



Roll Call Number

20-1293

Agenda Item Number

65

Date August 5, 2020 reconvened from August 3, 2020

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR CONVEYANCE OF AN UNDERGROUND ELECTRIC EASEMENT TO MIDAMERICAN ENERGY COMPANY ON CITY-OWNED PROPERTY AT 3226 UNIVERSITY AVENUE FOR \$1.00

WHEREAS, in a letter dated June 5, 2020, MidAmerican Energy Company requested of the City of Des Moines an underground electric easement (Easement) on City property located at 3226 University Avenue; and

WHEREAS, said Easement is needed in order to provide upgraded electrical service to the City-owned improvements on the property; and

WHEREAS, the City and the public will not be inconvenienced by the conveyance of said Easement to MidAmerican Energy Company; and

WHEREAS, on July 13, 2020 by Roll Call No. 20-1108, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed conveyance be set down for hearing on August 3, 2020, at 5:00 p.m., in the MSC Board Room, Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, Des Moines, Iowa. Given Mayor Cownie's March 17, 2020 Proclamation, as amended prohibiting indoor gatherings of ten or more persons on public property, Section One of the Governor's June 25, 2020 Proclamation strongly encouraging vulnerable Iowans to limit participation in gatherings of any size and any purpose during the COVID19 outbreak and the City Manager's decision to delay the opening of City buildings to the public due to the recent upwards spikes of positive COVID-19 cases and hospitalizations in Polk County and the need to maintain safety; it is impossible and impractical to have physical public access to the meeting location and the meeting will be conducted electronically with electronic public access to the meeting location; and

WHEREAS, due notice of said proposal to convey the Easement was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal, including how to participate telephonically or electronically, as applicable; and

WHEREAS, in accordance with City Council direction, those interested in the 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, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed conveyance of the underground electric easement described below are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the Easement proposed to be conveyed, and the public would not be inconvenienced by reason of the conveyance of an underground electric easement to MidAmerican



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Energy Company, more specifically described below, across a portion of City property located at 3226 University Avenue, Des Moines, Iowa, in order to provide upgraded electrical service to the City-owned improvements on the property, in consideration of the utility service being provided to the City therein, and the conveyance of said underground electric easement is hereby approved:

Legal Description

A part of Lots 3 and 4, Lyon's Park, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa more particularly described as follows:

Commencing as a point of reference at the SW Corner of the East 4.5 feet of the East 1/2, of said Lot 4; thence N00°00'33"E, 18.15 feet along the West line of said East 4.5 feet to the point of beginning; thence continuing N00°00'33"E along said West line, 182.29 feet to a point; thence S01°15'47"E, 112.61 feet to a point; thence S00°00'33"W, 64.75 feet to a point; thence S88°55'48"E, 34.07 feet to a point; thence N87°23'02"E, 47.89 feet to a point; thence N70°03'43"E, 18.77 feet to a point; thence N00°00'45"W, 102.42 feet to a point; thence S89°55'26"W, 3.50 feet to a point; thence N00°00'45"W, 9.50 feet to a point; thence N89°55'26"E, 8.50 feet to a point; thence S00°00'45"E, 110.11 feet to a point; thence N70°03'43"E, 2.17 feet to a point on the east line of the West 1/2 of Lot 3, in said Lyon's Park; thence S00°00'31"E, 13.20 feet to a point on the north line of the South 20.0 feet of the West 1/2 of said Lot 3; thence S89°38'44"W, 75.04 feet along said north line to a point; thence S00°08'36"W, 2.43 feet to a point; thence N88°55'48"W, 34.05 feet to the point of beginning. Said easement contains 1,450 square feet, more or less.

3. The Mayor is authorized and directed to sign the underground electric easement identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
4. The City Clerk is authorized and directed to forward the original of the underground electric easement, 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.
5. The Real Estate Division Manager is authorized and directed to forward the original of the underground electric easement, 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.
6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the underground electric easement and copies of the other documents to the grantee.
7. There will be no proceeds associated with this conveyance.



