CITY OF WEST DES MOINES
CITY COUNCIL COMMUNICATION

DATE: May 3, 2021

ITEM:

Resolution – Natural Gas Facilities Construction and Reimbursement Agreement with MidAmerican Energy Co. - Utility Service to Future SW Public Safety Facility

FINANCIAL IMPACT:

The cost of this work is anticipated not to exceed $2,164,225.00 for extending natural gas service from near the South 88th Street and Grand Avenue intersection to the future Southwest Public Safety Facility. The actual costs may vary from estimates and will be determined at the time of construction. The City may obtain a refund of a portion of the construction costs based upon revenue generated by the Public Safety Facility and any third-party connections to the gas extension if made within ten years of completion of construction of the extension. The cost of the improvements will be paid from account no. 500.000.000.5250.490 with the ultimate funding intended to come from the Osmium Urban Renewal Area TIF.

BACKGROUND:

The City is planning to construct the Southwest Public Safety Facility, although the date of construction has not been determined. The City has requested that MidAmerican Energy Company extend natural gas service to the Facility in advance of the Facility's construction, which will also allow private development occurring adjacent to the proposed gas main extension to obtain service. The gas main will extend from South 88th Street and Grand Avenue, running adjacent to South 88th Street, Raccoon River Drive and Southwest Grand Prairie Parkway to the approximate location of the future Southwest Public Safety Facility.

Due to the urgency to procure materials and commence selection of subcontractors to perform the work, and in order to meet the targeted permanent service date of April 2, 2021, an interim Reimbursement Agreement was approved by the City Council on December 7, 2020. The interim Reimbursement Agreement will terminate upon approval of the attached Natural Gas Facilities Construction and Reimbursement Agreement.

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

OUTSTANDING ISSUES: None.

RECOMMENDATION: Approve the Natural Gas Facilities Construction and Reimbursement Agreement with MidAmerican Energy Company.

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 J. Scieszinski, City Attorney RJS
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed			
Recommendation			

RESOLUTION APPROVING THE NATURAL GAS FACILITIES CONSTRUCTION AND REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND MIDAMERICAN ENERGY COMPANY

WHEREAS, the City Council of the City of West Des Moines has previously directed the extension of natural gas service for the following described public improvement:

Utility Service to Future Southwest Public Safety Facility,
Project No. 0510-060-2015

WHEREAS, a Natural Gas Facilities Construction and Reimbursement Agreement has been negotiated between the City and MidAmerican Energy Company, a franchised utility, to construct a natural gas facility extension to serve the Public Safety Facility; and

WHEREAS, the cost to construct the extension is estimated to not exceed $2,164,225.00.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, THAT:

1. The Natural Gas Facilities Construction and Reimbursement Agreement between the City of West Des Moines and MidAmerican Energy Company is approved.

2. The Mayor is authorized to sign the Agreement and the City Clerk is directed to attest to the Mayor's signature.

PASSED AND APPROVED on this **3rd day of May, 2021.**

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

NATURAL GAS FACILITIES CONSTRUCTION AND REIMBURSEMENT AGREEMENT – CITY OF WEST DES MOINES, IOWA

MIDAMERICAN ENERGY COMPANY, an Iowa corporation, its successors and assigns (the "Company"), and the CITY OF WEST DES MOINES, IOWA, a city incorporated under Chapter 372 of the Iowa Code, (the "Customer") (each a "Party" and together, the "Parties"), enter into this Gas Facilities Construction and Reimbursement Agreement ("Agreement") as of the date of the last signature below (the "Effective Date") and agree as follows:

Recitals

WHEREAS, the Company is a public utility providing gas service within the City of West Des Moines, Iowa;

WHEREAS, the Customer is planning to construct a public safety facility located in the City of West Des Moines, Iowa south of the Racoon River along Southwest Grand Prairie Parkway (the "Site") as depicted in Exhibit B;

WHEREAS, the Parties desire to enter into this Agreement to memorialize the Parties' intent for the Company to complete a Distribution Main Extension (as that term is defined later in Article I below) to serve the Customer's future gas load at the Site;

WHEREAS, the Customer will take future natural gas service under the Company's Iowa Natural Gas Tariff (the "Tariff");

WHEREAS, in order to meet the Customer's future natural gas distribution service needs at the Site, the Company will construct, own, maintain, and operate the Company Facilities (as that term is defined later in Article I below) of its natural gas system, including, but not limited to, the Company Facilities associated with the Distribution Main Extension;

WHEREAS, in order to design, procure and install the Company Facilities necessary to serve the Customer's natural gas load, certain plans and responsibilities are formalized between the Parties as set forth below.

