

FRANCHISES AND OTHER SERVICES

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CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 GRANT OF FRANCHISE. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, authorized to do business in the State of Iowa, hereinafter called "Company," and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City a gas distribution system, to furnish natural gas along, under and upon the streets, avenues, alleys and public places to serve customers within and without the City and to furnish and sell natural gas to the City and its inhabitants. For the term of this franchise the Company is granted the right of eminent domain, the exercise of which is subject to Council approval upon application by the Company. This franchise shall be effective for a 25-year period from and after the effective date of the ordinance codified herein;[†] provided, however, there may be a re-evaluation prior to the end of year 10, with the opportunity for both parties to request amendments. If neither party requests such re-evaluation by means of a written notice to the other party during the last 60 days of year 10, or if the parties are unable to agree to amend the ordinance, then the franchise will continue without change for the remaining 15 years.

110.02 STATE CODE RESTRICTIONS AND LIMITATIONS. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa.

110.03 EXCAVATIONS. The Company shall have the right to excavate in any public street for the purpose of laying, re-laying, repairing or extending gas pipes, mains, conduits, and other facilities, provided that the same shall be so 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.

110.04 RELOCATION OF PROPERTY. 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. If the City has a reasonable alternative route for the street, alley or public improvements, which alternative route would not cause the relocation of the Company installations, the City shall consider but is not required to select said alternative route. If relocation of the Company facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Company's cost of relocation, the City shall consider but is not required to select the route that requires the other franchisees or users to relocate.

[†] **EDITOR'S NOTE:** Ordinance No. 01-04, adopting a natural gas franchise for the City, was passed and adopted on October 5, 2004.

110.05 RESTORATION OF PROPERTY. In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, Company shall not unnecessarily obstruct the use of the streets and, in compliance with established City standards, shall promptly restore the surface, restoring the original condition as nearly as practicable.

110.06 INDEMNIFICATION. 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, caused or occasioned, or allegedly caused or occasioned, in whole or in part, by Company's negligence in construction, reconstruction, excavation, operation or maintenance of the gas utilities authorized by the 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.

110.07 EXTENSION OF SYSTEM. The Company shall extend its mains and pipes, and operate and maintain the system in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

110.08 STANDARDS OF OPERATION. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent with applicable Iowa laws and regulations.

110.09 FRANCHISE TAX. The City reserves the right to impose a franchise fee pursuant to the Code of Iowa. The franchise fee shall only be imposed following a public hearing and adoption of an ordinance authorizing said franchise fee. The City shall work with the Company to develop a methodology and timeline to implement the franchise fee.

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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 non-exclusive franchise to acquire, construct, erect, maintain and operate in the City of Sheffield, 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 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 this 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. This franchise shall be effective for a twenty-five (25) year period from and after the effective date of this ordinance.†

111.02 RIGHTS AND PRIVILEGES. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa*, 2013, or as subsequently amended or changed.

111.03 POLES AND WIRES. 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 unreasonably 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.

111.04 TRIMMING TREES. 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 and removal of trees shall be done in accordance with current nationally-accepted safety and utility industry standards and Federal and State law, rules, and regulations.

† **EDITOR'S NOTE:** Ordinance No. 05-01-13, adopting an electric franchise for the City, was passed and adopted on May 13, 2013.

111.05 CONSTRUCTION AND MAINTENANCE. 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 facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley of such street or alley. The City and the 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 shall 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 streets, avenues, alleys 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, and shall replace the surface, restoring the condition as existed prior to the Company excavation. 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 immediate previously existing 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 UTILITY EASEMENTS. 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 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 NOT REQUIRED. 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 ten (10) years.

111.09 RELOCATION REIMBURSEMENT. 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 the City shall 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 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.

111.11 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 that is located in City right of way. The Company and City recognize the information provided will, under current Iowa law, constitute public records, but that nonetheless, some information provided will be confidential under state or federal law or both. Therefore, the City shall not release any information with respect to the location or type of equipment which the Company owns or controls in the right of way which may constitute a trade secret or which may otherwise be protected from public disclosure by state or federal law. Furthermore, the City agrees that no documents, maps or 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.

111.12 APPLICABLE REGULATIONS. 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 QUALITY AND QUANTITY. 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.

111.14 FRANCHISE FEE. There is hereby imposed upon and shall be collected from the retail electric customers of the Company receiving service, pursuant to the Tariff, located within the corporate limits of the City and remitted by the Company to the City, a franchise fee from each customer class as set forth below of the gross receipts, minus uncollectable amounts, derived by the Company from the delivery and sale of electric energy to customers within the corporate limits of the City;

- Residential Customers 0 (zero) percent
- Non-Residential Customers 0 (zero) percent

111.15 FEE EXEMPTIONS. The City may, as allowed by Iowa law, exempt customer classes of sales from imposition of the franchise fee, or modify, decrease, or eliminate the franchise fee. The City reserves the right to cancel any or all the franchise fee exemptions and also reserves the right to grant exemptions to customer classes in compliance with Iowa law and

Section 111.16 of this chapter. The City does therefore exempt the customer classes or customer groups shown below franchise fees.

- Customer classes initially exempted by the City.

111.16 MODIFYING FEES. 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 which is not less than 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.

111.17 COLLECTION OF FEES. 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 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.

