

Date April 8, 2013

HOLD HEARING FOR CONVEYANCE OF A PERMANENT UNDERGROUND GAS EASEMENT TO MID AMERICAN ENERGY COMPANY; CONVEYANCE OF A FIBER OPTICS LICENSE AGREEMENT TO CENTURY LINK; AND ACCEPTANCE OF A PERMANENT UNDERGROUND FIBER OPTICS EASEMENT FOR THE "METRO NET" SHARED COMMUNICATIONS SYSTEM; ALL BEING RELOCATED IN CONJUNCTION WITH THE GREATER DES MOINES BOTANICAL CENTER IMPROVEMENTS PROJECT

WHEREAS, on May 9, 2011, by Roll Call Nos. 11-0822, 11-0823, and 11-0824, the City Council passed Ordinance No. 15,014 vacating approximately 13.498 acres of parkland and right-of-way adjacent to the Greater Des Moines Botanical Center at 909 Robert D. Ray Drive; and approved the lease of said vacated parkland and right-of-way to Greater Des Moines Botanical Garden (GDMBG) for the consideration of the Greater Des Moines Botanical Garden agreeing to be responsible for operation of the Botanical Center and, at its cost, to be responsible for \$7,500,000 in improvements, including expanded gardens on the Grounds, by June 1, 2015, and an endowment of \$2,000,000 for operational expenses at the Botanical Center and grounds, and \$500,000 for construction related costs and operating costs during and immediately after construction, for an initial period of 25 years, with two 25 year renewal options at the option of the GDMBG, beginning on January 1, 2013; and

WHEREAS, on May 9, 2011, by Roll Call No. 11-0825, the City Council approved an Urban Renewal Development Agreement with the Greater Des Moines Botanical Garden; and

WHEREAS, on June 11, 2012, by Roll Call No. 12-0935, the City Council approved the conceptual Master Plan developed by GDMBG for construction of improvements in the Botanical Center and its grounds; and

WHEREAS, on December 17, 2012, by Roll Call Nos. 12-1971, 12-1972, and 12-1973 the City Council passed Ordinance No. 15,152 approving an amendment of vacation Ordinance No. 15,014 regarding reservation of utility easements on the botanical center and adjacent grounds property and for amendment of lease of such vacated property to GDMBG; and

WHEREAS, the original lease agreement required the City to remove the "Metro Net" shared communications system fiber infrastructure spur connection; and

WHEREAS, the lease amendment provides for reservation of a 20-foot wide utility corridor upon the leased premises to allow the City to relocate the Metro Net trunk fiber infrastructure at City expense and further allows the City the right to grant easements for utilities within the reserved area as the City deems necessary, prudent, and appropriate; and

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Date April 8, 2013

WHEREAS, in accordance with the lease amendment and master plan, establishment of the permanent easements and license agreement as described below are necessary to relocate said utilities within the corridor in conjunction with the Greater Des Moines Botanical Center improvements project; and

WHEREAS, on, March 25, 2013, by Roll Call No. 13-0459, it was duly resolved by the City Council that the proposed conveyance of property interests at 901 Robert D. Ray Drive, be set down for hearing on April 8, 2013, at 5:00 p.m., in the City Council Chambers; and

WHEREAS, due notice of said proposal to convey the property interests 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 conveyance, 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 conveyance of the property interests as described below are hereby overruled and the hearing is closed.
2. The public would not be inconvenienced by reason of conveyance of the property interests at 901 Robert D. Ray Drive, more specifically described as follows:

Grantee: City of Des Moines, Iowa
Consideration: \$1
Document Type: Permanent Easement for fiber optics infrastructure ("Metro Net")
Legal Description: A 10.00 FOOT WIDE EASEMENT IN PART OF LOT 6, RIVER HILLS PLAT 4, AN OFFICIAL PLAT, AND PART OF VACATED FILMORE STREET LYING WEST OF EAST 6TH STREET AND PART OF LOT 'A' OF THE OFFICIAL PLAT OF LOT 1, VORSES SUBDIVISION, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. THE CENTERLINE OF SAID EASEMENT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 9703, PAGE 595; THENCE SOUTH 85°44'46" EAST ALONG THE NORTH LINE OF SAID ACQUISITION PLAT, 5.39 FEET TO THE POINT OF BEGINNING; THENCE NORTH 22°02'43" EAST, 119.58 FEET; THENCE NORTH 26°18'21" EAST, 231.64 FEET; THENCE NORTH 13°40'44" WEST, 68.41 FEET; THENCE NORTH 30°01'05" EAST, 153.92 FEET; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE

