

ORDINANCE NO. 203

AN ORDINANCE GRANTING TO MIDAMERICAN ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND NON-EXCLUSIVE FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF UNIVERSITY HEIGHTS, IOWA, AN ELECTRIC SYSTEM AND COMMUNICATIONS FACILITIES AND TO FURNISH AND SELL ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS AND AUTHORIZING THE CITY TO COLLECT FRANCHISE FEES FOR A PERIOD OF 20 YEARS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF UNIVERSITY HEIGHTS, JOHNSON COUNTY, IOWA:

**Section 1.** There is hereby granted to MidAmerican Energy Company, an Iowa corporation, (hereinafter called "Company,)" and its successors and assigns, the right and non-exclusive franchise to acquire, construct, erect, maintain and operate in the City of University Heights, Iowa, (hereinafter called the "City,)" a system for the transmission and distribution of electric energy and communications signals along, under, over and upon the streets, avenues, rights of way and alleys to serve customers within the City, and to furnish and sell electric energy to the City and its inhabitants. This franchise shall be effective for a ten (10) year period from and after the effective date of this ordinance. However, the franchise shall continue for an additional ten (10) years if neither the City nor Company provides written notice to the other party of its desire to terminate the franchise, within ninety (90) days of the scheduled 10-year expiration date. In the event neither party requests amendments or termination, this franchise will terminate on the twentieth anniversary of the original effective date.

**Section 2.** The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa 2017 or as subsequently amended or changed.

**Section 3.** 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 conduits or conductors for the distribution of electric energy and communications signals in and through the City, provided the same shall be placed in accord with this franchise and City code regulations of the City, regarding the placement of structures, facilities, accessories or other objects in the right of way, including ordinances which assign corridors or other placements to users of the right of way and requirements which may be adopted regarding separation of structures, facilities, accessories or other objects. All electric utility system components placed above, upon, in or under public right of way, and the wires placed thereon or therein, shall comply with the National Electrical Safety Code as adopted by the regulations of the Iowa Utilities Board. The Company shall not without express approval from the City by way of resolution adopted by the City Council place in the right of way any substation operating at greater than fifteen thousand (15,000) volts, transmission lines, equipment or appliances operated at greater than fifteen thousand (15,000) volts, or pad-mounted distribution facilities of greater than fifteen thousand (15,000) volts serving an underground distribution feeder system.

**Section 4.** The Company shall, excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), in accordance with Iowa law including Company's Tariff on file with and made effective by the Iowa Utilities Board as may subsequently be amended ("Tariff"), at its cost and expense, locate and relocate its existing installations located in, on, over or under the right-of-way of any public street, right of way or alley in the City in such a manner as the City may require for the purposes of facilitating

the construction, reconstruction, maintenance or repair of the street right of way or alley or promoting the efficient operation of any such improvement. The City may require the Company to place or bury its electrical utility system components underground as consistent with company tariffs (it is the understanding of the parties that under current tariffs the Company shall assume and pay as its own expense the cost of moving a line from one above-ground location to another above-ground location and the City shall reimburse the Company for any additional cost occasioned by placing a facility underground if the City requests such location). To the extent Company locates new installations or equipment or relocates existing installations or equipment, Company shall investigate and assess the possibility of place installations and equipment underground and will provide a report, prepared at Company expense, to the City concerning the possibility, including cost, of doing so. If the City has a reasonable alternative route for the street, right of way or alley or a cost-neutral construction method, which would not cause the relocation of Company installations or would minimize the cost or expense of relocation of Company installations, the City and Company shall work together to consider said alternative route or cost-neutral construction method. The City shall, in the extension or modification of streets and roads, make provision for the placement of company service lines and facilities on City-owned right of way without charge to Company. In planning for the extension or modification of streets, the City shall, to the extent practicable design such changes to limit the need for relocation of Company facilities to the extent such planning does not result in additional cost to the City; provided, however, that the City desires to encourage relocation of such facilities underground and may include extension or modification designs to achieve that goal. Nothing in this franchise Ordinance shall be construed as a guarantee that in either existing right-of-way or

in future acquired right-of-way the City will provide sufficient space for any particular need of the Company nor shall the City be required to obtain additional right-of-way solely for the use of the Company.

**Section 5.** In making excavations in any streets, avenues and 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. The Company in making such excavations shall obtain a City permit (and pay any associated fees and costs) therefor and provide City representatives with advance notice prior to the actual commencement of the work, and shall comply with all provisions and requirements of the City in its regulation of the use of City right of way in performing such work. In emergencies which require immediate excavation, the Company may proceed with the work without first applying for or obtaining the permit, provided, however, that Company shall apply for and obtain the excavation permit as soon as possible after commencing such emergency work. The Company shall comply with all provisions and requirements of the City in its regulation of the use of City right of way in performing such work. The Company shall comply with all City ordinances regarding paving cuts, placement of facilities and restoration of pavement and other public infrastructure. The Company shall replace the surface, restoring the condition as existed prior to the Company's excavation and subject to City's approval but shall not be required to improve or modify the public right of way, sidewalks or other areas in or adjacent to the Company project to a condition superior to its immediate previously existing condition. Company shall complete all repairs in a timely manner. Company agrees any replacement of road surface or any other physical characteristic including but not limited to sod, plantings, and sidewalks, shall conform to current City ordinances

regarding depth and composition; to the extent consistent with current City ordinances, replacement shall conform to prior conditions.

**Section 6.** 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 and their replacements on, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley or public ground where the Company has electric facilities, the City shall grant the Company a utility easement for said facilities.