111.18 IDENTIFYING CUSTOMERS. 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 60 days after receiving annexation ordinances from the City.

111.19 FRANCHISE FEE INDEMNIFICATION. 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.

111.20 FEE REMITTANCE. 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

MidAmerican shall provide City with notice at least 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.

111.21 FEE ADMINISTRATION. 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.

111.22 FEE REFUNDS. 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.

111.23 OBLIGATION TO COLLECT. The obligation to collect and remit the fee imposed by this chapter is modified or repealed if:

1. 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 ordinance, in which case the obligation of Company to collect and remit franchise fee shall be modified to zero or the lesser rate;
2. 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; or
3. 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 nonappealable 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 ordinance 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.

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

1. Any of the 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.
2. 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.
3. 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.

111.25 MANAGEMENT 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.

111.26 TERMINATION. Either City or Company ("party") may terminate this franchise if the other party shall be 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 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.

CHAPTER 115

CEMETERY

115.01 Definition
115.02 Trusteeship
115.03 Rules and Regulations
115.04 Records
115.05 Sale of Interment Rights

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115.01 DEFINITION. The term “cemetery” means the Sheffield Cemetery, which is a municipal cemetery under the provisions of Chapter 523I of the *Code of Iowa* and which shall be operated under the provisions of Chapter 523I of the *Code of Iowa* and this chapter.

(Code of Iowa, Sec. 523I.501)

115.02 TRUSTEESHIP. Pursuant to Section 523I.502 of the *Code of Iowa*, the City Council hereby states its willingness and intention to act as the trustee for the perpetual maintenance of the cemetery property.

(Code of Iowa, Sec. 523I.502)

115.03 RULES AND REGULATIONS. The Council shall operate the cemetery in accordance with the rules and regulations therefor, which shall be adopted and amended from time to time by resolution of the Council. Such rules and regulations may cover the hours of opening and closing, the use of roads within the cemetery, the hours for burials, the decorating of graves and the fees for services rendered in connection with interments or the placing of markers. The rules shall specify the cemetery’s obligations in the event that interment spaces, memorials, or memorializations are damaged or defaced by acts of vandalism. Any veteran, as defined in Section 35.1 of the *Code of Iowa*, who is a landowner or who lives within the City shall be allowed to purchase an interment space and to be interred within the cemetery. In addition, any veteran who purchases an interment space within the cemetery shall be allowed to purchase an interment space for interment of the spouse of the veteran if such a space is available, and the surviving spouse of a veteran interred within the cemetery shall be allowed to purchase an interment space and be interred within the cemetery if such a space is available.

(Code of Iowa, Sec. 523I.304)

115.04 RECORDS. It is the duty of the Clerk to make and keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:

(Code of Iowa, Sec. 523I.311)

1. Sales or Transfers of Interment Rights.
 - A. The name and last known address of each owner or previous owner of interment rights.
 - B. The date of each purchase or transfer of interment rights.
 - C. A unique numeric or alphanumeric identifier that identifies the location of each interment space sold by the cemetery.
2. Interments.
 - A. The date the remains are interred.

- B. The name, date of birth, and date of death of the decedent interred, if those facts can be conveniently obtained.
- C. A unique numeric or alphanumeric identifier that identifies the location of each interment space where the remains are interred.

115.05 SALE OF INTERMENT RIGHTS. The sale or transfer of interment rights in the cemetery shall be evidenced by a certificate of interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price. The agreement for interment rights shall disclose all information required by Chapter 523I of the *Code of Iowa*. The payment of all fees and charges shall be made at the office of the Clerk where receipts will be issued for all amounts paid. Said fees and charges shall be based upon the charges as established by the Council.

(Code of Iowa, Sec. 523I.310)

115.06 PERPETUAL CARE. The Council, by resolution, shall accept, receive, and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of interment space sales or permanent charges made against interment spaces which has been set aside in a perpetual care fund. The assets of the perpetual care fund shall be invested in accordance with State law. The Council, by resolution, shall provide for the payment of interest annually to the appropriate fund, or to the cemetery, or to the person in charge of the cemetery, to be used in caring for or maintaining the individual property of the donor in the cemetery or interment spaces that have been sold with provisions for perpetual care, all in accordance with the terms of the donation or bequest or the terms of the sale or purchase of an interment space and Chapter 523I of the *Code of Iowa*.

(Code of Iowa, Sec. 523I.503, 523I.507 & 523I.508)

115.07 CEMETERY LOTS WITHOUT PERPETUAL CARE. Owners of lots or other interested persons may secure perpetual care on lots or parts of lots in the older portions of the cemetery not having perpetual care by the payment to the City of the perpetual care charges at the rates specified in the rules and regulations.

115.08 ANNUAL CARE. An annual care charge, as specified in the rules and regulations, shall be made by the City on those lots in the older portions of the cemetery which are not at present under perpetual or endowed care. The City reserves the right to refuse to furnish maintenance service, or to permit the erection of any monumental work on those lots not under perpetual or endowed care or when the annual care on such lot has not been paid in advance.

115.09 CASKET FOUNDATIONS. Burials of caskets in the cemetery shall be enclosed in a concrete box or in an outer wall of steel or concrete, or shall have some other foundation and support structure which will provide support equivalent to a concrete vault. The Council shall determine whether the foundation and support structure is sufficient.

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