THEREFORE, the Parties agree as follows:

Article I. Definitions

1. When used anywhere in this Agreement, including in the recitals, the following terms shall have the meanings indicated.

    a. Applicable Law – shall mean all laws, statutes, codes, natural gas codes, natural gas standards, ordinances, decrees, rules, regulations, statutory rules, published policies and guidelines, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and terms and conditions of any grant of approval,

permission, authority or license of any governmental authority, statutory body or self-regulatory authority.

b. Commitment Costs – shall mean the amount of the Company's reasonably and prudently incurred actual costs to supply the material and labor for, and miscellaneous costs associated with, the Company Facilities needed to supply the Customer-requested natural gas distribution service to the Site to serve the Customer's natural gas load. An estimate of the Commitment Costs is itemized in Exhibit A, Section 3, Exhibit C and Exhibit D of this Agreement. Subject to the exceptions set forth in this Article I, Section 1, Subsection "b", the above-mentioned miscellaneous costs include, but are not limited to, all costs attributable to the Customer under the Company's Tariff including costs related to obtaining regulatory approval.

c. Company Facilities – shall include the Distribution Main Extension needed to serve the Customer's natural gas load at the Site, including the Company Facilities identified in Exhibit A, Section 2 and in Exhibit B of this Agreement as amended and updated from time to time.

d. Reserved.

e. Customer Commitment Costs – shall be defined in Exhibit C of this Agreement.

f. Customer Facilities – shall be defined in Exhibit A, Section 4 to this Agreement.

g. Distribution Main Extension – shall mean any expansion of the Company's natural gas facilities used to deliver natural gas, including Excess Facilities. Distribution Main Extension shall include the definition provided in the Company's Tariff.

h. Estimated Annual Revenues – shall mean an estimate of the annual revenues generated by a customer of the Company, calculated on the basis of similarly situated customers, and taking into account factors that include the size of the customer's facility, the size and type of equipment to be used by the customer, the average annual amount of service required by the equipment, and the average number of hours per day and days per year the equipment will be in use.

i. Estimated Base Revenues – shall mean an estimate of the net annual revenues generated by a customer of the Company, calculated by subtracting the cost of purchased gas and energy efficiency cost recovery charges from that customer's Estimated Annual Revenues.

j. Good Utility Practice – shall mean any of the practices, methods, and acts engaged in or approved by a significant portion of the natural gas utility industry during the relevant time period; or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts reasonably known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good

Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the region.

k. Initial Period – shall mean the three (3) years of the Company's natural gas service starting from the date of service to the Customer's public safety facility.

l. Net Revenue – shall be calculated using the Customer's cumulative total actual revenue billed in Years one (1), two (2), and three (3) of the Initial Period, or, at the Parties mutual written agreement, actual revenue billed in Year one (1) of the Initial Period multiplied by the numeral three (3), each less, if applicable, fuel expenses and energy efficiency cost recovery charges.

m. Permanent Service – shall be as stated in Exhibit A, Section 7.

n. Permanent Service Date – shall mean the date the Company completes construction of the Distribution Main Extension.

o. Points of Custody Transfer – shall mean the points of termination of the Customer's equipment and the Company's downstream equipment

p. Public Authorities – shall mean the City of West Des Moines, Iowa, the Iowa Utilities Board ("IUB"), either state or federal Department of Transportation ("DOT"), the Federal Aviation Administration ("FAA"), and any other applicable regulatory bodies.

q. Refundable Advance – shall mean the amount paid by the Customer to the Company prior to construction in the event the estimated Revenue Credit is less than the estimated Commitment Costs. If a Refundable Advance is due it will be set forth in Exhibit C, and may be increased after construction in the event estimated Commitment Costs are less than actual Commitment Costs, as set forth in Exhibit C. The Refundable Advance may be refunded as set forth in Article III, Section 3, and Exhibit C.

r. Reimbursement Balance – shall be as defined in Article III, Section 2, subsection "c", and Exhibit C.

s. Revenue Credit – shall be calculated using the Customer's cumulative total estimated revenue for Years one (1), two (2), and three (3) from the Permanent Service Date, or Year one (1) from the Permanent Service Date multiplied by the numeral three (3), less, if applicable, fuel expenses and energy efficiency cost recovery charges. The Revenue Credit will be set forth in Exhibit C.

t. Tax Gross Up – shall mean the additional amount required to recover the Company's income taxes, if any, imposed by Internal Revenue Code § 118, pursuant to 199 Iowa Administrative Code ("IAC") § 19.3(10).

u. Temporary Gas Service – shall mean natural gas distribution service of a temporary nature with anticipated natural gas use of less than three (3) years, and as further defined in Article II, Section 3 below.

v. Third Party Refunds – shall be defined in Article III, section 3.

w. MEC equipment at customer site – shall mean the Company-owned six (6) inch gas pipe located at the Site, to be constructed as described in this Agreement.