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Moved by Mandelbaum to adopt.

APPROVED AS TO FORM:

/s/

Lisa A. Wieland, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

CERTIFICATE

I, P. KAY CMELIK, 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 T.M. Franklin Cownie Mayor

[Signature of P. Kay Cmelik]

City Clerk

32.00
9965 JM

Doc ID: 035554800006 Type: GEN
Kind: EASEMENT
Recorded: 09/03/2020 at 08:35:53 AM
Fee Amt: \$32.00 Page 1 of 6
Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2020-00025903
BK 18047 PG 132-137

Prepared by and return to: Bill Miller 515-242-6747
MIDAMERICAN ENERGY ATTN: RIGHT-OF-WAY SERVICES PO BOX 657 DES MOINES, IA 50306-0657

RETURN TO:

**MIDAMERICAN ENERGY COMPANY
UNDERGROUND ELECTRIC EASEMENT**

Folder No.	<u>9432-20</u>	State of	<u>Iowa</u>
Work Req. No.	<u>2589011</u>	County of	<u>Polk</u>
Project No.	<u>A1145</u>	Section	<u>06</u>
		Township	<u>78</u> North
		Range	<u>24</u> West of the 5 th P.M.

1. For and in consideration of the sum of One and no/100---Dollar (\$1.00), and other valuable consideration, in hand paid by MIDAMERICAN ENERGY COMPANY, an Iowa corporation, receipt of which is hereby acknowledged, the undersigned owner(s) City of Des Moines, Iowa, an Iowa municipality (Grantor), its successors and assigns, does hereby grant to MIDAMERICAN ENERGY COMPANY (Grantee), its successors and assigns, a perpetual, non-exclusive easement to construct, reconstruct, operate, maintain, replace or remove underground conduits, wires and cables for the transmission and distribution of electric energy and for communication and electrical controls, including other reasonably necessary equipment incident thereto (collectively "Facilities") under and on the surface of the ground, through and across certain property described below, together with the right of ingress and egress to and from the same, and all the rights and privileges incident and necessary to the enjoyment of this easement ("Easement Area"). The Facilities on the Easement Area will be used by Grantee (a public utility) for the purpose of providing public utility service to Grantor at such property and which such utility service is intended for a public purpose.

DESCRIPTION OF PROPERTY CONTAINING EASEMENT AREA:

The West one-half (W 1/2) of Lot Three (3), in Lyon's park, a Subdivision now included in and forming a part of the City of Des Moines, Iowa,
and,
The East 4 1/2 feet of the East 1/2 of Lot 4, Lyon's Park, being an addition to the City of Des Moines,
Except,
The East 75 feet of the South 20 feet of the West Half of Lot 3, in Lyon's Park, an Official Plat, now included in and forming a part of the City of Des Moines, Iowa.

DESCRIPTION OF EASEMENT AREA:

A part of Lots 3 and 4, Lyon's Park, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa more particularly described as follows:

Commencing as a point of reference at the SW Corner of the East 4.5 feet of the East 1/2, of said Lot 4; thence N00°00'33"E, 18.15 feet along the West line of said East 4.5 feet to the point of beginning; thence continuing N00°00'33"E along said West line, 182.29 feet to a point; thence S01°15'47"E, 112.61 feet to a

point; thence S00°00'33"W, 64.75 feet to a point; thence S88°55'48"E, 34.07 feet to a point; thence N87°23'02"E, 47.89 feet to a point; thence N70°03'43"E, 18.77 feet to a point; thence N00°00'45"W, 102.42 feet to a point; thence S89°55'26"W, 3.50 feet to a point; thence N00°00'45"W, 9.50 feet to a point; thence N89°55'26"E, 8.50 feet to a point; thence S00°00'45"E, 110.11 feet to a point; thence N70°03'43"E, 2.17 feet to a point on the east line of the West 1/2 of Lot 3, in said Lyon's Park; thence S00°00'31"E, 13.20 feet to a point on the north line of the South 20.0 feet of the West 1/2 of said Lot 3; thence S89°38'44"W, 75.04 feet along said north line to a point; thence S00°08'36"W, 2.43 feet to a point; thence N88°55'48"W, 34.05 feet to the point of beginning. Said easement contains 1,450 square feet, more or less.

