

## CHAPTER 111

### ELECTRIC FRANCHISE

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**111.01 FRANCHISE GRANTED.** There is hereby granted to Interstate Power and Light Company, hereinafter referred to as the “Company,” its successors and assigns, the right and non-exclusive franchise to acquire, construct, reconstruct, erect, maintain and operate in the City of Creston, Iowa, hereinafter referred to as the “City,” works and plants for the manufacture and generation of electricity and a distribution system for electric light, heat and power and the right to erect and maintain the necessary poles, lines, wires, conduits and other appliances for the distribution of electric current along, under and upon the streets, alleys and public places or public grounds (excluding parks) in the said City to supply the City and the inhabitants of said City with electric light, heat and power for the period of twenty-five (25) years.<sup>†</sup> The City Council reserves to itself the right to extend this franchise to parks at the request of the Company.

The Company is granted the right to exercise powers of eminent domain as provided in Section 364.2 of the *Code of Iowa*. At least thirty (30) days prior to exercising its right to eminent domain, the Company shall notify the City of its intent to exercise such right.

**111.02 PLACEMENT.** The poles, lines, wires, circuits, and other appliances shall be placed and maintained so as not to unnecessarily interfere with the travel on said streets, alleys, 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. The said Company, its successors and assigns shall hold the City free and harmless from all damages to the extent arising from the negligent acts or omissions of the Company in the erection or maintenance of said system.

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<sup>†</sup> **EDITOR’S NOTE:** Ordinance No. 21-197, adopting an electric franchise for the City, was passed and adopted on April 20, 2021.

**111.03 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 practical and if defects are caused shall repair the same. 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 which in no event shall exceed the panel or panels 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.

**111.04 RELOCATIONS.** The Company shall, at its cost, 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 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 thereof, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City requires the Company to relocate facilities in the public right of way that have been relocated at Company expense at the direction of the City during the previous three years, the reasonable costs of such relocation will be paid by the City.

If the City orders or requests the Company to relocate its existing facilities or equipment for any reason other than as specified above, or as the result of the initial request for a commercial, private or other non-public development, the Company shall receive payment for the cost of such relocation as a precondition to relocating its existing facilities or equipment.

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 alternative location for the Company's facilities as part of its relocation request.

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.

**111.05 STREET VACATION.** At least thirty (30) days prior to the City abandoning or vacating any street, avenue, alley or public ground, the City shall notify the Company of any such vacation. If the Company notifies the City within such thirty (30) day timeframe that the Company has electric facilities, the City shall grant the Company a utility easement for said facilities.

**111.06 VEGETATION MANAGEMENT.** The pruning and removal of trees/vegetation shall be done in accordance with current nationally accepted safety and utility industry standards and federal, State, and local laws, rules, and regulations. 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 performed in accordance with Company's then current line clearance vegetation plan as filed and approved by the Iowa Utilities Board, as well as all applicable codes and standards referenced therein, and any City ordinances regarding the pruning of trees, provided such ordinances are not in conflict with Company's line clearance vegetation plan and are mutually agreed to in advance by both the Company and the City.

**111.07 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 tariffs made effective by the Iowa Utilities Board or its successors, and Iowa law. The Company will maintain compliance with Iowa Utilities Board regulatory standards for reliability.

**111.08 ACTS OF GOD.** 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 quickly as is reasonably possible.

**111.09 FRANCHISE FEE.** There is hereby imposed a franchise fee of one percent (1%) upon the gross revenue generated from sales of electricity by the Company within the corporate limits of the City. The Company shall begin collecting the franchise fee upon receipt of written approval of the required tax rider tariff from the Iowa Utilities Board.

The amount of the franchise fee shall be shown separately on the utility bill to each customer. The Company shall remit franchise fee receipts to the City no more frequently than on or before the last business day of the month following each calendar year quarter.

The franchise fee shall be applied to all customers' bills in accordance with Iowa Code Chapter 364.2(f), and 423B.5, as amended, and subject to any modifications or the repeal of same. The Company shall not, under any circumstances be required to return or refund any franchise fees that have been collected from 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.

Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the City limits, the City Clerk shall provide written notification to Company of such annexation or change in the limits of said City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in the limits of the City, commencing no later than sixty (60) days from the effective date of the Company receiving written notification from the City of the annexation.

**111.10 TERM AND ACCEPTANCE.** 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. The acceptance shall be filed with the City Clerk within ninety (90) days from passage of this ordinance.

**111.11 TERMINATION.** The City expressly reserves the right to terminate the franchise granted herein if the Company breaches any of the provisions of this franchise; provided, however, there shall be no termination if the Company shall correct the breach within sixty (60) days written notice provided by the City, or if the breach is the result of the Company's compliance with State or federal rules, regulations or law.

**111.12 INDEMNIFICATION.** To the extent allowed by law, 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 to the extent resulting from or relating to its negligent acts or omissions in the use or occupancy of the streets, avenues, alleys and public places in the City, or arising 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. Company shall indemnify and defend City for, from and against any and all mechanics' liens and other liens and encumbrances filed by any person claiming by, through or under Company and against all costs, expenses, losses and liabilities (including reasonable attorneys' fees) incurred by City in connection with any such lien or encumbrance or any action or proceeding brought thereon. Notwithstanding the foregoing, the Company shall not be obligated to defend, indemnify or hold the City harmless for claims, demands, losses, damages, cost and expenses (including, but not limited to, court costs, fines,

penalties and reasonable attorneys' fees) to the extent, resulting from or relating to the negligent acts or omissions of the City, its agents, employees, or contractors.

**111.13 HOME RULE AUTHORITY.** The City reserves to itself all home rule powers and authority.

**111.14 SEVERABILITY.** If any section or provision of this ordinance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other provisions of this ordinance which can be given effect without the invalid portion or portions and to this end each section and provision of this ordinance is severable.

**111.15 PUBLICATION EXPENSE.** The expense of the publication of this ordinance shall be paid by the Company.

**111.16 ENTIRE AGREEMENT.** 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 supplemented, superseded, modified or otherwise amended without the approval and acceptance of both the City and the Company. Notwithstanding the foregoing, in no event shall the City enact or maintain any ordinance or place any limitations, either operationally or through the assessment of fees other than those approved and accepted by the Company within this ordinance, that create additional burdens upon the Company, or which delay utility operations.

**111.17 EFFECTIVE DATE.** 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 ninety (90) days following City Council approval 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 of this ordinance shall be published in accordance with the *Code of Iowa* in the official newspaper for the City of Creston, Iowa. In the event that Company does not file its written acceptance within ninety (90) days after its approval by the City Council this ordinance shall be void and of no effect.

*(Ch. 111 – Ord. 21-197 – Apr. 21 Supp.)*