (DMWW) has purchased a series of water bodies along the south side of the Raccoon River, east of the McMullen Water Treatment Plant. The westernmost of these water bodies, known as Crystal Lake, has been used for many years to provide a relatively low nitrate raw water source for the McMullen Plant. The long term plan is to connect all of the water bodies in series to form a “Chain of Lakes” which will be capable of providing up to 15 million gallons per day of low nitrate water supply.

Crystal Lake is located on the west side of Interstate 35 adjacent to the McMullen Treatment Plant Property. This is a very “operational” area where lime residuals are processed and radial collector wells are located. The other water bodies, including the Bishop Farms Lake, are all located on the east side of Interstate 35. This area is not immediately accessible from the McMullen property, it is currently less of an operational area with no wells nor residuals processing, and it will likely stay more natural even after the Chain of Lakes concept is implemented.

### Care and Maintenance Proposal

Shortly after DMWW purchased the Bishop Farms property, the Iowa Department of Natural Resources (IDNR) approached staff with a proposal. IDNR would manage the property as an extension of Walnut Woods State Park in exchange for DMWW allowing public access to the recreational opportunities the property has to offer. The IDNR proposal included opening and closing the gates daily and patrolling the property on a regular basis. In addition, they would promote public access by constructing a parking lot, creating a mowed walking trail around the lake, and developing a kayak/canoe access program.

This proposal was attractive to DMWW because this property is in a remote area and, left unattended, could be misused. Regular visits by the Walnut Woods Park Ranger could help prevent misuse. In addition, allowing public access to an area where such access is not detrimental to DMWW operations is consistent with our mission of stewardship of public lands. This partnership and the associated public access will also allow us to promote the story of water through signage which IDNR will install on the property highlighting our collaboration.

This signage will also identify the lake as a part of the DMWW water supply and educate the public about the area and its importance as a water resource.

### **Proposed Care and Maintenance Agreement**

Staff has spent the last several months developing the attached Care and Maintenance Agreement which is still in draft form. In addition to the conditions originally proposed by IDNR the parties have agreed:

1. No motorized boats will be allowed on the water. Canoes, kayaks and stand-up paddle boards only
2. No public access will be allowed from the Bishop Property, under the Raccoon River bridge, to DMWW property on the west side of I-35
3. No horse trails or snowmobile access will be allowed
4. No swimming or ice skating will be allowed
5. No urban deer hunting will be allowed
6. No firearms, fireworks or explosives will be allowed
7. No overnight camping or no open fires will be allowed
8. No all-terrain vehicles, snowmobiles or unlicensed recreational motor vehicles will be allowed

It is anticipated the agreement between DMWW and IDNR will be brought to the full Board for approval in November or December of this year.

### **Purple Martin Lake Water Resource Area**

Shortly after discussions began with DNR the Walnut Woods Park Ranger requested permission to install a Purple Martin house on the property which he believed was ideal Martin habitat. The Purple Martin is the largest North American swallow but their populations are undergoing long-term declines in many parts of North America. Purple Martins rely almost entirely on human-supplied housing and IDNR had grant money for the installation of a number of Purple Martin houses. Shortly after the Martin house was installed there was a thriving colony of Purple Martins using it as their home. For that reason it has been proposed that the lake be named Purple Martin Lake and the area around the lake be called Purple Martin Lake Water Resource Area.

**BISHOP FARMS  
PROPERTY**  
APPROX. 215 ACRES



NOT TO SCALE

**AGREEMENT BY AND BETWEEN  
THE IOWA DEPARTMENT OF NATURAL RESOURCES  
AND  
DES MOINES WATER WORKS**

**THIS AGREEMENT**, between the state of Iowa, acting through the Iowa Department of Natural Resources (“DNR”), and Board of Water Works Trustees of the City of Des Moines (“DMWW”) is effective as of this \_\_\_\_ day of \_\_\_\_\_, 2015.

**WITNESS**, the DNR and DMWW have jointly determined that it is in the public interest to transfer the care and maintenance of certain real property owned by DMWW more particularly described as:

All that part of Lot 7 in the Official Plat of Section 29, Township 78 North, Range 25 West of the 5th P.M., Polk County, Iowa, lying South of the Raccoon River.

AND

All that part of Government Lots 4, 5 and 6 of Section 29, Township 78 North, Range 25 West of the 5th P.M., Polk County, Iowa, lying South of the Raccoon River.

AND

The South Half of the Southwest Quarter of Section 29, Township 78 North, Range 25 West of the 5th P.M., Polk County, Iowa.

AND

All that part of the Southeast Quarter of the Southeast Quarter of Section 30, Township 78 North, Range 25 West of the 5th P.M., Polk County, Iowa, lying East of the centerline of Interstate 35, EXCEPT that portion deeded to the State of Iowa recorded in Book 2928 Page 356 and Book 4366 Page 511.

