

CHAPTER 111

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111.01 GRANT OF FRANCHISE. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, its successors and assigns (“Company”), the nonexclusive right, franchise, and privilege for a period of twenty-five (25) years from and after the effective date of the ordinance codified in this chapter[†], to acquire, construct, erect, operate, and maintain in the City, as provided herein, the necessary facilities for the distribution, transmission, and sale of electric energy for public and private use, and to construct and maintain over, upon, across and under the streets, highways, avenues, alleys, bridges and public places the necessary facilities, fixtures and equipment for such purposes; provided, however, based on provisions of Section 111.11 of this chapter, the franchise, at the option of the City, may be terminated on its fifth or tenth anniversary.

111.02 COMPETITIVE ELECTRIC SERVICES. Nothing in this agreement shall be construed or interpreted to limit or prohibit the City, residents or businesses of the City from participating in or enjoying any benefits and protections of a restructured electric utility industry to the extent that such opportunities, benefits and protections are made available generally to consumers of competitive electric services under State and Federal rules, regulations and laws.

111.03 MAINTENANCE OF FACILITIES. The facilities, fixtures, and equipment for the distribution, transmission, and sale of electric energy within the City shall be placed and maintained so as not to unnecessarily or unreasonably interfere with travel on the streets, highways, avenues, alleys, bridges, and public places in the City, nor shall such facilities, fixtures, and equipment unnecessarily or unreasonably interfere with the proper use of the same, including ordinary drainage, or with the sewer or water systems, underground pipe, or other property of the City. In the event that facilities, fixtures, and equipment of the Company located within the public right-of-way must be relocated because of paving, road construction, or road reconstruction, sewer or water systems construction or reconstruction, or the construction or reconstruction of public drainage systems or similar public works, such relocation, at the written request of the City, shall be timely completed by the Company at its cost. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Company to compensate the Company for the costs of relocation. The Company shall obtain a permit for the construction of facilities, fixtures, and equipment within the public right-of-way. The City shall advise the Company of any conflicts such construction may have with planned or anticipated public improvements, but failure of the City to so advise the Company will not relieve the Company of its obligations under this section. Work that does

[†] **EDITOR’S NOTE:** Ordinance No. 583, adopting an electric franchise for the City, was passed and adopted on September 5, 2000.

not require cutting or removing of pavement or sidewalks located within the public right-of-way, and is classified as routine service or maintenance work, replacement services and emergency repairs are exempted from the permitting requirements.

111.04 LOCATION. The City reserves to itself the right to determine upon which side of a street new Company's facilities, fixtures, and equipment shall be located, but shall only reserve this right in those instances where there is sufficient right-of-way to utilize either side of the paved or otherwise maintained street surface. The City also reserves the right to determine on which side of a street replacement facilities and fixtures shall be located when said replacement is in conjunction with public works projects referenced in Section 111.03 of this chapter. If the City determines that there is insufficient right-of-way, then the Company will be responsible for obtaining necessary access. The Company shall remove its above ground facilities, fixtures and equipment as they are abandoned. Any below ground abandoned facilities, fixtures, and equipment that become in conflict with public improvements or private improvements approved by the City, excluding equipment or services that were customer owned or installed, shall be removed at the Company's expense.

111.05 RIGHT OF CITY TO REGULATE USE OF PUBLIC PROPERTY. The Company agrees for and on behalf of itself, its lessees, successors, and assigns that it shall at all times be subject to all rights, power and authority now or hereafter possessed by the City, and all subsequent amendments thereto, to regulate the manner in which the Company shall use the streets, alleys, avenues, bridges, and public places of the City, when not inconsistent with the authority and rights granted Company in this chapter and the rules and regulations of the Iowa Utilities Board.

111.06 INDEMNIFICATION OF CITY. The Company shall indemnify and hold the City harmless for all loss, claims, or damages on account of injury to or death of persons, or injury to property arising from the Company's acquisition, construction, erection, maintenance, or operations of its facilities, fixtures or equipment within the City. The Company shall, at its own expense, defend any action at law, in equity, or in an administrative proceedings brought against the City on account of Company's acquisition, construction, erection, maintenance, or operation of its facilities, fixtures, or equipment within the City. The Company shall not be obligated, however, 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.

111.07 STANDARDS OF OPERATION. In addition to the obligations of the Company under this franchise, the Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

111.08 LOCATION OF ELECTRIC LINES. In the event of any construction or reconstruction of any electric lines within the City, the Company shall consider all options for the construction or reconstruction. The options shall include relocation, overhead construction, underground construction and other options that may apply, provided that the Company shall comply with City subdivision ordinances which are not in conflict with Iowa Utilities Board rules and regulations or State and Federal law, requiring underground construction of utilities in new subdivisions with costs to be governed by Company tariffs in effect at the time of construction.

111.09 TRIMMING TREES. The Company shall have the right to prune or remove at Company expense any trees extending into any street, alley or public ground as reasonably

necessary to maintain electric safety and reliability and to prevent limbs, branches or trunks from interfering with the wires and facilities of the Company.

111.10 EMINENT DOMAIN. For the term of the franchise the Company is granted the right of eminent domain, the exercise of which is subject to the sole discretion and approval of the Council upon application by the Company.

111.11 TERMINATION. Section 111.01 of this chapter notwithstanding, the City may terminate this franchise agreement on the fifth anniversary of the effective date of the franchise by giving the Company notice in writing of its intent to terminate the franchise agreement at least one year prior to such anniversary. Prior to terminating the franchise, the City shall conduct a public hearing and shall at three separate regular Council meetings pass and adopt an ordinance to terminate the franchise. Failure to give such notice abrogates the right of the City to terminate the franchise agreement on the fifth anniversary date, provided, however, that in the event notice is given, public hearing conducted and ordinance passed and adopted, the franchise agreement shall terminate on the fifth anniversary unless the parties agree to extend the term of the franchise agreement on mutually satisfactory terms and conditions. The City may terminate the franchise agreement on the tenth anniversary of the effective date of the agreement by giving the Company notice in writing of its intent to terminate the franchise agreement at least one year prior to such anniversary. Prior to terminating the franchise the City shall conduct a public hearing and shall at three separate regular Council meetings pass and adopt an ordinance to terminate the franchise. Failure to give such notice abrogates the right of the City to terminate the franchise agreement on the tenth anniversary date, provided, however, that in the event notice is given, public hearing conducted and ordinance passed and adopted, the franchise shall terminate on the tenth anniversary unless the parties agree to extend the term of the franchise agreement on mutually satisfactory terms and conditions.

111.12 TERMINATION ON DEFAULT. If the Company shall be in default in the performance of any of the terms and conditions of this chapter and shall continue in default for more than sixty (60) days after receiving notice from the City of such default, and the default is not contested by the Company, the City may, following a public hearing, by ordinance passed and adopted at three separate regular Council meetings, terminate all rights granted under this chapter to the Company unless MidAmerican Energy Company has made substantial progress toward curing the default. The Company shall not be considered to have defaulted on any terms or conditions of this chapter if the alleged default is the result of the actions of a third party.