CHAPTER 111

ELECTRIC FRANCHISE

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111.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the "Company," and its successors and assigns, the right and nonexclusive franchise to acquire, construct, erect, maintain and operate in the City of Oakland, Iowa, hereinafter called the "City," a system for the transmission and distribution of electric energy and communication signals along, under, over, and upon the streets, avenues, alleys and public places to serve customers within and without the City, and to furnish and sell electric energy to the City and its inhabitants. For the term of the franchise, the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. The franchise shall be effective for a 25-year period from and after the effective date of the ordinance codified in this chapter.[†]

111.02 STATE CODE RESTRICTIONS. The rights and privileges granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa*.

111.03 USE OF PUBLIC WAYS. The Company shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures, and accessories as well as to excavate and bury conductors for the distribution of electric energy and communications signals in and through the City, but all of said conduits and poles shall be so placed as not to unreasonably interfere with any above- or below-ground utility services or facilities which have been or may hereafter be located by or under authority of the City.

111.04 TRIMMING OF TREES. The Company is authorized and empowered to prune or remove at Company expense any trees or vegetation extending into any street, alley, or public grounds to maintain electric reliability, safety, to restore utility service and to prevent interference with the wires and facilities of the Company. Any such pruning and removal shall be done in accordance with current nationally accepted safety and utility industry standards and federal and State laws, rules, and regulations.

111.05 RELOCATION OF PROPERTY. Excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), the Company shall, in accordance with Iowa law, including Company's tariff on file with and made effective by the Iowa Utilities Board, as may be subsequently amended ("Tariff"), at its cost and expense, locate and relocate its existing facilities or equipment located in, on, over, or under the right-of-way of any public street or alley in the City in such a manner as the City may reasonably require for

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[†] **EDITOR'S NOTE:** Ordinance No. 48, adopting an electric franchise for the City, was passed and adopted on May 11, 2015.

the purposes of facilitating the construction, reconstruction, maintenance, or repair of the street or alley of such street or alley. The City and Company shall work together to develop a suitable alternative route or construction method so as to eliminate or minimize the cost and expense to the Company of relocation of Company installations. The City shall be responsible for surveying and staking the right-of-way for City projects that require the Company to relocate Company facilities. If requested, the City shall provide, at no cost to the Company, copies of the relocation plan and profile and cross section drawings. If tree removals must be completed by the City as part of the City's project and are necessary whether or not utility facilities must be relocated, the City, at its own cost, shall be responsible for said removals. If the timing of the tree removals does not coincide with the Company facilities relocation schedule and the Company must remove trees that are included in the City's portion of the project, the City shall either remove the trees or reimburse the Company for the expenses incurred to remove said trees. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City may attempt to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

111.06 EXCAVATIONS. In making excavations in any public right-of-way and other public places for the installation, maintenance, or repair of conductor, conduits, or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets or public places, and shall restore the surface to the condition as existed prior to the Company work. The Company shall not be required to restore or modify public right-of-way, sidewalks, or other areas in or adjacent to the Company project to a condition superior to its immediately preceding condition or to a condition required for the City to comply with City, State or federal rules, regulations or law. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition.

111.07 VACATING STREETS. Vacating a street, avenue, alley, public ground or public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities on, below, above, or beneath the vacated property. Prior to the City's abandoning or vacating any street, avenue, alley, or public ground where the Company has electric facilities in the vicinity, the City shall provide Company with not less than sixty (60) days' advance notice of the City's proposed action and, upon request, grant the Company a utility easement covering existing and future facilities and activities. If the City fails to grant the Company a utility easement for said facilities prior to abandoning or vacating a street, avenue, alley, or public ground, the City shall, at its cost and expense, obtain easements for existing Company facilities.

111.08 RELOCATION OF FACILITIES. The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right-of-way which have been relocated at Company expense at the direction of the City in the previous ten (10) years.

111.09 RELOCATION FOR PRIVATE DEVELOPMENT. Pursuant to relocation of Company facilities as may be required by Sections 111.03, 111.05, 111.06, 111.07 and 111.08, if the City orders or requests the Company to relocate its existing facilities or equipment in order to facilitate the project of a commercial or private developer or other non-public entity, the City shall reimburse—or require the developer or non-public entity to reimburse—the Company for the cost of such relocation as a precondition to relocation of its existing facilities or equipment. The Company shall not be required to relocate in order to facilitate such private project at its expense.