AND

All that part of Government Lot 11 of Section 30, Township 78 North, Range 25 West of the 5th P.M., Polk County, Iowa, lying South of the Raccoon River and also lying East of the centerline of Interstate 35, EXCEPT that portion deeded to the State of Iowa recorded in Book 2931 Page 619.

(the “Property”)

**THEREFORE**, in consideration of mutual promises and covenants herein contained, the parties agree as follows:

**Section 1. Purposes.** The purposes of this Agreement are to establish a state recreational area to be known as the “Purple Martin Lake Water Resource Area” at the Property, and for DMWW to transfer to DNR, and for DNR to accept and assume, the care and maintenance of the Property for such use.

**Section 2. Transfer.** DMWW hereby transfers to DNR, and DNR hereby assumes and accepts the use, care and maintenance of the Property for the purposes and under the terms set forth herein.

**Section 3. Statutory Authority.** The DNR enters into this agreement pursuant to the statutory authority granted it in Iowa Code sections 456A.24(7).

**Section 4. Term of Agreement.** This agreement is effective on the date it is last signed below and continues in full force and effect to and including December 31, 2025, unless sooner terminated as provided in Section 20.

**Section 5. DNR Master Plan.** The Property will be managed in conjunction with Walnut Woods State Park by the DNR Parks Bureau. All DNR Parks rules and regulations will be enforced in this area. The following master plan for the Property will require approval in writing from DMWW:

- Phase 1: Coordinate with the City of West Des Moines on maintaining road access.  
Construct a parking lot for public access.  
Create a mowed walking trail around the lake.  
Install signage on the Property to highlight the collaboration between DMWW and DNR and identify the lake as a part of the DMWW water supply.
- Phase 2: Restoration enhancement. Control invasive species and manage vegetation and trees surrounding the lake to allow for public access.  
Create interpretive signage kiosks educating the public about the area and its importance as a water resource.
- Phase 3: Develop a kayak/canoe access program with precautions to eliminate vandalism to the floating, solar-powered mixers.
- Phase 4: Dependent on available funding, construct a shelter, open pit latrine, and future beautification.

**Section 6. Conditions.** The parties agree to the following conditions shall govern the use of the Property:

1. No motorized boats will be allowed on the water. Canoes, kayaks, and stand-up paddle boards only upon receipt of a boat permit that contains a release of liability
2. No public access will be allowed from the Bishop Property, under the Raccoon River bridge, to DMWW property on the west side of I-35.
3. No horse trails or snowmobile access will be allowed.
4. No swimming or ice skating will be allowed.
5. No urban deer hunting will be allowed.

6. No firearms, fireworks, or explosives will be allowed.
7. No overnight camping or no open fires will be allowed.
8. No all terrain vehicles, snowmobiles or unlicensed recreational motor vehicles will be allowed.

**Section 7. Liability; Indemnity.**

1. Nothing in this Agreement shall be construed to create joint or several liability of a party hereto for the acts, omissions or obligations of the other party. Each party shall be liable only for its own acts and the parties shall have such rights of indemnity and contribution among themselves with respect to this Agreement and the undertakings hereunder as shall be permitted by law and consistent with the provisions of this Agreement.
2. DNR agrees to save and indemnify and hold harmless, DMWW, its officers and employees against all liabilities, judgments, costs and expenses which DMWW may incur or which in any way results from use of the Property by members of the public under the terms of this Agreement as may be allowed by law and/or limited by Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapters 669 and 670.
3. Except for matters within the scope of the indemnity in subsection 2 of this Section, each party otherwise agrees to save and indemnify and hold harmless, the other party, its officers and employees against all liabilities, judgments, costs and expenses which the parties may incur or which in any way results from the acts, omissions, carelessness or neglect of either party, as may be allowed by law and/or limited by Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapters 669 and 670..

**Section 8. Management of Property.** The DNR agrees to maintain and manage the Property as a public access area for the people of the State of Iowa in the same manner as state owned access areas and subject to the following provisions:

1. Hours of access will be from 6:00 a.m. to 10:30 p.m.
2. All DNR Parks rules and regulations will be enforced.

**Section 9. Maintenance or Repair of Property.** The Property is subject to flooding by the Raccoon River. The parties agree that flood related cleanup and maintenance activities shall be divided as follows:

1. DMWW will be responsible for any clean up, maintenance, or repairs that is needed for the continued use of the area for water supply purposes.
2. DNR will be responsible for any clean up, maintenance, or repairs that is needed for the continued use of the area for public access and recreational purposes.

