

CHAPTER 111

ELECTRIC FRANCHISE

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111.01 GRANT OF FRANCHISE. There is hereby granted to Interstate Power and Light Company, (hereinafter called “Company”) and to its successors and assigns, the right and non-exclusive franchise to acquire, construct, reconstruct, replace, erect, maintain and operate in the City of Arnolds Park, Iowa a system for the distribution of electric energy along, under, over and upon the streets, avenues, rights of way, alleys, public places or public grounds (excluding parks) to serve customers within the City, and to furnish and sell electric energy to the City and its inhabitants. The City Council reserves to itself the right to extend this franchise to specific areas or corridors within parks at the request of the Company. The Company is granted the right to exercise of powers of eminent domain. This franchise shall be effective for a twenty-five (25) year[†] period from and after the effective date of this ordinance.

111.02 PLACEMENT OF EQUIPMENT. The Company shall have the right to erect all necessary poles and to place thereon and attach thereto the necessary wires, guys, anchors, fixtures and accessories as well as to excavate and bury conduits or conductors and related equipment and appurtenances for the distribution of electric energy in and through the City, provided the same shall be placed in accord with this franchise and the City Code and regulations of the City of Arnolds Park regarding the placement, replacement, repair or construction of structures, facilities, accessories or other objects in the right of way by utilities and other users of the right of way, including ordinances which assign corridors or other placements to users of the right of way and requirements which may be adopted regarding separations of structures, facilities, accessories or other objects.

[†] **EDITOR’S NOTE:** Ordinance No. 17-01, adopting an electric franchise for the City, was passed and adopted on January 11, 2017.

111.03 STREETS. The City may require the Company for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street, avenue, right of way or alley, public places or grounds in accord with the ordinances of the City at the Company's cost and expense 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, to construct, replace, repair, locate and relocate its existing facilities or equipment in, on, over or under any public street, avenue, right of way, alley, public places or grounds in the City in such a manner as the City may reasonably require, except the Company shall not be required to construct, replace, repair, locate and relocate existing facilities where Company facilities are located in private easements (whether titled in the Company or other entities) unless said private easement is upon land owned by the City. If the City orders or request 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 of a commercial 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 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 three (3) years.

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.

111.04 EXCAVATIONS. In making excavations in any streets, avenues, alleys and public places for the installation, maintenance or repair of any conductor, conduit or other appurtenance or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets, avenues, alleys or public places. The Company in making any such excavations shall, if required by ordinance, obtain a City permit therefore and shall not unnecessarily obstruct the use of streets, avenues, alleys, or public places and shall provide the City Manager or City Manager's designee or such other person as the City may designate with 24 hours' notice prior to the actual commencement of the work, and shall comply with all provisions and requirements of the City in its regulation of the use of City right of way in performing such work. In emergencies which require immediate excavation, the Company may proceed with the work without first applying for or obtaining

a permit, provided, however, that the Company shall apply for and obtain an excavation permit as soon as possible after commencing such emergency work.

The Company shall comply with all provisions and requirements of the City in its regulation of the use of City right of way in performing any excavations. The Company shall comply with all city ordinances regarding paving cuts, placement of facilities and restoration of pavement and other public infrastructure. The Company shall replace the surface, restoring the condition as existed prior to the Company's excavation, but shall not be required to improve or modify the public right of way unless said improvement is necessary to meet a SUDAS (Statewide Urban Design and Specifications) standard, a requirement of the Americans with Disabilities Act, or any other standard mandated by state or federal law, provided however, if any improvement is requested or required for aesthetic, cosmetic or similar purposes not mandated by state or federal law the City shall reimburse the Company the incremental cost of such improvements. The Company shall complete all repairs in a timely and prompt manner. Company agrees any replacement of road surface shall conform to current City ordinances regarding its depth and composition.

111.05 VACATED PROPERTY. The City when 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 and their replacements on, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley, right of way or other public ground where the Company has electric facilities, the City shall grant the Company a utility easement for said facilities. This section shall not apply to the realignment, reconstruction, or vacation of streets or alleys in a designated urban renewal area; provided, however, the City shall identify, reserve and make available alternate locations for facilities to serve the designated urban renewal area consistent with the technical needs of the company.

111.06 STREETLIGHTS. The Company agrees that, unless there are extenuating circumstances because of damage, supply shortage or other reason beyond the Company's control, the Company shall replace any street light which is burned out or otherwise not functioning within ten (10) days of receipt of written notice specifying the street light in need of replacement or repair. If because of extenuating circumstances the Company will not be able to replace or repair a street light within ten (10) days after notice, the Company shall notify the City within ten (10) days of the receipt of written notice from the City what the extenuating circumstances are, including a date when the street light will be repaired or replaced.

The Company shall adopt a program and provide a written copy to the City, under which the Company will convert all street lights in the City to Light Emitting Diode (LED) lights within five (5) years of the effective date of this franchise. The Parties agree that should an improved technology be developed and commercially reasonable during this franchise, thereafter, the Company may, at its option, substitute different lighting technologies that provide an amount and quality of light that is at least equal to that provided by the LED technology. Before installing any such substitute technology, the Company must obtain the City's approval, such approval shall not be unreasonably withheld.