Said easement area is generally depicted on Exhibit "A" attached hereto and made a part hereof.

2. Additionally, Grantee shall have the right to remove from the Easement Area described above, any obstructions, including but not limited to, trees, plants, undergrowth, buildings, fences and structures that interfere with the proper operation and maintenance of said Facilities and equipment. Prior to removing any trees, buildings, fences or structures that exist on the date of execution of this easement, Grantee will obtain approval from the Municipal Arborist, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, in the event of emergency or other potentially hazardous condition, Grantee shall have the right to remove trees without written approval, that interfere with the proper operation and maintenance of said Facilities and equipment.
3. Grantor agrees that it will not construct or place any permanent or temporary buildings, structures, fences, trees, plants, or other objects on the Easement Area described above, or make any changes in ground elevation without written permission from Grantee indicating that said construction or ground elevation changes will not result in inadequate or excessive ground cover, or otherwise interfere with the Grantee's rights to operate and maintain its facilities. Notwithstanding the foregoing, Grantor may construct or place enclosures, fencing, landscaping or similar improvements associated with the Facilities that are required by state or city codes, without permission from Grantee, provided such improvements do not compromise required code clearances or interfere with Grantee's rights herein.
4. In consideration of such grant, Grantee agrees that it will repair or pay for any damage which may be caused to crops, fences, or other property, real or personal of the Grantor by the construction, reconstruction, maintenance, operation, replacement or removal of the Facilities, (except for damage to property placed subsequent to the granting of this easement), that Grantee determines interferes with the operation and maintenance of the Facilities and associated equipment. The cutting, recutting, trimming and removal of trees, branches, saplings, brush or other vegetation on or adjacent to the Easement Area, as may be required for the operation and maintenance of facilities and as pre-approved by the Municipal Arborist if such approval is required, is expected and not considered damage to the Grantor.
5. Each of the provisions of this easement shall be enforceable independently of any other provision of this easement and independent of any other claim or cause of action. In the event of any matter of dispute arising out of or related to this easement, it is agreed between the parties that the law of the jurisdiction and location where this easement is recorded (including statute of limitation provisions) will govern the interpretation, validity and effect of this easement without regard to the place of execution or place of performance thereof, or any conflicts or law provisions.
6. Additionally, when Grantor provides or installs duct/conduit for said Facilities, this grant shall cover and include all Facilities installed as a part of the Easement Area.
7. Grantor certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation. Grantor hereby agrees to defend, indemnify and hold harmless the Grantee from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.
8. Grantor and Grantee will comply with applicable state and local laws and policies in use of this easement.

Dated this 5th day of August, 202020

City of Des Moines, Iowa

By: T.M. Franklin Cownie
T.M. Franklin Cownie, Mayor

By: P. Kay Cmelik
P. Kay Cmelik, City Clerk

Approved as to Form:

By: Lisa A. Wieland
Lisa A. Wieland, Assistant City Attorney

ACKNOWLEDGMENT

STATE OF IOWA)
) ss
COUNTY OF POLK)

On this 5th day of August, A. D. 2020, before me, a Notary Public in and for the State of Iowa, personally appeared T. M. Franklin Cownie and P. Kay Cmelik, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and the City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Roll Call No. 20-1293 of the City Council on the 5th day of August, 2020 and that the Mayor and the City Clerk acknowledged the execution of the instrument to be their voluntary act and deed and it voluntarily executed.

Sandi L. Deery
Notary Public in and for said State



ACCEPTANCE BY GRANTEE

The undersigned hereby accepts this Underground Electric Easement and agrees to be bound by the terms set forth above.