2. All other capitalized terms of this Agreement shall have the same meanings as they have in the Company's Tariff and 199 IAC Chapter 19.

Article II. Site Assumptions for Natural Gas Load and Facilities

1. Customer's Estimated New Natural Gas Load and Supporting Facilities.

   i. Company will construct the Company Facilities to serve the public works facility. Assumptions can be made this load may be between 3-8 Mcfh based on similar projects.

2. Site Requirements.

   a. The Company shall have unrestricted access to the Company Facilities at all times.

   b. The Company will not begin construction of the Company Facilities until Customer pays to Company the Refundable Advance, if any, set forth in Exhibit C. All pre-construction work will be outlined in Exhibit A, Section 6.

3. Temporary Natural Gas Service. Following receipt of a written 120-day advance notice of the Customer's need for Temporary Natural Gas Service, the Company shall provide Temporary Natural Gas Service to the Customer's Site pursuant to the Company's Tariff provisions for Temporary Natural Gas Service. To the extent the Customer expands its facilities on the Site, Temporary Natural Gas Service may be obtained by the Customer for its construction of further distribution facilities branching off its existing distribution facilities at the Site; however, if it is necessary for the Customer to receive natural gas service from a separate location, the Company shall supply such Temporary Natural Gas Service pursuant to the Company's Tariff.

Article III. Commitments

1. Company Commitment.

   a. The Company shall use commercially reasonable efforts to manage project costs and complete the project in accordance with the project scope by the agreed upon Permanent Service Date, as set forth in Exhibits A and B, in all material respects in order to provide Permanent Service within the timeframe(s) set forth in Exhibits A and B, provided that all prerequisite Customer requirements outlined in Article II, Section

2, are completed and the Parties do not experience a Force Majeure Event, as defined in Article VI, Section 9. Furthermore, the Company's Commitment and proposals as set forth in this Article III, Section 1 are specifically contingent on the Customer first fulfilling the Customer's Commitment as set forth in this Agreement. Prior to the Company's commissioning of the Company Facilities, the Company will notify the Customer of the time and date in accordance with Notice provisions below.

b. The Company shall provide the Customer a point of contact to provide regular updates on the Company's expected completion date for Permanent Service and to promptly respond to the Customer's inquiries. If a Force Majeure Event occurs, the Parties will follow the procedures under Article VI, Section 9.

c. The Company shall construct the Company Facilities in accordance with Good Utility Practice and in compliance with Applicable Law.

2. Customer Commitment.

a. In order to construct the Company Facilities described in Exhibit A, the Customer agrees to make a Refundable Advance if the estimated Commitment Costs exceed the estimated Revenue Credit. If a Refundable Advance is due, the amount will be shown in Exhibit C.

b. If applicable, the Refundable Advance shall include an applicable Tax Gross Up. The Tax Gross Up for any Refundable Advance shall also be shown in Exhibit C.

c. Net Revenue and actual Commitment Costs shall be determined as set forth in Exhibit C. Customer shall not owe Company any reimbursement if the Net Revenue is equal to or exceeds the actual Commitment Costs. If the Net Revenue is less than the actual Commitment Costs, the Customer is responsible for paying the Company the difference, which amount is the Reimbursement Balance, plus any applicable Tax Gross Up. Company will reconcile estimated Commitment Costs with actual Commitment Costs and estimated Revenue Credit with actual Net Revenue, and based on such reconciliations may require additional payments from Customer or refund certain sums to Customer to achieve this result, all as set forth in Exhibit C. Customer commits to paying such additional amounts as may be required under Exhibit C.

d. The Customer shall provide, at no cost, support and assistance for acquiring all necessary easements, permits, and other required authorizations or approvals.