**Section 10. Boundary Management.** The DNR shall annually inspect the boundary of the Property and shall notify DMWW of any issues discovered.

**Section 11. Commercial Use of Property.** The DNR may not make commercial use of the Property or permit commercial use by others in accordance with State law and County ordinances. Non-discriminatory access restrictions are allowed where necessary for safety considerations.

Commercial uses include, without limitation, agricultural operations and forest harvest conducted by the DNR, its employees, agents, officers and volunteers, or an independent contractor working for the DNR.

**Section 12. DMWW Ownership and Use of Property.** DMWW shall retain ownership of the Property, and all rights, privileges and immunities incident to ownership in and to the Property, except as expressly otherwise provided herein. Without limiting the generality of the foregoing:

1. DMWW reserves the right to enter upon the Property at any time for any purpose.
2. DMWW reserves the right to utilize the water stored on the property to the extent required as a raw water source for the McMullen Water Treatment Plant. As such, the water level on the property may be drawn down to a minimal level which may make the water unavailable for recreational use.
3. DMWW reserves the right to store as much water on site as physically possible to maximize raw water storage. Any water access facilities will need to be designed to accommodate the high water level or recreational use of the water may be impacted.
4. DMWW reserves the right to have construction and/or maintenance or repair projects from time to time which may restrict or eliminate public access to some areas of the property during the construction.
5. DMWW reserves any and all immunity from liability under Chapter 461C, Code of Iowa

**Section 13. Improvements.** DNR shall make no permanent improvements to the Property until the development plans for such improvements have been approved by the DMWW. All costs associated with improvements under this paragraph shall be the responsibility of the DNR. The decision to proceed with development plans approved by DMWW shall be solely at DNR's discretion.

**Section 14. Surrender of Property.** At the expiration or termination of this agreement, the DNR will yield possession of the Property to DMWW and will, within 90 days after such time, remove all improvements, structures, and equipment thereon from said land. However, permanent structures may remain on the Property with specific written approval of DMWW. The Property shall be delivered, and any improvements, structures or equipment shall be removed, so as to leave the Property in as good order and condition as when the same was entered upon by the DNR.

**Section 15. Signs.** All signs (e.g., boundary, directional, area name or regulation) may remain in place at the discretion of the DNR. The DNR shall install and maintain signs on the boundary of the area designating it as a public use area and alerting users that it is managed by the DNR. The DNR may add additional boundary, directional, and regulatory signs as it deems necessary, to be removed upon termination of this agreement. All signs shall include a DMWW logo.

**Section 16. Expenditure of Funds.** Nothing in this agreement shall obligate or bind either party to the expenditure of funds in excess of funds available to each party.

**Section 17. Public Use of Property.** Nothing in this agreement shall deny the right of the public to enter upon and use the Property for any lawful purpose whatsoever.

**Section 18. Nondiscrimination.** It is agreed that, with respect to use of the Property, the DNR will not exclude anyone from participation in, deny anyone the benefits of, or otherwise subject anyone to

discrimination because of the person's race, color, sex, gender identity, sexual preference, national origin, age or disability.

**Section 19. Severability.** If any provision of this agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

**Section 20. Choice of Law and Forum.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this agreement without regard to the choice of law provisions of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate.

**Section 21. Termination.** Either party may terminate this agreement upon 30 days' written notice to the other party should it be determined that either party is substantially failing to comply with the terms of the agreement; if, through action of the legislature or governor, the DNR cannot, in the sole opinion of DNR, meet its obligations under this agreement; if, through action of the legislature or governor, the DMWW cannot, in the sole opinion of DMWW, meet its obligations under this agreement; or, if there is a decision of any court, administrative law judge, or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects either party's ability to fulfill any of its obligations under this agreement.

**Section 22. Execution.** This agreement is entered into under the authority of a resolution adopted at the regular meeting of the Board of Water Works Trustees of the City of Des Moines, Iowa on \_\_\_\_\_, as shown in the minutes thereof.

**BOARD OF WATER WORKS TRUSTEES  
OF THE CITY OF DES MOINES, IOWA**

This agreement is entered into under the authority of a resolution adopted at a meeting of the Board of Water Works Trustees of the City of Des Moines, Iowa on \_\_\_\_\_, as shown in the minutes thereof.

BY: \_\_\_\_\_  
Graham R. Gillette, Chairperson

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
William G. Stowe  
CEO and General Manager

**IOWA DEPARTMENT OF NATURAL RESOURCES**

This agreement is entered into under the authority of a resolution adopted at the regular meeting of the Natural Resource Commission on \_\_\_\_\_, as shown in the minutes thereof.

BY: \_\_\_\_\_  
Chuck Gipp, Director

DATE: \_\_\_\_\_

DRAFT