MIDAMERICAN ENERGY COMPANY

By: Michael C Fehr

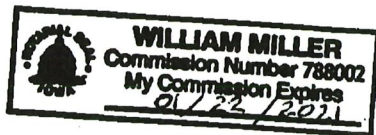
Please Print: Michael C. Fehr

Title: Vice President, Resource Development

STATE OF IOWA)
) ss.
COUNTY OF POLK)

This instrument was acknowledged before me on August 28, 2020, by Michael C. Fehr as Vice President, Resource Development of MidAmerican Energy Company.

William Miller
Signature of Notary Public



PROPERTY DESCRIPTION

THE WEST ONE-HALF (W 1/2) OF LOT THREE (3), IN LYON'S PARK, A SUBDIVISION NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA,
 AND,
 THE EAST 4 1/2 FEET OF THE EAST 1/2 OF LOT 4, LYON'S PARK, BEING AN ADDITION TO THE CITY OF DES MOINES,
 EXCEPT,
 THE EAST 75 FEET OF THE SOUTH 20 FEET OF THE WEST HALF OF LOT 3, IN LYON'S PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, IOWA.

EAST 4 1/2', E 1/2 LOT 4

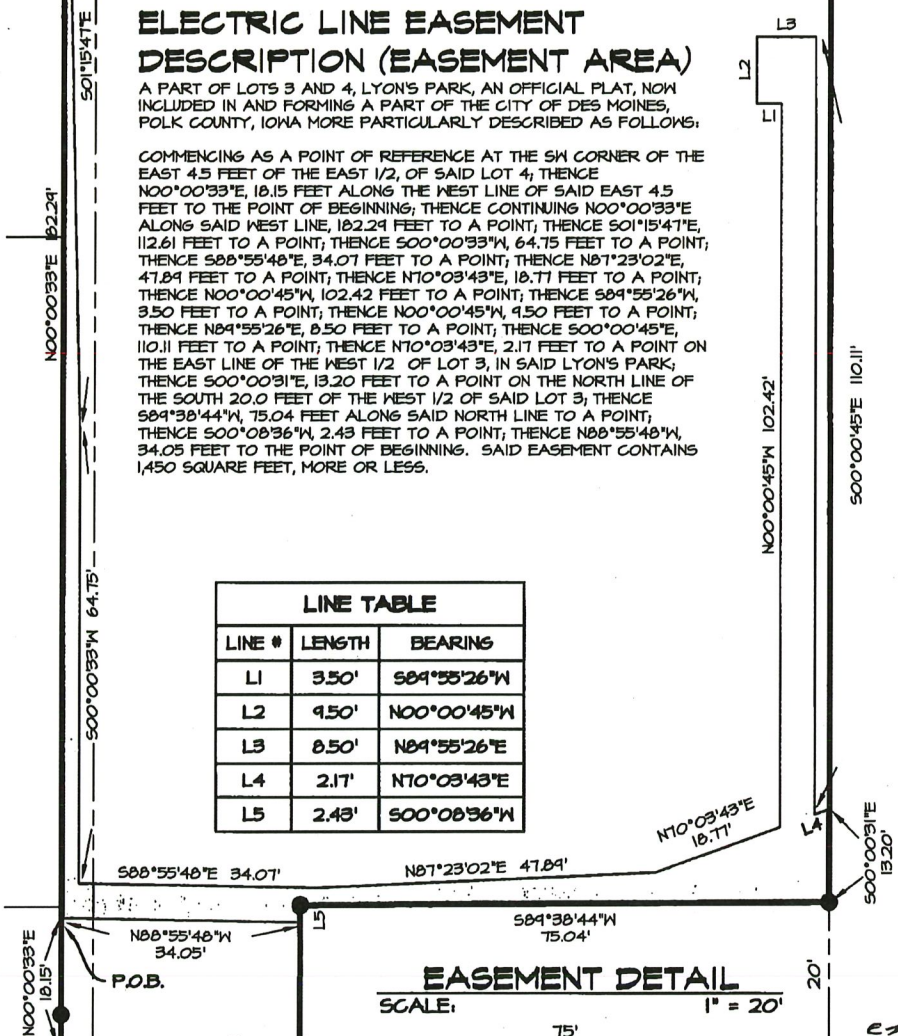
W 1/2 LOT 3

ELECTRIC LINE EASEMENT DESCRIPTION (EASEMENT AREA)