3. Third Party Refunds

a. If, during the first ten (10) years following the Permanent Service Date, any customer of Company directly connects with a service line to the gas pipeline constructed for Project, then Company shall refund to Customer an amount equal to three times the Estimated Base Revenues of that additional customer, including a pro rata share of the

Tax Gross Up, up to the amount of the Reimbursement Balance. Because Customer has no ability to determine whether another Company customer has taken service from the gas pipeline, Company shall notify Customer of any such customer. Company's refund obligations are satisfied ten (10) years after the actual permanent in-service date or earlier if the Reimbursement Balance, if any, has been fully refunded. Any such refunds shall be subject to the following items:

b. No interest will be paid on refunded Reimbursement Balance, if any.

c. Any refunds will be made at least once a year during the 10-year period.

d. Total refunds shall not exceed the amount of the Reimbursement Balance, if any.

e. No refunds shall be made for customers connected after ten (10) years from the Permanent Service date.

f. Any Balance remaining on the Reimbursement Balance at the end of the 10-year period after the payment of all refunds shall be retained by Company.

g. Pipeline or distribution extensions branching off of the Company Facilities constructed under this Agreement resulting in additional service line connections to those extensions will NOT result in refunds to Customer.

h. Refunds associated with service to Customer's future public safety facility are addressed in Exhibit C. If, in addition to Customer's future public safety facility, Customer directly connects a facility with a service line to the gas pipeline constructed for the Project as described in this Article III, Section 3, then such connection shall be treated as a customer connection and shall be eligible for a Third Party Refund according to the terms herein.

Article IV. Term and Termination

1. This Agreement will become effective upon the Effective Date and remain in effect until the later of: (i) the Company meeting its obligations under this Agreement and the Customer meeting all of its obligations under this Agreement by generating sufficient Net Revenue to cover the actual Commitment Costs and/or by paying any Reimbursement Balance and Tax Gross Up if owed; and (ii) the date upon which a Party has elected not to use this Agreement in accordance with this Article IV ("Term").

2. The Customer has the unilateral right to terminate this Agreement upon 30 days' advance written notice to the Company, in which case the Company will stop all work under this Agreement and associated Exhibits. If the Customer opts to terminate this Agreement, the Customer will owe to the Company any documented non-recovered costs, including applicable Tax Gross Up, reasonably incurred by the Company in connection with this Agreement and as outlined in Exhibits A, B, C and D; provided, however, that the Company shall use commercially reasonable efforts to mitigate such non-recoverable costs

by either re-selling the equipment or using the equipment for another Company project or use. Any such successful mitigation shall be offset against the documented non-recovered costs owed by the Customer.

Article V. Notices

Unless otherwise provided in this Agreement, any notice, request, demand, monthly statements and payments provided for in this Agreement or in the Company's Tariff, or any notice which either Party may desire to give to the other, shall be in writing and shall be considered as duly delivered when mailed by first-class postage prepaid United States mail addressed to the other Party at its address indicated below or at such other address as either Party may designate for itself in writing to the other Party:

Company (Contract Administration)
MidAmerican Energy Company
Director, Key Accounts
3500 104th Street
Urbandale, IA 50322
david.johnson@midamerican.com

Company (Payments)
MidAmerican Energy Company
Treasury
P. O. Box 8020
Davenport, IA 52808-8020
treasury@midamerican.com

Customer (Contract Administration / Bills)
City of West Des Moines
Engineering Services
4200 Mills Civic Parkway, Suite 2D
West Des Moines, Iowa 50265
Brian.Hemesath@wdm.iowa.gov

Legal Notices

Customer
City of West Des Moines
City Attorney's Office
4200 Mills Civic Parkway, Suite 2E
West Des Moines, Iowa 50265
Richard.Scieszinski@wdm.iowa.gov

Company
MidAmerican Energy Company
General Counsel
666 Grand Avenue, Suite 500
P.O. Box 657
Des Moines, Iowa 50306-0657
timothy.whipple@midamerican.com

Article VI. Miscellaneous

1. Application of Tariffs. If the terms and conditions of this Agreement are inconsistent with or are not addressed in the Company's Tariff or 199 IAC chapter 19, the terms and conditions of this Agreement shall apply. The provisions of this Agreement and the Company's Tariff are subject to change upon order or approval of any regulatory authority having jurisdiction. If there is a regulatory change requiring an amendment to this

Agreement, the Parties will work in good faith to negotiate amendments to this Agreement to comply with the regulatory change.

2. Severability. Each provision of this Agreement is severable and if any provision shall be finally determined to be invalid, illegal or unenforceable in any jurisdiction, the remaining provisions shall not be affected thereby nor shall said provision be invalid in any other jurisdiction.

