MEMORANDUM OF UNDERSTANDING

BETWEEN DRAINAGE DISTRICT #22 (CITY OF COUNCIL BLUFFS , IA),

M & P LEVEE DISTRICT (M & P)

AND MIDAMERICAN ENERGY COMPANY (MEC)

WHEREAS, MidAmerican Energy Company (MEC) is in the process of closure construction of the North Impoundment at the Walter Scott, Jr. Energy Center in or about Council Bluffs, Iowa; and

WHEREA, MEC within closure construction made certain levee mitigation including thickening/ widening alterations/modifications of levees and added levee penetration appurtenances; and

WHEREAS, the (City) as trustee for Drainage District #22 Pottawattamie County, IA is the levee sponsor for the United States Corps of Engineers and, as such, is obligated to maintain and operate flood control levees and channels, including L624-627 conveying Mosquito Creek through MEC lands at Walter Scott, Jr. Energy Center.

WHEREAS, (M & P) Levee District Pottawattamie/ Mills County, IA is the levee sponsor for the United States Corps of Engineers and, as such, is obligated to maintain and operate flood control levees and channels, including L611-614 conveying Pony Creek through MEC lands at Walter Scott, Jr. Energy Center.

WHEREAS, MEC, the City, and M & P wish to arrive at an understanding regarding the future operation and maintenance of these altered/modified levees and added penetration appurtenances that co-exist in on under over lands of the final closure of the North Impoundment at Walter Scott, Jr. Energy Center.

NOW THEREFORE, the parties (MEC, CITY and M & P) hereby make the following statements concerning their understanding with respect to the said final closure and levee and appurtenances:

1. MEC provide without cost to USACE through local sponsors all lands, easements, and necessary right of way necessary for altered/modified levees and added penetration appurtenances to be operated and maintained to original USACE authorized level of protections.

2. MEC intends to develop a site-specific O&M manual for the final closure to reflect the as-built conditions for any levee permanent alteration/ modifications or penetration appurtenances and provide to the parties and the USACE. This will be provided within 60 days of completion of construction, or within such longer period as is reasonable given the circumstances. The information deliverables will at a minimum include digital and pdf files of the O&M addenda or revision As-Built drawings (cadd and pdf files), soil compaction data, and survey files (cadd).

3. The site-specific O&M manual will include maintenance and operations expectations of the permanent levee mitigation measures for the closure construction of the North Impoundment. The mitigation includes new levee dry side sand blankets, stability berms and added levee penetrations appurtenances into Mosquito and Pony Creek. MEC agrees to maintain the permanent levee mitigation measures necessary for the closure facility indefinitely.

4. During all activities, all parties agree to be bound to Title 33 Navigation and Navigable waters Chapter II USACE part 208 flood control regulations within USACE lands.

5. 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 MEMORANDUM OF UNDERSTANDING. 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. This Memorandum of Understanding shall be in effect from August 20, 2020 forward.

IN WITNESS of these understandings, and as authorized representatives of our respective entities, we have affixed our signature below as of the 20th day of August, 2020.

CITY OF COUNCIL BLUFFS, IOWA

For benefit of Drainage District #22

_____

Title: _____

MIDAMERICAN ENERGY COMPANY

_____

Title: _____

M & P DRAINAGE DISTRICT

_____

Title: _____