Date April 8, 2013

SOUTHEASTERLY WHOSE RADIUS IS 2215.00 FEET, WHOSE ARC LENGTH IS 98.25 FEET AND WHOSE CHORD BEARS NORTH 31°17'20" EAST, 98.25 FEET; THENCE NORTH 64°11'41" EAST, 32.83 FEET; THENCE NORTH 24°59'02" EAST, 344.37 FEET; THENCE NORTH 7°14'23" EAST, 34.01 FEET; THENCE NORTH 24°59'02" EAST, 228.06 FEET; THENCE NORTH 80°49'44" EAST, 53.48 FEET; THENCE SOUTH 63°19'34" EAST, 72.12 FEET; THENCE NORTH 39°38'46" EAST, 15.47 FEET; THENCE NORTH 34°19'43" EAST, 126.32 FEET; THENCE NORTH 17°36'11" EAST, 68.21 FEET; THENCE NORTH 89°03'39" EAST, 21.98 FEET; THENCE NORTH 14°11'30" EAST, 75.49 FEET; THENCE NORTH 27°40'53" EAST, 233.63 FEET TO THE POINT OF TERMINUS WHICH LIES ON THE WEST RIGHT OF WAY OF EAST 6TH STREET AND CONTAINING 0.45 ACRES.

Grantee: Mid American Energy Company
Consideration: \$1
Document Type: Permanent Underground Gas Easement
Legal Description: A 10.00 FOOT WIDE EASEMENT IN PART OF LOT 6, RIVER HILLS PLAT 4, AN OFFICIAL PLAT, AND PART OF VACATED FILMORE STREET LYING WEST OF EAST 6TH STREET AND PART OF LOT 'A' OF THE OFFICIAL PLAT OF LOT 1, VORSES SUBDIVISION, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. THE CENTERLINE OF SAID EASEMENT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 'C', RIVER HILLS PLAT 4; THENCE NORTH 85°44'46" WEST, 32.65 FEET ALONG THE SOUTH LINE OF SAID LOT 6, RIVER HILLS PLAT 4; THENCE NORTH 04°10'09" EAST, 15.76 FEET; THENCE NORTH 85°49'51" WEST, 304.56 FEET; THENCE NORTH 22°55'46" EAST, 97.71 FEET; THENCE NORTHERLY ALONG A CURVE CONCAVE EASTERLY WHOSE RADIUS IS 1805.00 FEET, WHOSE ARC LENGTH IS 223.31 FEET AND WHOSE CHORD BEARS NORTH 26°28'26" EAST, 223.17 FEET; THENCE NORTH 30°01'05" EAST, 248.37 FEET; THENCE NORTHERLY ALONG A CURVE CONCAVE EASTERLY WHOSE RADIUS IS 2205.00 FEET, WHOSE ARC LENGTH IS 94.98 FEET AND WHOSE CHORD BEARS NORTH 31°15'08" EAST, 94.97 FEET TO THE POINT OF BEGINNING; THENCE NORTH 64°11'41" EAST, 33.55 FEET; THENCE NORTH 24°59'02" EAST, 349.49 FEET; THENCE NORTH 7°14'23" EAST, 34.01 FEET; THENCE NORTH 24°59'02" EAST, 221.20 FEET; THENCE NORTH 80°49'44" EAST, 81.11 FEET; THENCE NORTH 38°05'16" EAST, 65.74 FEET; THENCE NORTH 30°26'21" EAST, 124.70 FEET; THENCE EASTERLY ALONG A CURVE CONCAVE SOUTHERLY WHOSE RADIUS IS 116.00 FEET, WHOSE ARC LENGTH IS 118.55 FEET AND WHOSE CHORD BEARS NORTH 59°43'04" EAST, 113.46 FEET; THENCE NORTH 88°59'46" EAST, 82.57 FEET TO THE POINT OF TERMINUS WHICH LIES ON THE WEST RIGHT OF WAY OF EAST 6TH STREET AND CONTAINING 0.25

Date April 8, 2013

ACRES. (*This easement replaces the original easement recorded on 08/18/2004 in Book 10695 Pages 269-273 of Polk County, Iowa, which will be released.)