3. Waiver. The rights of the Parties may not be waived except in writing signed by the waiving Party. A waiver by either Party of any of its rights under this Agreement or any breach of this Agreement shall not be construed as a waiver of any other or future rights or breaches. No waiver by either Party of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character.

4. Applicable Law. This Agreement and the Parties' performance shall be interpreted in accordance with the laws of the State of Iowa, without reference to its provisions concerning conflicts of laws, and shall be subject to all applicable rules and regulations of regulatory authorities having jurisdiction.

5. Dispute Resolution and Jury Waiver. The Parties agree that any dispute regarding the interpretation of 199 IAC 19, or the Company's Iowa Tariff falls under the IUB's jurisdiction and the Parties shall first attempt to resolve any disputes through the IUB's informal complaint process. The Parties retain the right to request reconsideration of an IUB decision and the right to appeal the IUB decision. The Parties retain the right to appeal any IUB decision or enforce any other provisions of this Agreement in either Iowa state or federal courts. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior oral or written agreements and all contemporaneous oral communications, except the Reimbursement Agreement for Equipment Procurement and Design of Natural Gas Main Extension executed by the Parties with an effective date of December 9, 2020, which shall be interpreted and enforced consistently with this Agreement. All additions, amendments or modifications to this Agreement must be made in writing and must be signed by the Parties. This Agreement shall be effective upon execution.

7. Assignment/Successors. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and assigns. Either Party may at any time, upon

written notice to the other Party, assign this Agreement and all of its rights and obligations under this Agreement to the Party's affiliate or subsidiary.

8. Default. Failure to make a payment due under this Agreement shall not be considered a material breach until such payment is past due by 45 days and the Company has provided written notice of such to the Customer.

9. Force Majeure.

   a. Neither Party will be liable for delays or any failure to perform under this Agreement due to causes that: (a) are not within the reasonable control of the applicable Party; (b) are not the result of the acts or omissions of the applicable Party; and (c) by the exercise of due diligence and its best efforts, the applicable Party is unable to overcome or avoid (a "Force Majeure Event"), including war (including civil war), riots, terrorist attacks, embargoes, acts (whether sovereign or contractual) of civil or military authorities, acts or failures to act of any governmental entity, fires, floods, explosions, the elements, epidemics, quarantine restrictions, industry-wide strikes, or the other Party's acts or omissions with respect to matters for which such Party is responsible. The other Party will not be required to perform or resume performance of those of its obligations that correspond to the obligations of the Party excused by Force Majeure Event.

   b. If there is a Force Majeure Event, the affected Party will orally notify the other Party as soon as commercially practicable of such delay and will provide to the other Party a written description of the details of such Force Majeure Event within five business days from the date of such oral notice. If the Party claiming a Force Majeure Event complies with the foregoing procedures, the Parties will negotiate in good faith an equitable adjustment to the completion schedules and any other affected terms of this Agreement.

   c. During a Force Majeure Event, both Parties shall use commercially reasonable efforts to resume performance under this Agreement.

   d. Notwithstanding the foregoing, each Party acknowledges and agrees that it is entering into this Agreement and committing to perform its respective obligations with an awareness of the effects of the COVID-19 outbreak, as of the Effective Date, the continuation of which the Parties agree will not be deemed a Force Majeure Event absent changes in circumstances or occurrence of events beyond the Parties' reasonable control which would independently meet the definition of a Force Majeure Event.

10. Compliance with the Laws. The Parties agree they will comply with Applicable Laws in performance of this Agreement.

11. Interpretation and Joint Drafting. The Parties expressly agree that this Agreement was jointly drafted and that each had the opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. The language in all parts of this Agreement will be in all cases construed according to its fair meaning and not strictly for or against either of the Parties. If a claim is made by any Party relating to any conflict,

omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion will be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Party or counsel for any particular Party.

12. Good Faith. Each Party will act in good faith in the performance of its obligations under this Agreement and each Party will cooperate with the reasonable requests of the other Party and otherwise use commercially reasonable efforts to implement the provisions of and to administer this Agreement in accordance with its terms.

13. Captions. The captions of the various Articles and Sections of this Agreement are for convenience and reference only and do not limit or define any terms and provisions of this Agreement.

