

CHAPTER 48**GAS FRANCHISE**

48.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the “Company,” and its successors and assigns, the non-exclusive right and franchise to acquire, construct, erect, maintain and operate in the City of Windsor Heights, Iowa, hereinafter called the “City,” a system for the transmission and distribution of natural gas 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 natural gas to the City and its inhabitants. This franchise grants no rights for communications signals other than signals necessary for the operation and maintenance of the Company’s natural gas system described herein. Pursuant to Section 364.2(4)(e) of the Code of Iowa, 2003, 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 rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa, 2003, or as subsequently amended or changed.

48.02 TERM OF FRANCHISE. This franchise shall remain in effect for a period of twenty-five (25) years from the effective date of this ordinance. The City may request amendments to the franchise by providing to the Company written notice of the City’s desire to amend said franchise. Such notice shall be given at least one hundred eighty (180) days prior to the expiration of the fifteenth (15th) or twentieth (20th) year of the agreement. If the parties are unable to agree to amend this franchise within ninety (90) days after such notice is given, the City may terminate this franchise agreement. Failure to amend or terminate the franchise at the first option does not render invalid the City’s second option to amend or terminate the franchise.

48.03 REPRESENTATIONS OF COMPANY. The Company agrees to provide, construct, install and maintain its entire system pursuant to Iowa Utilities Board rules and regulations in such condition that it will furnish safe, adequate, efficient and continuous service. The Company’s system shall be of sufficient capacity to supply all reasonable demands of the City and consumers within the City and to provide a reasonable reserve for emergencies. All natural gas service shall be supplied through a meter or other means that shall accurately measure the amount of natural gas supplied to a consumer. All gas pipes, mains, conduits, and other gas facilities shall be placed and maintained so as not to interfere unnecessarily with travel on the City’s streets, alleys, and public places or with the proper use of the same, including ordinary drainage, or with the construction or use of the sewers, pipes, drains, and other property of the City, or the flow of water therefrom.

48.04 LOCATION OF FACILITIES. The Company shall not locate any new natural gas mains, pipes, or conduits within the City in the public right-of-way without the prior approval of the City; however, the City shall not unreasonably withhold approval of Company's location of Company facilities within public right-of-way. The City reserves to itself the power to impose reasonable regulations on the Company's use of streets. The City reserves the right, by resolution or otherwise, to designate the location of any new natural gas distribution facilities, which designation shall not conflict with Company's adherence to its design standards and such utility regulation as governs its construction of facilities. The City shall work with the Company to ensure, to the extent practicable, that the Company may locate its facilities in the least-cost manner consistent with its design standards and utility regulation and consistent with the City's desire to promote the public safety and welfare and protect public 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.

48.05 EXCAVATIONS AND OTHER WORK. In making excavations or performing other work in the City, the Company shall proceed with such work so as to cause the least possible inconvenience to the public. The Company shall properly protect, according to safety standards generally accepted at the time of placement, all excavations and obstructions by proper shoring, surface plates, barricades, warning lights, and such other or additional devices as circumstances may warrant. The Company shall provide the City with twenty-four (24) hours' notice to the City prior to commencing work that requires the excavation of the traveled portion of the streets, avenues, or alleys. Emergency repairs are exempted from this notification requirement. The Company shall notify the City of the emergency repair following the completion of said emergency repairs. If in the opinion of the City's Public Works Department such excavation or obstruction is not properly and safely protected, the City's Public Works Department shall notify the Company and the Company shall immediately comply with such reasonable instructions not in conflict with accepted utility safety rules and practices. Company excavations within the public rights-of-way, public areas, and private property within the City shall be refilled within a reasonable time thereafter consistent with accepted utility safety rules and practices. Pavements, sidewalks, curbs, gutters, vegetation, or landscape opened, disturbed, or damaged by the Company shall be promptly restored and replaced with like materials by the Company at its own expense and left in a condition as good as or better than before. In the event that the Company fails to comply with this section, the City may do such work as may be needed to properly prepare such pavements, sidewalks, curbs, gutters, vegetation, or landscape, and the cost of such repairs shall be repaid to the City by the Company.

48.06 RATES. The Company shall supply natural gas to consumers within the City at just and reasonable rates. It is recognized that under the statutes of the State of Iowa, the Iowa Utilities Board of the Iowa Department of Commerce is vested with legal authority to supervise, fix or change rates and charges authorized to be charged by the Company to natural gas consumers. In the event rates or charges in general, or any class or type of rate or charge shall, during the term of this franchise, cease to be regulated by any state or federal agency, the City Council reserves the right to regulate such rates within the City with the costs of such regulation to be borne by the Company, as a part of the Company's cost of doing business and reflected in its rates.

