

CHAPTER 116

ELECTRIC TRANSMISSION FRANCHISE

116.01 Grant
116.02 Indemnification
116.03 Excavations
116.04 Relocation
116.05 Modern System
116.06 Vegetation Management
116.07 Continuous Service
116.08 Non-Exclusivity

116.09 Undergrounding
116.10 Severability
116.11 Term of Agreement
116.12 Publication Expenses
116.13 Repeal of Conflicting Ordinances
116.14 Acceptance
116.15 Closing

116.01 GRANT. There is hereby granted to the Company the right and franchise to acquire, construct, reconstruct, erect, maintain, operate and remove in the City a transmission system for electric power and the right to erect and maintain the necessary poles, lines, wires, conduits, and other appliances and such additional supporting equipment for the transmission of electric current and telecommunications (collectively, the “Facilities”) along, under and upon the streets, avenues, alleys and public places in the City; also the right to erect and maintain upon the streets, avenues, alleys and public places, transmission lines through the City for the period of twenty-five (25) years;[†] also the right of eminent domain as provided in Section 364.2 of the *Code of Iowa*.

116.02 INDEMNIFICATION. The Facilities shall be placed and maintained so as not to unnecessarily interfere with the travel on the streets, avenues, and public places in the City nor unnecessarily interfere with the proper use of the same, including ordinary drainage, or with the sewers, underground pipe and other property of the City, and the Company shall hold the City free and harmless from all damages arising from the negligent acts or omissions of the Company in the erection or maintenance of the transmission system.

The Company shall indemnify, defend and hold City harmless from and against any and all claims, demands, losses, damages, cost and expenses (including, but not limited to, court costs, fines, penalties and reasonable attorneys’ fees, but excluding consequential or indirect damages), judgements, liabilities and causes of action of any nature whatsoever resulting from or relating to its negligent acts or omissions in the use or occupancy of the streets, avenues, alleys and public ways in the City, a default of this franchise, or arising in any manner out of the negligent acts or omissions of its agents, employees, or contractors in connection with same, or with respect to the violation of any laws, including without limitation, any environmental laws.

[†] **EDITOR’S NOTE:** Ordinance No. 22-07, adopting an Electric Transmission Line Franchise for the City, was passed and adopted on March 1, 2022.

The requirements of indemnification shall not be a waiver of any right that the City would have to assert defenses on its own behalf under State or federal law. To the extent authorized by law, in consideration of this indemnification, the City will affirmatively assert all applicable defenses, including without limitation those of governmental immunity, that it has in any given circumstance that may give rise to a claim for indemnification under this section. The Company's indemnification obligations under this franchise shall survive the expiration, cancellation, or termination of this franchise in accordance with applicable statutes of limitation in force within the State of Iowa.

116.03 EXCAVATIONS. In making any excavations in any street, alley, or public place, Company, its successors and assigns, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, and shall back fill all openings in such manner as to prevent settling or depressions in surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practicable and, if defects are caused, shall repair the same. Except for events of an emergency, Company shall give reasonable advance notice to the City before excavating in streets, avenues, alleys, or public places within the City.

In making excavations in the streets, avenues, or alleys the Company shall proceed with such work as reasonably necessary to protect the public. The Company shall properly protect the work, according to safety standards generally accepted at the time of placement.

As soon as reasonably possible after use, any trenches for excavations which the Company has opened shall be filled. All backfilling in streets, avenues, or alleys will be according to City specifications. Pavements, sidewalks, curb and gutters or other portions of streets, avenues, or alleys opened, disturbed or damaged by Company shall be promptly restored and replaced with like materials by the Company at its own expense and left in as good condition as before. In the event like replacement materials are not available, the Company shall notify the City which must approve the use of any alternate materials. In the event the company fails to restore the work area in accordance with this section as promptly as is practical, the City and Company shall meet within 10 days of written notice. If the parties agree in writing, the City may complete the work at the expense of the Company.

If other entities are party to the excavation the costs of restoration shall be apportioned to all entities using or enjoying the benefits of the excavation. In cases where a cut or disturbance is made in a section of street paving or

sidewalks, but causes greater disturbance than simply to the area cut, rather than replace only the area cut, the Company shall replace that area of disturbance, which in no event shall exceed the panel(s) disturbed. Whenever the City shall pave or repave any street or shall change the grade line of any street or alley or shall construct or reconstruct any conduit, water main service or water connection, sewer or other City owned public works, it shall be the duty of the Company, except where easements of record are held by the Company, when so ordered by the City, to relocate its lines and other property in the streets, avenues, or alleys at its own expense so as to conform to the established grade or line of such street or alley and so as not to unnecessarily interfere with the public improvements so constructed or reconstructed. If the grade line change is being done for a third-party project, the Company shall receive payment for the cost of such relocation as a precondition to relocating its existing facilities or equipment.

All entities owning and operating facilities in the public right-of-way, including City-owned and operated facilities, shall be treated in a neutral manner.