14. Exhibits. The Exhibits attached to this Agreement are incorporated in this Agreement and made a part of this Agreement.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be an original, but all of which taken together will constitute only one legal instrument. Provided that both Parties have signed this Agreement in counterparts and the counterparts have been delivered to both Parties, it will not be necessary in making proof of this Agreement to produce or account for more than one (1) counterpart.

16. Change in Law. Notwithstanding any other provision in this Agreement, if any Applicable Law is changed, amended or revoked, or any statutes, rules, regulations, permits or authorizations are enacted or granted, such that: (i) the continued implementation of this Agreement would have a material adverse effect on either Party; or (ii) this Agreement or any part of this Agreement would be rendered unenforceable, then the Parties agree to negotiate in good faith to amend this Agreement to conform with such Applicable Law or new statutes, rules, regulations, permits, or authorizations (as applicable) in order to maintain the original intent of the Parties under this Agreement.

17. Further Assistance. Each party, upon the reasonable request of the other Party, will perform any further acts which are consistent with this Agreement and that do not increase the duties or financial obligations of the Parties or reduce any rights of the Parties.

18. Survival Rights. This Agreement will continue in effect after its termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under this Agreement.

19. Verification. Each Party will maintain adequate records to assist the other Party in meeting any obligation under this Agreement and will provide such records upon reasonable notice from the other Party.

20. No Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement, and this Agreement should not be construed to create or confer any right or interest in or to, or

to grant any remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established in this Agreement.

21. Relationship of Parties. This Agreement does not constitute a joint venture, association or partnership between the Parties. No express or implied term, provision or condition of this Agreement will create, or will be deemed to create, an agency, joint venture, partnership or any fiduciary relationship between the Parties.

22. Business Ethics. Both the Customer and the Company, and their respective employees, officers, agents, representatives and subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of their obligations under this Agreement. In conjunction with its performance under this Agreement, the Parties and their respective employees, officers, agents and representatives shall comply with, and cause its subcontractors and its employees, officers, agents and representatives to comply with, all Applicable Laws, including, without limitation, the United States Foreign Corrupt Practices Act and the United Kingdom Bribery Act 2010. Without limiting the generality of the foregoing, the Customer specifically represents and warrants that neither the Customer nor any subcontractors, employees, officers, representatives or other agents of the Customer have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for the Customer or the Company in connection with the Services to be performed hereunder. The Customer shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Agreement and to verify the Customer's compliance with this section. The Company shall be permitted to audit such records as reasonably necessary to confirm the Customer's compliance with this section. The Customer shall immediately provide notice to the Company of any facts, circumstances or allegations that constitute or might constitute a breach of this section and shall cooperate with the Customer's subsequent investigation of such matters. The Parties specifically acknowledge that the Customer's failure to comply with the requirements of this section shall constitute a condition of default under this Agreement.

23. Authority to Execute. By signing below, Customer's representative certifies that Customer has obtained all necessary public approvals to enter this Agreement and is duly authorized by Customer to execute this Agreement on Customer's behalf and to bind Customer to this Agreement and the terms herein.

24. Public Records. The Company recognizes that the Customer is a governmental entity subject to the Open Records Statute codified in Iowa Code Chapter 22.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

MIDAMERICAN ENERGY COMPANY		**CITY OF WEST DES MOINES**	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

EXHIBITS

Exhibit A – Project Details

Exhibit B – Figures

Exhibit C – Customer Commitment Costs

Exhibit D – Preliminary Project Cost Summary

EXHIBIT A
PROJECT DETAILS

1. Estimated Natural Gas Load Information

a. Customer Loads.

i. Company will construct the Distribution Main Extension to serve a public safety facility at a future date. Company has assumed the maximum load may be between three (3) and eight (8) million cubic feet per hour (Mcfh). The Customer did not provide the Company any gas load assumption and understands the above load is based on similar project data using the Customer's anticipated end-use types. Company shall have no liability or responsibility in the event the actual maximum load deviates from or exceeds the assumed maximum load of eight (8) million cubic feet per hour (MCfh).

2. Company Facilities

a. Company Facilities.

i. The Company will construct, own, and operate approximately 16,800 feet of six-inch 60 psig plastic main along with approximately 2,000 feet of six-inch 60 psig steel main. Steel main will be bored under the Raccoon River and railroad north of the river.

ii. The Company shall maintain its Company Facilities consistent with Good Utility Practice.

iii. If the Customer anticipates a natural gas load greater than the assumptions documented above, the Customer must immediately notify the Company to allow the Company to update its system models and update any changes to the construction. Based on the notification, the Parties shall plan the Natural Gas Distribution Main Extension, if necessary, to each Party's facilities. Furthermore, if the Customer's forecasted gas load is expected to exceed the installed capacity and additional facilities are required, then additional facilities shall not be constructed until any required approval of the IUB or other applicable authorities is received.

iv. For planning purposes, Exhibit B, Figure 1 shows the layout of the Distribution Main Extension. If the Customer anticipates natural gas load greater than the installed capacity for the Company Facilities identified in Exhibit A, the Customer shall notify the Company in accordance with the provisions in Article V of the Agreement.