A PART OF LOTS 3 AND 4, LYON'S PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

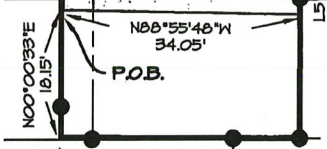
COMMENCING AS A POINT OF REFERENCE AT THE SW CORNER OF THE EAST 4.5 FEET OF THE EAST 1/2, OF SAID LOT 4; THENCE N00°00'33"E, 18.15 FEET ALONG THE WEST LINE OF SAID EAST 4.5 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N00°00'33"E ALONG SAID WEST LINE, 182.29 FEET TO A POINT; THENCE S01°15'41"E, 112.61 FEET TO A POINT; THENCE S00°00'33"W, 64.75 FEET TO A POINT; THENCE S88°55'48"E, 34.07 FEET TO A POINT; THENCE N87°23'02"E, 47.89 FEET TO A POINT; THENCE N70°03'43"E, 18.77 FEET TO A POINT; THENCE N00°00'45"W, 102.42 FEET TO A POINT; THENCE S84°55'26"W, 3.50 FEET TO A POINT; THENCE N00°00'45"W, 9.50 FEET TO A POINT; THENCE N84°55'26"E, 8.50 FEET TO A POINT; THENCE S00°00'45"E, 110.11 FEET TO A POINT; THENCE N70°03'43"E, 2.17 FEET TO A POINT ON THE EAST LINE OF THE WEST 1/2 OF LOT 3, IN SAID LYON'S PARK; THENCE S00°00'31"E, 13.20 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 20.0 FEET OF THE WEST 1/2 OF SAID LOT 3; THENCE S84°38'44"W, 75.04 FEET ALONG SAID NORTH LINE TO A POINT; THENCE S00°08'36"W, 2.43 FEET TO A POINT; THENCE N88°55'48"W, 34.05 FEET TO THE POINT OF BEGINNING. SAID EASEMENT CONTAINS 1,450 SQUARE FEET, MORE OR LESS.

LINE TABLE		
LINE #	LENGTH	BEARING
L1	3.50'	S84°55'26"W
L2	9.50'	N00°00'45"W
L3	8.50'	N84°55'26"E
L4	2.17'	N70°03'43"E
L5	2.43'	S00°08'36"W



S88°55'48"E 34.07'
 N87°23'02"E 47.89'
 N70°03'43"E 18.77'
 S00°00'31"E 13.20'
 S84°38'44"W 75.04'
 S00°08'36"W 2.43'
 N88°55'48"W 34.05'

EASEMENT DETAIL
 SCALE: 1" = 20'