111.10 INDEMNIFICATION. The Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses, on account of injury or

damage to any person or property, to the extent caused or occasioned by the Company's negligence in construction, reconstruction, excavation, operation, or maintenance of the electric facilities authorized by the franchise; provided, however, the Company shall not be obligated to defend, indemnify, and save harmless the City for any costs or damages to the extent arising from the negligence of the City, its officers, employees, or agents.

111.11 MAPPING INFORMATION. Upon reasonable request, the Company shall provide the City, on a project specific basis, information indicating the horizontal location, relative to boundaries of the right-of-way, of all equipment which it owns or over which it has control which is located in the public right-of-way, including documents, maps, and other information in paper or electronic or other forms ("Information"). The Company and City recognize the Information, in whole or part, may be considered a confidential record under State or federal law or both. Upon receipt of a request from a third party for information concerning information about the Company's facilities within the City, the City will promptly submit same to Company. If the Company believes any of the information requested constitutes a trade secret that may otherwise be protected from public disclosure by State or federal law, or otherwise exempt from disclosure under the provisions of the Freedom of Information Act, the Federal Energy Regulatory Commission Critical Energy Infrastructure requirements pursuant to 18 CFR 388.112 and 388.113, or Chapter 22 of the *Code of Iowa*, as such statutes and regulations may be amended from time to time, then the Company shall provide the City with a written explanation of the basis for such assertion of confidentiality or exemption from disclosure within ten (10) days.

111.12 MAINTENANCE OF FACILITIES. The Company shall construct, operate, and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors and Iowa law.

111.13 STANDARDS OF OPERATION. During the term of the franchise, the Company shall furnish electric energy in the quantity and quality consistent with and in accordance with the applicable regulations of the Iowa Utilities Board, the Company's Tariff and made effective by the Iowa Utilities Board or its successors and Iowa law.

111.14 FRANCHISE FEE. There is hereby imposed upon the customers a franchise fee of _______ percent upon the gross receipts, minus uncollectible accounts, generated from sales of electricity and distribution service, pursuant to the Tariff, by the Company to City. The franchise fee shall be remitted by the Company to the City on or before the last business day of the calendar quarter following the close of the calendar quarter in which the franchise fee is charged.

1. The City agrees to modify the level of franchise fees imposed only once in any 24-month period. Any such ordinance exempting classes of customers, increasing, decreasing, modifying or eliminating the franchise fee shall become effective, and billings reflecting the change shall commence on an agreed-upon date that is not less than sixty (60) days following written notice to the Company by certified mail. The Company shall not be required to implement such new ordinance unless and until it determines that it has received appropriate official documentation of final action by the City Council.

2. The City recognizes the administrative burden collecting franchise fees imposes upon the Company and the Company requires lead time to commence collecting said franchise fees. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety

(90) days of receipt of information required of the City to implement the franchise fee, including the City's documentation of customer classes subject to or exempted from City-imposed franchise fee. The City shall provide the information and data required in a form and format acceptable to the Company. The Company will, if requested by the City, provide the City with a list of premises considered by the Company to be within the corporate limits of the City.

3. The City shall be solely responsible for identifying customer classes subject to or exempt from paying the City imposed franchise fee. The City shall be solely responsible for notifying Company of its corporate limits, including, over time, annexations or other alterations thereto, and customer classes that it wishes to subject to, or to the extent permitted by law, exempt from paying the franchise fee. The City shall provide to the Company, by certified mail, copies of annexation ordinances in a timely manner to ensure appropriate franchise fee collection from customers within the corporate limits of the City. The Company shall have no obligation to collect franchise fees from customers in annexed areas until and unless such ordinances have been provided to the Company by certified mail. The Company shall commence collecting franchise fees in the annexed areas no sooner than sixty (60) days after receiving annexation ordinances from the City.