Grantee: QWEST Corporation d/b/a CenturyLink QC

Consideration: \$2,000

Document Type: License Agreement for fiber optics

Legal Description: A FIBER OPTICS LICENSE AGREEMENT IN PART OF LOT 6, RIVER HILLS PLAT 4, AN OFFICIAL PLAT, AND PART OF VACATED FILMORE STREET LYING WEST OF EAST 6TH STREET, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. THE CENTERLINE OF SAID EASEMENT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE ACQUISITION PLAT RECORDED IN BOOK 9703, PAGE 595; THENCE SOUTH 85°44'46" EAST ALONG THE NORTH LINE OF SAID ACQUISITION PLAT, 5.39 FEET TO THE POINT OF BEGINNING; A 10.00 FOOT WIDE EASEMENT THENCE NORTH 22°02'43" EAST, 119.58 FEET; THENCE NORTH 26°18'21" EAST, 231.64 FEET; THENCE NORTH 13°40'44" WEST, 68.41 FEET; THENCE NORTH 30°01'05" EAST, 153.92 FEET; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE SOUTHEASTERLY WHOSE RADIUS IS 2215.00 FEET, WHOSE ARC LENGTH IS 98.25 FEET AND WHOSE CHORD BEARS NORTH 31°17'20" EAST, 98.25 FEET; THENCE NORTH 64°11'41" EAST, 32.83 FEET; THENCE NORTH 24°59'02" EAST, 344.37 FEET; THENCE NORTH 7°14'23" EAST, 34.01 FEET; THENCE NORTH 24°59'02" EAST, 228.06 FEET; THENCE NORTH 80°49'44" EAST, 53.48 FEET; THENCE SOUTH 63°19'34" EAST, 72.12 FEET; THENCE NORTH 39°38'46" EAST, 15.47 FEET; THENCE NORTH 34°19'43" EAST, 126.32 FEET; THENCE NORTH 17°36'11" EAST, 68.21 FEET; THENCE NORTH 89°03'39" EAST, 21.98 FEET; THENCE NORTH 14°11'30" EAST, 17.25 FEET TO POINT 'A' THIS IS A POINT OF INTERSECTION WHICH BEGINS A 5.00 FOOT WIDE EASEMENT; THENCE NORTH 75°22'30" EAST, 50.02 FEET; THENCE NORTH 89°08'49" EAST, 78.11 FEET TO THE POINT OF TERMINUS WHICH LIES ON THE WEST RIGHT OF WAY OF EAST 6TH STREET AND CONTAINING 0.40 ACRES.

3. That the conveyance of such permanent easements and license agreement, be and are hereby approved.
4. The Mayor is authorized and directed to sign the permanent easements and license agreement for conveyance as 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 permanent easements and license agreement, together with a certified copy of this resolution and of the affidavit of

★ **Roll Call Number**

Agenda Item Number

44

Date April 8, 2013

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.

6. The Real Estate Division Manager is authorized and directed to forward the original of the permanent easements and license 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 permanent easements and license agreement and copies of the other documents to the grantees.

8. There are no proceeds from the conveyance of said permanent easements, and the \$2,000 proceeds from the license agreement will be deposited as follows: 2013-14 CIP, Park Improvements, Page Park Improvements - 13, PKS137.

(Council Communication No. 13 - 172)

Moved by _____ to adopt.

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato,
Assistant City Attorney

BSW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
KIERNAN				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

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.

MOTION CARRIED APPROVED

Mayor

City Clerk

PROJECT LOCATION