3. **Commitment Costs associated with the Company Facilities.** The Commitment Costs are estimated to be one million seven hundred eighty-seven thousand five hundred eighty-one dollars ($1,787,581).

These costs shall be payable as set forth in Exhibit C.

4. Customer Facilities

a. The Customer will construct, own, operate, and maintain its own future equipment and connect to the Company equipment.

b. The Customer shall maintain the future Customer Facilities consistent with Good Utility Practice.

5. Metering

The metering point will mutually be agreed upon by Company and Customer.

6. Company Site Requirements

All Site Requirements set forth in Article II, Section 2 of the Agreement must be met as set forth therein.

7. Company Commitment

The Company commits to using its best efforts to have the Company Facilities in place to provide natural gas distribution service to the Customer Facilities on or before the Permanent Service Date of April 1, 2021; provided, however, the Company's Commitment and proposals are contingent upon: (i) the Customer requirements described in this Agreement; and (ii) the Company not experiencing a Force Majeure Event, as defined in Article VI, Section 9. If a Force Majeure Event occurs, the Parties will follow the procedures set forth in Article VI, Section 9.

EXHIBIT B
FIGURES

Figure 1. Preliminary Project Drawing

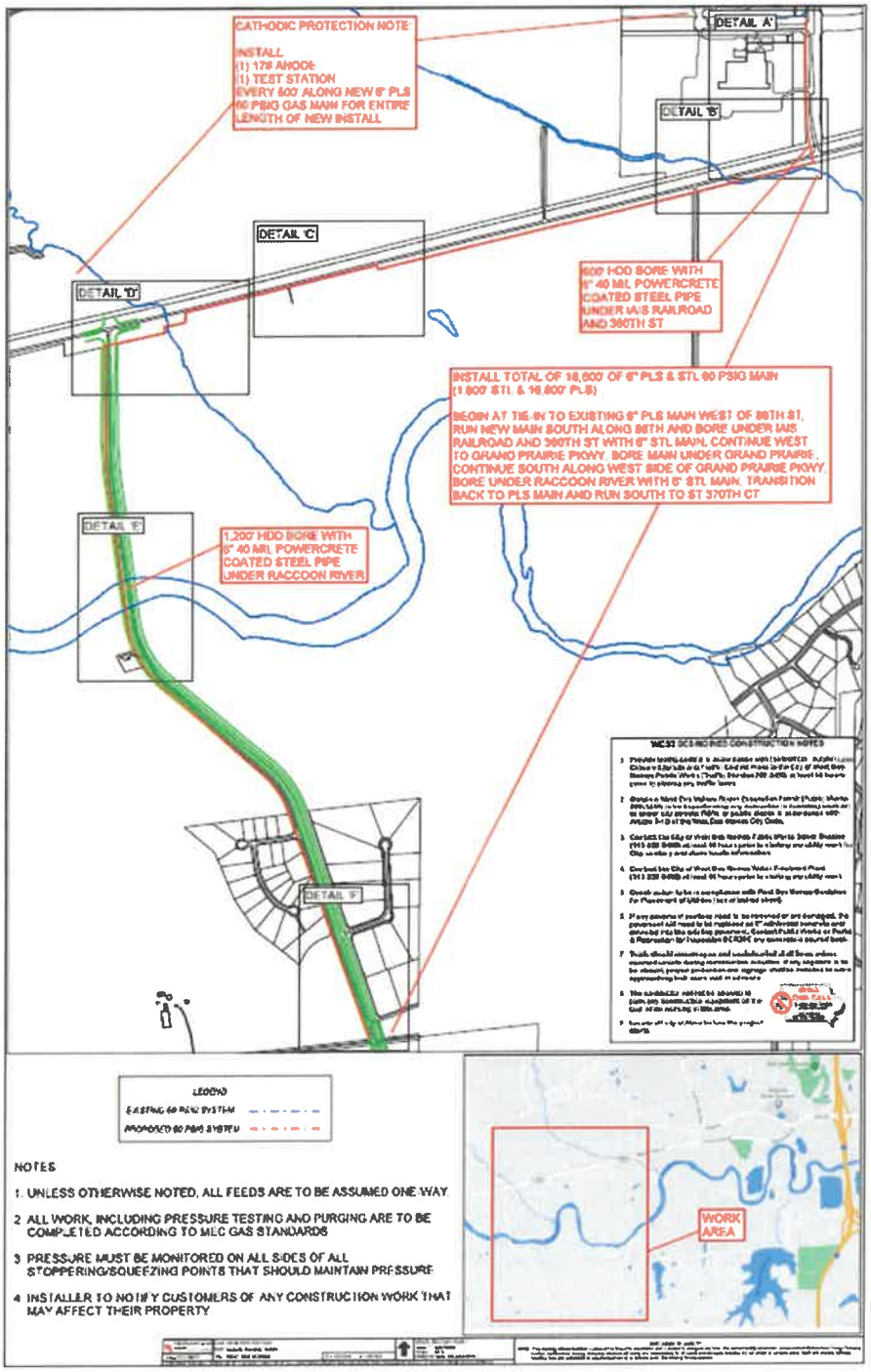

Figure 1 represents a preliminary project drawing, as conceived by the Company as of the Effective Date.

EXHIBIT C
CUSTOMER COMMITMENT COSTS

1. Customer Commitment Costs

a. Estimated Commitment Costs, Revenue Credit, and Refundable Advance. The estimated Commitment Costs are one million seven hundred eighty-seven thousand five hundred eighty-one dollars ($1,787,581). The Revenue Credit is calculated as set forth in Article I, Section 1, Subsection "s", and is estimated to be zero dollars ($0). Based on these figures, the Customer shall pay an upfront Refundable Advance of two million one hundred sixty-four thousand two hundred twenty-five dollars ($2,164,225), which includes the estimated Commitment Costs plus an applicable Tax Gross Up of three hundred seventy-six thousand six hundred forty-three dollars ($376,643).