116.04 RELOCATION. Except as provided herein below, the Company shall, at its cost and expense, locate and relocate its Facilities in, on or over any public street or alley in the City in such a 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 orders or requests the Company to relocate its Facilities for, or causes the need for relocation for public or private development, then the primary benefit of a commercial or private project, or as the result of the initial request of a commercial or private developer or other non-public entity, the Company shall receive payment for the costs of such relocation as a precondition to relocating its Facilities. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause the Company unreasonable additional expense in exercising its authority under this section. The City shall also provide a reasonable alternate location for the Company's Facilities. The City shall give the Company reasonable advance written notice to vacate a public right-of-way. Vacating a public right-of-way shall not deprive the Company of its right to operate and maintain existing Facilities until the reasonable cost of relocating the same are paid to the Company.

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, or 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, the City shall not release any Information without prior consent of the Company and shall return the Information to Company upon request. 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. In the event any action at law, in equity, or administrative is brought against the City regarding disclosure of any document which the Company has designated as a trade secret or as otherwise protected from disclosure, the Company shall cooperate with the City in its defense of nondisclosure.

116.05 MODERN SYSTEM. The system authorized by this ordinance shall be kept in an operable condition consistent with good utility practice and the reliability standards of the North American Electric Reliability Council (NERC). The Company shall construct and maintain its transmission facilities in accordance with applicable law. The Company will maintain compliance with State and federal regulatory standards.

116.06 VEGETATION MANAGEMENT. To promote public safety in proximity to its Facilities and to maintain electric reliability, the Company is authorized and empowered to remove, cut, trim, destroy, or otherwise control any tree, shrub, brush, bush, or any parts thereof located within or extending into any street, alley, right-of-way or public grounds. The foregoing vegetation management shall be completed in accordance with the most current nationally accepted safety and utility industry standards, as revised and updated from time to time.

116.07 CONTINUOUS SERVICE. Service to be rendered by the Company under this franchise shall be continuous unless prevented from doing so by fire, Acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Company's equipment, and in such event service shall be resumed as promptly as reasonably possible in accordance with Good Utility Practice, as defined by FERC Order 888 in Section 1.14 of the Pro Forma Open Access Transmission Tariff.

116.08 NON-EXCLUSIVITY. The franchise granted by this ordinance shall not be exclusive.

116.09 UNDERGROUNDING. The City may request estimates for the undergrounding of replacement lines, upgrades or new lines, including lines to be adjusted for road moves or for other specific projects. When requested, the Company will provide to the City two estimates: 1) an estimate for the cost of the project with overhead construction, and 2) an estimate for the cost of the project with underground construction. The City will have no more than 60 days from the estimate date to determine if it wants the line built overhead or placed underground. If the City chooses underground construction for such project, the City will be responsible for the incremental cost of undergrounding, if and to the extent, such costs are not already part of or included in a precondition payment for relocation pursuant to Section 116.04. The incremental cost of undergrounding is defined as the differential between the estimate for underground construction and the estimate for

overhead construction. Upon receipt of the City's payment for the incremental cost of undergrounding, the Company will install the underground facilities. The Company reserves the right to bill City for the amount that the incremental cost associated with installation exceeds its estimate. The City reserves the right to a refund of overpayment if the incremental costs are less than the amount billed in the estimate. If the City wishes to have a line not scheduled for replacement or upgrade placed underground, the City shall contact the Company to make such a request. The City shall cover all costs related to this work. If undergrounding of transmission lines requires entities interconnecting with the Company to make adjustments to their electrical systems, the City bears the responsibility of communication with those entities and, if it chooses, the cost of converting their facilities from overhead to underground. The Company reserves the right to review all the City's communications with the affected entities.

116.10 SEVERABILITY. 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.

116.11 TERM OF AGREEMENT. The term of the franchise granted by this ordinance and the rights granted thereunder shall continue for the period of twenty-five (25) years from and after written acceptance by the Company.

116.12 PUBLICATION EXPENSES. The expense of the publication of this ordinance shall be paid by the company.

116.13 REPEAL OF CONFLICTING ORDINANCES. All ordinances, or parts of ordinances, insofar as they are in direct conflict therewith, are hereby repealed.

116.14 ACCEPTANCE. The franchise granted by this ordinance shall be conditioned upon acceptance by the Company in writing. The acceptance shall be filed with the City Clerk within ninety (90) days from the passage of this ordinance.

116.15 CLOSING. This ordinance sets forth and constitutes the entire agreement between the Company and the City with respect to the rights contained herein, and may not be superseded, modified or otherwise amended without the approval and acceptance of the Company. In no event shall the City act in any manner, by ordinance or otherwise, to effectively unilaterally amend this agreement. Upon acceptance by the Company, this ordinance shall supersede, abrogate and repeal any prior electric system ordinance between the Company and the City as of the date this ordinance is accepted by the Company.

(Ch. 116 – Ord. 22-07 – Jun. 22 Supp.)