**Section 7.** The company shall not be required to relocate, at its cost and expense, Company facilities in the public right of way that have been relocated at Company expense at the direction of the City in the previous five (5) years.

**Section 8.** Pursuant to relocation of Company facilities, if the City orders or requests the Company to relocate its existing facilities or equipment in order to directly facilitate a project for the primary benefit of a commercial or private developer or other non-public entity, the City shall require the developer or non-public entity to reimburse the Company for the actual and reasonable cost of such relocation as a precondition to relocation of its existing facilities or equipment.

**Section 9.** The Company shall indemnify, save and hold harmless the City from any and all claims, suits, losses, damages, costs or expenses, including reasonable attorney fees, expenses, and costs, 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 this franchise; provided, however, that 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.

**Section 10.** The Company is authorized and empowered to prune or remove at Company expense, any tree extending into any street, avenue, right of way, alley, public place or public grounds to maintain electric reliability, safety, to restore utility service and to prevent limbs, branches, or trunks from interfering with the wires and facilities of the Company. The pruning and removal of vegetation and trees shall be completed in accordance with current nationally accepted safety and utility standards, NSI Z133.1-2012, American National Standard for Arboricultural Operations-Safety Requirements, and ANSI A300(part 1) - 2008 Pruning, (Revision of ANSI A300 part 1-2001) American National Standard for Tree, Shrub, and other Woody Plant Management - Standard of Practices (Pruning) or subsequent revisions to these standards, and City ordinances regarding the pruning of trees that incorporate by reference that standard, as well as nationally accepted safety and utility industry standards and federal and state law, rules and regulations. The Company shall not remove or prune any tree on public grounds, other than right-of-way, except in an emergency or when necessary to alleviate an existing electrical outage without first obtaining permission of the City (which City shall not unreasonably withhold), nor shall the Company dig or otherwise excavate under the canopy of any tree on public ground, unless using trenchless technologies or directional boring, except in an emergency or when necessary to alleviate an existing electrical outage, without having first given the City twenty four (24) hours' notice.

**Section 11.** 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 that is located in City right of way, including documents, maps and other information in paper or electronic or other forms ("Information.") The Company and City recognize the Information may in whole or part be considered a confidential record under state or federal law or both. Therefore, City shall return the Information to Company upon request; provided, however, that such request must be made within ninety (90) days of providing the Information to the City and provided further that the City does not have need to retain the Information. City recognizes that Company may claim the Information, or some of the Information, constitutes a trade secret or is otherwise protected from public disclosure by state or federal law on other grounds. Furthermore, the City agrees that no documents, maps or other Information provided to the City by the Company shall be made available to the public or other entities if such documents or Information are 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. In the event any action at law, in equity or administrative proceeding is brought against the City regarding disclosure of any document which the Company has designated as a trade secret or which the Company has otherwise designated as protected from disclosure, the City shall notify the Company, which may seek an injunction or other relief; in any such action at law, in equity or administrative proceeding, the Company shall assume, upon request of the City, the defense of said action and reimburse the City any and all costs, including attorney fees, costs, and expenses, and penalties to the extent allowed by law. If the Company designates Information as a trade secret or otherwise protected from disclosure, the Company shall mark each page of the Information as "trade secret" or "protected

from disclosure". If Company fails to mark Information in such fashion, the City may provide the Information if and to the extent requested as a public record.

**Section 12.** 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. During the term of this 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.

**Section 13.** This franchise shall apply to and bind the City and Company and their successors and assigns.

**Section 14.** Either City or Company ("party") may terminate this franchise if the other party shall be in material 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 this franchise. A party shall not be considered to be in breach of this franchise if it has operated in compliance with state or federal law. A party shall not be considered to have breached this franchise if the alleged breach is the result of the actions of a third party or the other party.

**Section 15.** If any of the provision or portion of this franchise ordinance is for any reason declared to be illegal or void, the lawful provisions of this franchise ordinance, which are severable from said unlawful provisions, shall be and remain in



full force and effect, the same as if the franchise ordinance contained no illegal or void provisions.

**Section 16.** This ordinance and the rights and privileges herein granted shall become effective and binding upon its approval and passage in accordance with Iowa law and the written acceptance by the Company. The City shall provide Company with an original signed and sealed copy of this ordinance within 10 days of its final passage. The Company shall, within thirty (30) days after the City Council approval of this ordinance, file in the office of the Clerk of the City, its acceptance in writing of all the terms and provisions of this ordinance. Following City Council approval, this ordinance shall be published in accordance with the Code of Iowa. The effective date of this ordinance shall be the date of publication. In the event Company does not file its written acceptance of this ordinance within thirty (30) days after its approval by the City Council, this ordinance shall be void and of no effect.

**Section 17.** Upon the effective date of this ordinance, all prior franchises granted to the Company to furnish electric service to the City and its inhabitants are hereby repealed and all other ordinances or parts of ordinances in conflict herewith are also hereby repealed.

**Section 18.** In the event any word, phrase, sentence, paragraph or section contained in this ordinance shall be held to be invalid, unlawful, or unconstitutional for any reason, then it is hereby declared that the remaining such portions and provisions of this ordinance would have been enacted and remain in full force and effect.

**Section 19.** This ordinance shall become effective upon its passage and publication as provided by law.

Adopted by the University Heights City Council this 23<sup>rd</sup> day of May, 2017, and approved this 23<sup>rd</sup> day of May, 2017.

  /s/    
Louise A. From, Mayor

(SEAL)

ATTEST:

  /s/    
Christine M. Anderson, City Clerk