b. Reconciliation of Estimated and Actual Commitment Costs. Actual Commitment Costs will be determined within ninety (90) days of the Permanent Service Date. The Company shall retain billing records to account for all actual Commitment Costs which shall be maintained in a reasonable and accessible manner. If actual Commitment Costs exceed estimated Commitment Costs, the Customer shall pay to Company an additional Refundable Advance payment in the amount of the positive difference between the actual and estimated Commitment Costs, plus an applicable Tax Gross Up. If actual Commitment Costs are less than estimated Commitment Costs, Company will refund to Customer the negative difference between the actual and estimated Commitment Costs, plus an applicable Tax Gross Up. Payment will be due within forty-five (45) days from the date Company confirms actual Commitment Costs to Customer.

c. Reconciliation of Revenue Credit and Net Revenue. Provided that Company's gas service to Customer's public safety facility and Customer's Initial Period begins during the first ten (10) years following the Permanent Service Date, Actual Net Revenue will be calculated at the end of the Initial Period as set forth in Article I, Section 1, Subsection l. If actual Net Revenue exceeds the estimated Revenue Credit of zero dollars ($0), Company will refund Customer the positive difference plus applicable Tax Gross Up. At no point shall the refund exceed the total Refundable Advance collected from Customer, as determined under subsections "a" and "b" above. Payment will be due forty-five (45) days from the end of the Initial Period.

d. Reimbursement Balance. The net Refundable Advance remaining, if any, after payment or refund of any amounts required in subsections "b" and "c" above shall be considered the total Reimbursement Balance collected from Customer.

e. Future Third Party Refunds. Other than any refunds made under subsections "b" and "c" above, any other refunds from Company to Customer shall only be as set forth in the Third Party Refund provisions found in Article III, Section 3 of this Agreement.

EXHIBIT D
PRELIMINARY PROJECT COST SUMMARY

The Services and Associated Estimated Preliminary Financial Commitments

Labor	$ 1,190,169
Material	$ 323,825
Adverse Conditions	$ 125,000
Potential Rock Excavation	$ 50,000
Staking, Shoring, Traffic Control, Permitting	$ 40,000
Horizontal Directional Drilling (HDD) profile for both river bore and railroad bore, Railroad Permit fees, Soil Sampling	$ 58,587
Commitment Cost (Sub Total)	**$ 1,787,581**
Tax Gross Up	$ 376,643
Refundable Advance (Total)	**$ 2,164,225**