

ORDINANCE NO. 167

AN ORDINANCE GRANTING TO MIDAMERICAN ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND 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 FOR A PERIOD OF 10 YEARS, WITH A TEN-YEAR AND FIVE-YEAR RENEWAL THEREAFTER.

BE IT ENACTED by the City Council of the City of University Heights, Iowa:

Section 1. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the "Company," and its successors and assigns, the right and 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, alleys and rights-of-way of the City to serve customers within and without 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. The City may continue this franchise by resolution adopted more than one, but less than two years prior to the tenth anniversary of the effective date of this Ordinance. In the event the City Council does not adopt such a resolution, this franchise will terminate on the tenth anniversary of the effective date. The City may continue this franchise by resolution adopted more than one but less than two years prior to the twentieth anniversary of the effective date of this Ordinance. In the event the City Council does not adopt such a resolution, this franchise will terminate on the twentieth anniversary of the effective date. If both such resolutions are adopted, this franchise will terminate on the twenty-fifth anniversary of the 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 2007 or as subsequently amended or changed, the Code of Ordinances of the city of University Heights, and any other applicable statutes or regulations promulgated by federal or state agencies under applicable law.

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 excavate and bury conductors for the distribution of electric energy and communications signals in and through the City, but all said conduits and poles shall be placed as not to interfere with the construction of any water pipes, drain or sewer, or the flow of water therefrom, which have been or may

hereafter be located by authority of the City. The Company is authorized and empowered to prune or remove at Company expense any tree extending into any street, alley 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 of trees shall be done to current nationally accepted safety and utility industry standards.

Section 4. The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement.

Section 5. In making excavations in any streets, avenues, or alleys for the excavation of conduits or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets, avenues, and alleys and shall replace the surface, restoring the original condition as nearly as practicable.

Section 6. The Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses, , including reasonable attorney's and engineering fees and expenses, on account of injury or damage to any person or property, caused or occasioned in whole or in part, 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 arising from the negligence of the City, its officers, employees or agents.

Section 7. The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

Section 8. During the term of this franchise, the Company shall furnish electric energy in the quantity and quality consistent with applicable Iowa laws and regulations.

Section 9. This franchise shall apply to and bind the City and the Company and their successors and assigns; provided that any assignment by the company shall be subject to the approval of the

City Council by resolution, which approval shall not be unreasonably withheld.

Section 10. With the permission of the City Council, to be separately given in regard to each application to use powers of eminent domain, company shall have the power to condemn private property for the purpose of providing electrical energy distribution and communication system to the public and in a reasonable relationship to an overall plan of distributing electricity and providing communication services within the City. Company must establish the necessity of each taking of private property and, when so established, the City Council shall approve the condemnation of the private property by resolution, upon such terms as the City Council may impose, if the council finds the use of such powers is in the public interest, does not create an unacceptable public safety problem, and there is not any reasonable alternative.

Section 11. If any section, provision, or part of this ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

Section 12. 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 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 that MidAmerican Energy Company does not file its written acceptance of this ordinance within 30 days after its approval by the City Council this ordinance shall be void and of no effect.

Section 13. Upon the effective date of this ordinance, all prior electric 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.

Adopted by the University Heights City Council this 8th day of April, 2008, and approved this 8th day of April, 2008.

Louise From, Mayor

ATTEST: (seal)

Christine Anderson, City Clerk