SW CORNER
 E 4 1/2, E 1/2 LOT 4
 LYON'S PARK

OWNERS
 CITY OF DES MOINES

NORTH

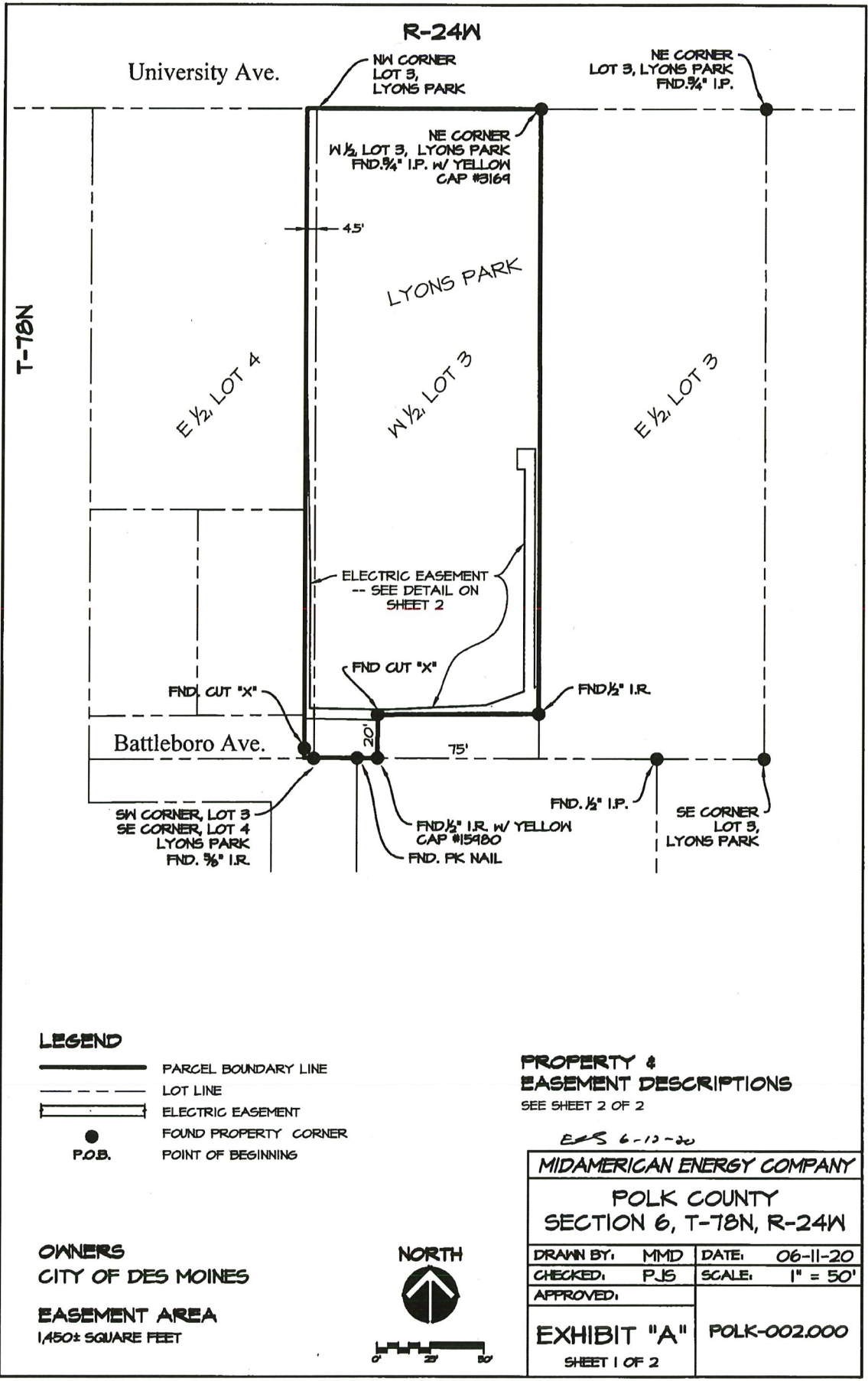


MIDAMERICAN ENERGY COMPANY

POLK COUNTY
 SECTION 6, T-78N, R-24W

DRAWN BY: MMD DATE: 06-11-20
 CHECKED: PJS SCALE: 1" = 20'
 APPROVED:

EXHIBIT "A" POLK-002.000
 SHEET 2 OF 2



LEGEND

- PARCEL BOUNDARY LINE
- LOT LINE
- ELECTRIC EASEMENT
- FOUND PROPERTY CORNER
- P.O.B. POINT OF BEGINNING

OWNERS
CITY OF DES MOINES

EASEMENT AREA
1,450± SQUARE FEET

NORTH



PROPERTY & EASEMENT DESCRIPTIONS
SEE SHEET 2 OF 2

ECS 6-12-20

MIDAMERICAN ENERGY COMPANY	
POLK COUNTY SECTION 6, T-78N, R-24W	
DRAWN BY: MMD	DATE: 06-11-20
CHECKED: PJS	SCALE: 1" = 50'
APPROVED:	
EXHIBIT "A"	POLK-002.000
SHEET 1 OF 2	