111.07 SERVICE AVAILABILITY. The Company shall maintain the availability of service throughout the entire City including newly annexed areas, but excluding areas designated by the Iowa Utilities Board to be the exclusive service territory of another electric provider, by extending lines or facilities in a manner consistent with Iowa law. The Company shall furnish electric energy in sufficient quantities to supply the reasonable demands of the City and the inhabitants thereof and including industrial users in accordance with the regulations and conditions of service as approved by the Iowa Utilities Board.

111.08 REQUESTED INFORMATION. Mapping information provided on a project-specific basis as part of the self-permitting process will be used solely and exclusively by the City in administering the use and occupancy of the public right-of-way within the City and shall not be provided to or relied on by any person for any other purpose. The Company does not guarantee the accuracy of the facility location contained in the Information and in no way does having this Information relieve the City of its obligation under Iowa law to call for locates. Prior to any excavating in the rights-of-way, both parties shall follow the procedures set forth in Iowa Code Chapter 480 or an entity with a similar function utilized by both the City and the Company, currently the Iowa One-Call System.

At the request of the City, mapping information will be reviewed with the City staff. All reviews will be in compliance with the Federal Energy Regulatory Commission's regulations or the regulations of other agencies with authority over the review and dissemination of information related to utility infrastructure, and infrastructure security.

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. City recognizes that Company claims the Information may constitute a trade secret or is otherwise

protected from public disclosure by state or federal law on other grounds and agrees to retain the Information in its non-public files. 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, and 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 City shall promptly notify the Company. The Company shall have the right to assume the defense of said action. The Company shall reimburse the City any and all costs, including attorney fees and penalties, to the extent allowed by law which may result from any said action.

111.09 PRUNING AND REMOVAL OF 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 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.

111.10 INDEMNIFICATION. The Company shall indemnify, save and hold harmless the City from any and all claims, suits, losses, damages, costs or expenses, including attorney fees, on account of injury or damage to any person or property, to the extent caused or occasioned in whole or part 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 in whole or part from the negligence of the City, its officers, employees or agents.

111.11 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. Upon notice, the Company shall promptly seek a tax rider tariff from the Iowa Utilities Board and 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 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.

111.12 RIGHT OF WAY. The City may, in the extension or modification of streets and roads, make provision for the placement of Company service lines and facilities on City owned right of way without charge to Company. In the event such an area is provided, the Company must utilize the area provided for placement of its service lines and facilities as directed by the City or other reasonable location provided by the Company. Nothing in this franchise shall be construed as a guarantee that in either existing right of way or in future acquired right of way the City will provide sufficient space for any particular need of the Company nor shall the City be required to obtain additional right of way solely for the use of the Company.

111.13 PUBLIC IMPROVEMENTS. In the event the Company is required to move, remove or modify the placement of any of its poles, lines, wires, conduit, conductors, fixtures, accessories, equipment or appurtenances located within the City because of any public improvement or public purposes of the City, the Company shall do so at its own expenses as directed by the City. In planning for the extension or modification of streets and roads, the City shall, to the extent practicable in the discretion of its public works director, design such changes to limit the need for the relocation of Company facilities.

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.

111.14 ANNUAL REPORT. The Company shall on an annual basis present a brief report to the City summarizing the Company's utility operations and community support activities within the City during the previous twelve (12) months.

111.15 DISTRIBUTION POLES. The City shall be privileged upon sixty (-60) days advance notice to the Company, without charge, to make use of the distribution poles of the Company that are placed within City right of way for any City alarm, City control, or City communication function, including City cameras, excluding any paid subscriber services (but including any City owned cable or wire line communication system for which use the City shall pay an amount consistent with federal law), to the extent that such use shall not interfere with their use by the Company, but the City shall hold the Company harmless from any and all causes of action, litigation or damages arising through the placing of the facilities of the City upon the Company's poles. If at the sole discretion of the Company, it is determined that said attachments may create a clearance violation or other hazardous situation, or that wind or other conditions may place undue stress on specific Company facilities, the City shall not be authorized to attach to those facilities. If attachments are in place, upon notification by the Company of damage or potential damage, the City shall promptly remove said attachments. The Company will contact the City Manager in the event of an emergency.

111.16 ENERGY EFFICIENCY. The Company will provide to the City energy efficiency materials and rebate forms for display in the building permit department and other City departments as requested by the City. The Company will participate in neighborhood and community events, when possible, and upon a request from the City or neighborhood organization, to encourage City residents to utilize the Company's energy efficiency programs.

111.17 HOME RULE AUTHORITY. The City reserves to itself all home rule authority under the Constitution of Iowa.

111.18 MATERIAL BREACH. 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.

111.19 FRANCHISE EFFECTIVE AND BINDING. 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 City shall provide Company with an original

signed and sealed copy of this ordinance within 10 days of its final passage. The Company shall, within thirty (30) days after the City Council approval of this ordinance, 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, this ordinance shall be published in accordance with the *Code of Iowa*. The effective date of this ordinance shall be the date of publication. In the event Company does not file its written acceptance of this ordinance within 30 days after its approval by the City Council this ordinance shall be void and of no effect.

111.20 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 written approval and acceptance of 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.

(Ch. 111 – Ord. 17-01 – Apr. 17 Supp.)