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**Date** ..... January 28, 2013 .....

**HEARING ON RIGHT-OF-WAY AGREEMENT BETWEEN MIDAMERICAN ENERGY COMPANY AND CITY OF DES MOINES ON CITY-OWNED PROPERTY LYING EAST OF SE 22<sup>ND</sup> STREET AND NORTH OF SCOTT AVENUE FOR RELOCATION OF OVERHEAD ELECTRIC LINES FOR THE SOUTHEAST CONNECTOR PROJECT**

**WHEREAS**, MidAmerican Energy Company (“MidAmerican”) currently is a licensee pursuant to license agreement with Norfolk Southern Railway Company for operation and maintenance of overhead electric lines within railroad right-of-way in the vicinity of SE 22<sup>nd</sup> Street and Scott Avenue; and

**WHEREAS**, due to the design and construction of the Southeast Connector Project, the City needs to relocate said MidAmerican overhead electric lines to City-owned property lying east of SE 22<sup>nd</sup> Street and north of Scott Avenue that will be used for the construction and right-of-way of the Southeast Connector; and

**WHEREAS**, MidAmerican has agreed to enter into a Right-of-Way Agreement, on file in the office of the City Clerk, with the City for the relocated lines, subject to said Agreement providing a permanent easement to MidAmerican that allows MidAmerican to remove obstructions from the right-of-way area, and prohibits the City from improving the right-of-way area for any purpose without MidAmerican’s prior approval, other than obstructions and improvements related to the Southeast Connector Project and associated roadway improvements; and

**WHEREAS**, approval of this Right-of-Way Agreement is required by MidAmerican to complete relocation of the overhead electric lines, and is necessary for the City to fulfill project grant deadlines for the Southeast Connector Project; and

**WHEREAS**, on January 14, 2013, by Roll Call No. 13-0027, it was duly resolved by the City Council that the proposed Right-of-Way Agreement be set down for hearing on January 28, 2013, at 5:00 p.m., in the City Council Chambers; and

**WHEREAS**, due notice of said proposal to enter into the Right-of-Way Agreement was given as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with City Council direction, those interested in this proposed Agreement, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa:

1. Upon due consideration of the facts and statements of interested persons, the objections to the proposed Right-of-Way Agreement between the City and MidAmerican Energy Company for

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operation and maintenance of overhead electric lines upon City-owned property lying east of SE 22<sup>nd</sup> Street and north of Scott Avenue, as described below, are hereby overruled and the hearing is closed.

2. The public would not be inconvenienced by reason of this Right-of-Way Agreement upon City-owned property lying east of SE 22<sup>nd</sup> Street and north of Scott Avenue, for the right-of-way area more specifically described as follows:

A PORTION OF LOT 1, LAKE SHORE PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA; AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 68°(DEGREES) 01'(MINUTES) 29"(SECONDS) EAST, 101.32 FEET ON THE NORTHERLY LINE OF SAID LOT 1; THENCE SOUTH 61°28'47" EAST, 83.54 FEET; THENCE NORTH 00°00'08" EAST, 10.27 FEET TO THE NORTHERLY LINE OF SAID LOT 1; THENCE SOUTH 68°01'29" EAST, 10.78 FEET ON SAID NORTHERLY LINE; THENCE SOUTH 00°00'08" WEST, 11.67 FEET; THENCE SOUTH 61°28'47" EAST, 22.76 FEET; THENCE SOUTH 00°00'40" EAST, 22.76 FEET; THENCE SOUTH 61°29'35" EAST, 29.65 FEET; THENCE SOUTH 28°30'25" WEST, 10.00 FEET; THENCE NORTH 61°29'35" WEST, 24.22 FEET; THENCE SOUTH 00°00'40" EAST, 285.50 FEET; THENCE NORTH 84°27'37" EAST, 29.79 FEET; THENCE SOUTH 05°32'23" EAST, 10.00 FEET; THENCE SOUTH 84°27'37" WEST, 30.75 FEET; THENCE SOUTH 00°00'40" EAST, 20.09 FEET; THENCE SOUTH 84°27'37" WEST, 20.08 FEET; THENCE SOUTH 00°02'27" EAST, 40.75 FEET; THENCE SOUTH 89°57'33" WEST, 10.00 FEET; THENCE NORTH 00°02'27" WEST, 39.77 FEET; THENCE SOUTH 84°19'56" WEST, 169.34 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 00°08'00" EAST, 50.26 FEET ON SAID WEST LINE; THENCE NORTH 84°19'56" EAST, 149.11 FEET; THENCE NORTH 00°00'40" WEST, 274.71 FEET; THENCE NORTH 61°28'47" WEST, 167.83 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 00°08'00" EAST, 43.71 FEET ON SAID WEST LINE TO THE POINT OF BEGINNING, CONTAINING 0.79 ACRES (34,603 SQUARE FEET) MORE OR LESS;

3. That the Right-of-Way Agreement with MidAmerican Energy Company, subject to the terms set forth herein and included in the Agreement on file with the City Clerk, be and is hereby approved.
4. The Mayor is authorized and directed to sign the Right-of-Way Agreement identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. The City Clerk is authorized and directed to forward the original of the Right-of-Way Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.

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6. The Real Estate Division Manager is authorized and directed to forward the original of the Right-of-Way Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Right-of-Way Agreement and copies of the other documents to the grantee.
8. There will be no proceeds associated with this Right-of-Way Agreement.

(Council Communication No. 13- 024)

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

*Glenna K. Frank*  
 Glenna K. Frank  
 Assistant City Attorney

RSW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
<b>TOTAL</b>				
MOTION CARRIED			APPROVED	
_____ Mayor				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_ City Clerk