48.07 ANNUAL REPORT. Upon request by the City, the Company shall file with the City Council a true copy of the annual report of the Company pertaining to the operation or conduct of the business of the Company under this franchise. The report may be the same as the Company shall have prepared for such year in the ordinary course of business of the Company and filed with the Iowa Utilities Board. In the event the City Council is authorized by state law and undertakes to regulate rates for service within the City, the Company shall provide all information necessary to permit the City Council to set just and reasonable rates.

48.08 INSPECTION OF COMPANY FACILITIES. The Company shall inspect its natural gas facilities used to provide natural gas service under this franchise in compliance with standards established by federal and state laws, rules, and regulations. The replacement or repair of natural gas facilities resulting from these inspections shall be completed within a reasonable period of time thereafter. Hazardous conditions shall be corrected promptly.

48.09 COMPLIANCE WITH CITY ORDINANCES. The Company shall at all times during the term of this franchise conform with, submit to, and carry out the provisions of any and all valid ordinances in effect during the term of this franchise, to the full extent allowed by law and to the extent such provisions are not in conflict with this franchise agreement: (a) relating to any person, firm or corporation supplying and distributing natural gas to the City or consumers within the City that are now in force or may hereafter be lawfully enacted; (b) relating to the use of City right-of-way; or (c) relating to the City's exercise of its police or regulatory powers.

48.10 FRANCHISE FEE. In consideration of the right to construct and maintain such facilities and equipment along, upon, across and under the streets, highways, avenues, alleys, bridges and public places of the City, there is hereby imposed upon the Company by the City, and the Company agrees that there shall be collected from Company's retail customers, in accordance with Company tariffs on file with and approved by the Iowa Utilities Board, and remitted by the Company to the City, a franchise fee in an amount up to and including five percent (5%) of the gross receipts derived by the Company from the transmission, distribution, transportation or sale of natural gas to retail customers within the corporate limits of the City (excluding, however, the sale of natural gas to the City for its own use), commencing with gross receipts received on or after the effective date of this franchise. The specific percentage levels for the franchise fee shall be established by separate ordinance, and may be different for diverse customer classes.

The obligation to pay the fee imposed by this section is modified if: (a) the City permits any other person to sell natural gas to City consumers and pay a franchise fee or its lawful equivalent at a lesser rate than provided in this section, in which case the Company shall collect from its customers and pay at the lesser rate; or (b) if the City adds additional territory by annexation or consolidation and is unable lawfully to impose the franchise fee upon any person selling natural gas to consumers within the additional territory, in which case the franchise fee on the revenue from sales by the Company in the additional territory shall be equal to that of the lowest fee being paid by any other person selling or transmitting natural gas within the additional territory.

48.11 EXEMPTION FROM PAYMENT OF FRANCHISE FEE. If the franchise fee or the Company's ability to collect the fee from its customers is adjudged to be unlawful, invalid, or unconstitutional by final non-appealable regulatory or judicial action, the Company shall be relieved of its obligation to collect from its customers and to remit to the City the franchise fee, the franchise fee shall be deemed to be of no further force and effect as of the date of such adjudication, and the City may request amendments to the franchise. If a refund to customers by the Company is ordered by such final non-appealable adjudication, the City agrees to repay to the Company such fees as are ordered to be refunded. If the parties are unable to agree to amend the franchise within a reasonable time after the City requests amendments thereto, the City may terminate the franchise.

48.12 REMITTANCE OF FRANCHISE FEE. The Company shall remit the franchise fee to the City Treasurer quarterly on or before May 1, August 1, November 1, and February 1 of each year for the three-month periods ending March 31, June 30, September 30, and December 31, respectively.

48.13 FORFEITURE OF FRANCHISE; CURE OF DEFAULTS. The violation of any material portion of this franchise by the Company or its successors or assigns, or its failure to promptly perform any of the provisions of this franchise, shall be cause for forfeiture of this franchise and the termination of all rights under this franchise. Such forfeiture shall be accomplished after written notice to the Company by the City, and a continuation of the violation, failure, or default specified in the notice, for at least sixty (60) days from the date the notice was served upon the Company.

If either party determines that there is a default under this franchise, the other party shall be given a written notice describing the default, stating whether a forfeiture or termination of the franchise will be sought, and where the default is curable, providing a reasonable time to cure the default, which shall be not less than thirty (30) or more than one hundred eighty (180) days.