4. The City shall indemnify the Company from claims of any nature arising out of or related to the imposition and collection of the franchise fee. In addition, the Company shall not be liable for collecting franchise fees from any customer originally or subsequently identified, or incorrectly identified, by the City as being subject to the franchise fee or being subject to a different level of franchise fees or being exempt from the imposition of franchise fees.

5. The Company shall remit franchise fee revenues to the City no more frequently than on or before the last business day of the month following each quarter as follows.

January, February and March
April, May and June
July, August and September, and
October, November and December

The Company shall provide City with notice at least thirty (30) days in advance of any changes made in this collection schedule, including any alterations in the calendar quarters or any other changes in the remittance periods.

6. The City recognizes that the costs of franchise fee administration are not charged directly to the City and agrees it shall, if required by the Company, reimburse the Company for any initial or ongoing costs incurred by the Company in collecting franchise fees that Company in its sole opinion deems to be in excess of typical costs of franchise fee administration.

7. The Company shall not, under any circumstances, be required to return or refund any franchise fees that have been collected from City customers and remitted to the City. In the event the Company is required to provide data or information in defense of the City's imposition of franchise fees or the Company is required to assist the City in identifying customers or calculating any franchise fee refunds for groups of or individual customers the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information.

8. The obligation to collect and remit the fee imposed by this chapter is modified or repealed if:

A. Any other person is authorized to sell electricity at retail to City consumers and the City imposes a franchise fee or its lawful equivalent at zero or a lesser rate than provided in this chapter, in which case the obligation of Company to collect and remit franchise fee shall be modified to zero or the lesser rate.

B. The City adds additional territory by annexation or consolidation and is unable or unwilling to impose the franchise fee upon all persons selling electricity at retail to consumers within the additional territory, in which case the franchise fee imposed on the revenue from sales by Company in the additional territory shall be zero or equal to that of the lowest fee being paid by any other retail seller of electricity within the City.

C. Legislation is enacted by the Iowa General Assembly or the Supreme Court of Iowa issues a final ruling regarding franchise fees or the Iowa Utilities Board issues a final non-appealable order (collectively, "final franchise fee action") that modifies, but does not repeal, the ability of the City to impose a franchise fee or the ability of Company to collect from City customers and remit franchise fees to City. Within 60 days of final franchise fee action, the City shall notify Company and the parties shall meet to determine whether this chapter can be revised, and, if so, how to revise the franchise fee on a continuing basis to meet revised legal requirements. After final franchise fee action and until passage by the City of revisions to the franchise fee ordinance, Company may temporarily discontinue collection and remittance of the franchise fee if in its sole opinion it believes it is required to do so in order to comply with revised legal requirements.

9. The other provisions of this chapter to the contrary notwithstanding, the Company shall be completely relieved of its obligation to collect and remit to the City the franchise fee, effective as of the date specified below, with no liability therefor under each of any of the following circumstances as determined to exist in the sole discretion of Company:

A. Any imposition, collection, or remittance of a franchise fee is ruled to be unlawful by the Supreme Court of Iowa, effective as of the date of such ruling or as may be specified by that Court.

B. The Iowa General Assembly enacts legislation making imposition, collection, or remittance of a franchise fee unlawful, effective as of the date lawfully specified by the General Assembly.

C. The Iowa Utilities Board or its successor agency denies the Company the right to impose, collect, or remit a franchise fee, provided such denial is affirmed by the Supreme Court of Iowa, effective as of the date of the final agency order from which the appeal is taken.

111.15 FEES. The City shall not, pursuant to Chapter 480A.6 of the *Code of Iowa*, impose or charge right-of-way management fees upon the Company or fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting, or inspections of Company work sites and projects or related matters.

111.16 TERMINATION. Either City or Company ("party") may terminate the franchise if the other party is materially in breach of its provisions. Upon the occurrence of a material breach, the non-breaching party shall provide the breaching party with notification by certified

mail specifying the alleged breach. The breaching party shall have sixty (60) days to cure the breach, unless it notifies the non-breaching party, and the parties agree upon a longer period for cure. If the breach is not cured within the cure period, the non-breaching party may terminate the franchise. A party shall not be considered to be in breach of the franchise if it has operated in compliance with State or federal law. A party shall not be considered to have breached the franchise if the alleged breach is the result of the actions of a third party or the other party.

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