48.14 RESERVATION OF HOME RULE POWERS. This ordinance is intended to be and shall be construed as consistent with the reservation of local authority contained in the Twenty-Fifth Amendment to the Iowa Constitution granting home rule powers to municipalities. To such end, any limitation on the power of the City is to be strictly construed, and the City reserves to itself the right to exercise all power and authority to regulate and control its local affairs, and all

ordinances and regulations of the City shall be enforceable against the Company unless, and only to the extent, they are irreconcilable with any rights granted to the Company under this ordinance.

48.15 MAPS OF DISTRIBUTION SYSTEM. Upon reasonable request, Company shall provide to the City Engineer, on a project specific basis, information indicating the horizontal location, in compliance with One-Call regulation, relative to the boundaries of the right-of-way, of all natural gas equipment which it owns or over which it has control and which is located in the project right-of-way. Project-specific mapping data shall be provided with the specificity and if reasonably possible in the format requested by the City Engineer. Mapping information provided to the City by the Company shall be for the exclusive use of the City in administering the use and occupancy of the public rights of way within the city and shall not be provided to or relied on by any person for any other purpose. At the request of the Company, any information requested with respect to the location or type of equipment the Company maintains or plans to install in the right-of-way that qualifies or is designated by the Company as proprietary information or as a trade-secret information under Iowa Code Sections 550 or qualifies to be kept confidential under Iowa Code Section 22.1 *et seq.*, shall be treated as confidential information or a trade secret and shall not be released to any party by the City.

48.16 CUSTOMER SATISFACTION SURVEYS. At the request of the City, the Company shall provide the City with summaries of the findings of its annual and other periodic customer satisfaction surveys and research. The Company also agrees to respond promptly and fully to the City's concerns and questions about specific service quality and customer satisfaction matters as and when they are communicated to the Company.

48.17 EXERCISE OF EMINENT DOMAIN POWERS. The Company shall have the power to condemn private property for the purpose of providing natural gas utilities to the extent necessary to serve a public use and in a reasonable relationship to an overall plan of transmitting or delivering natural gas in the public interest upon approval of the City Council. The Company must establish the necessity for each taking of private property, and when so established, the City Council may approve the condemnation of the private property by resolution. Any such exercise of the eminent domain powers shall be conducted in accordance with the Windsor Heights Municipal Code.

48.18 INDEMNITY. The Company shall indemnify and hold the City, and its officers, agents, and employees, free and harmless from any and all claims, demands, lawsuits, liability, and damages whatsoever, including all costs and expenses incident thereto, for any and all loss, damage, injury, or death caused or occasioned, in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the natural gas 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.

48.19 LEASE OR ASSIGNMENT OF FRANCHISE. This franchise shall apply to, inure to, and

bind the parties hereto and their successors.

48.20 SEVERABILITY; EFFECT OF REGULATORY ACTIONS. If any section, provision, or part of this franchise shall be invalidated by legislative action or by final, non-appealable regulatory or judicial adjudication, such action or adjudication shall not affect the validity of any section, provision, or part hereof that can be given effect without the invalid section, provision, or part. In the event of such ruling or action, however, either party may notify the other party in writing of its desire to renegotiate or amend this agreement. If the parties cannot agree to amend the ordinance within one hundred eighty (180) days of receipt of the written notification, either party may, but is not obligated to, terminate this agreement.

48.21 PUBLICATION OF ORDINANCE AND NOTICE; ELECTION UPON SUBMISSION OF VALID PETITION; EFFECTIVE DATE. Upon adoption of this ordinance by the City Council, the City Clerk shall publish this ordinance, together with a notice as hereafter provided, in a newspaper of general circulation in Polk County, all as required by Iowa Code Section 380.7. If at any time within twenty (20) days after publication of notice of hearing on this ordinance a petition is filed with the City Clerk in the manner provided by Iowa Code Section 362.4, asking that the question of passage of this ordinance be submitted to the registered voters of the City, then the City Council shall direct the county commissioner of elections to call a special election upon the question of passage of this ordinance. This ordinance shall take effect as provided in the notice to be published by the City Clerk, which shall read as follows:

NOTICE

Under the provisions of Section 364.2 of the Iowa Code, Windsor Heights City Council Ordinance No. 05-02, granting an natural gas franchise to MidAmerican Energy Company, shall take effect on March 28, 2005, provided that MidAmerican Energy Company shall have filed with the City Clerk a written acceptance of the franchise granted pursuant to said Ordinance. Provided, however, that if prior to March 28, 2005, a valid petition under Section 362.4 of the Iowa Code requesting submission to the voters of the proposal to grant said franchise is submitted to the City Clerk, then said Ordinance shall not take effect unless it is approved by an affirmative majority vote of the electors. Upon the county election commissioner's certification of an affirmative majority vote of the electors with respect to the proposal to grant the natural gas franchise as provided in said Ordinance, said Ordinance shall take effect.