

ORDINANCE NO. 2017-02

AN ORDINANCE GRANTING TO MIDAMERICAN ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND NON-EXCLUSIVE FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF HILLS, IOWA, A NATURAL GAS SYSTEM, AND TO FURNISH AND SELL NATURAL GAS TO THE CITY AND ITS INHABITANTS, AND AUTHORIZING THE CITY TO COLLECT FRANCHISE FEES, FOR A PERIOD OF 25 YEARS.

BE IT ENACTED by the City Council of the City of Hills, Iowa:

**Section 1.** There is hereby granted to MidAmerican Energy Company, an Iowa corporation, (hereinafter called "Company,") and to its successors and assigns, the right and non-exclusive franchise to acquire, construct, erect, maintain, and operate in the City of Hills, Iowa, (hereinafter called "the City") a gas distribution system, to furnish natural gas along, under, and upon the right-of-way, 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. For the term of this franchise, Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by Company. This franchise shall be effective for a twenty-five (25) year period from and after the effective date of this ordinance.

**Section 2.** The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa, 2017, as subsequently amended or changed.

**Section 3.** Company shall have the right to excavate in any public street for the purpose of laying, relaying, repairing, or extending gas pipes, mains, conduits, and other facilities, provided that the same shall be so placed as not to unreasonably interfere with any above- or below-ground utility services or facilities which have been or may hereafter be located by or under authority of the City.

**Section 4.** Company shall, excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), 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 ("Tariff,") at its cost and expense, 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 reasonably require for the purposes of facilitating the construction, reconstruction, maintenance, or repair of the street or alley. Relocation expenses for other hard surfaces, including pedestrian and non-motorized vehicle pathways, will be paid by the City. If the City has a reasonable alternative route for the street, alley, or public improvements, or an alternative construction method, which would not cause the relocation of Company installations, the City shall select said alternative route or construction method. The City shall be responsible for surveying and staking the right of way for City projects that require Company to relocate Company facilities. If requested, the City shall provide, at no cost to Company, copies of its relocation plan and profile and cross section drawings. If tree and vegetation removal must be completed by the City as part of the City's project and are necessary whether or not utility facilities must be relocated, the City, at its own cost, shall be responsible for

said removals. If the timing of the tree/vegetation removal does not coincide with Company facilities relocation schedule and Company must remove trees/vegetation that are included in the City's portion of the project, the City shall either remove the material at its cost or reimburse Company for the expenses incurred to remove said vegetation or trees. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall attempt to secure said funds and provide them to Company to compensate Company for the costs of relocation.

**Section 5.** In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits, or apparatus, Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring it to the condition as existed immediately prior to excavation. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition. Company shall not be required to restore or modify public right of way, sidewalks, or other areas in or adjacent to Company project to a condition superior to its immediate previously existing condition or to a condition exceeding its previously existing condition, to the extent any alterations are required for the City to comply with city, state, or federal rules, regulations, or laws.

**Section 6.** The City's vacating a street, avenue, alley, public ground, or public right-of-way shall not deprive Company of its right to operate and maintain existing facilities on, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley, or public ground where Company has facilities in the vicinity, the City shall provide Company with not less than sixty (60) days advance notice of the City's proposed action and, upon request, grant Company a utility easement covering existing and future facilities and activities. If the City fails to grant Company a utility easement for said facilities prior to abandoning or vacating a street, avenue, alley, or public ground, the City shall, at its cost and expense, obtain easements for the existing Company facilities.

**Section 7.** 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 at any time during the previous ten (10) years.

**Section 8.** Pursuant to relocation of Company facilities as may be required hereunder, if the City orders or requests Company to relocate its existing facilities or equipment in order to directly or indirectly facilitate the project of a commercial or private developer or other non-public entity, the City shall reimburse, or the City shall require the developer or non-public entity to reimburse, Company for the cost of such relocation as a precondition to relocation. Company shall not be required to relocate in order to facilitate such private project at its expense.

**Section 9.** Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs, or expenses, on account of injury or damage to any person or property, to the extent caused or occasioned by Company's negligence in construction, reconstruction, excavation, operation, or maintenance of the natural gas facilities authorized by this franchise; provided, however, that Company shall not be obligated to defend, indemnify, and save harmless the City for any costs or damages to the extent arising from the negligence of the City or its officers, employees, or agents.

**Section 10.** Upon reasonable request, Company shall provide the City, on a project specific basis, information indicating the horizontal location, relative to boundaries of the right of way, of all equipment which it owns or over which it has control that is located in the public right of way, including documents, maps, and other information in paper or electronic or other forms (“Information”). Company and the City recognize the Information may in whole or part be considered a confidential record under state or federal law or both. Upon receipt of a request from a third party for information concerning information about Company’s facilities within the City, the City will promptly submit same to Company. If Company believes any of the information requested constitutes a trade secret which may be protected from public disclosure by state or federal law, or otherwise 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, then Company shall provide the City with a written explanation of the basis for such assertion of confidentiality or exemption from disclosure within ten (10) days.

**Section 11.** Company shall extend its mains and pipes and shall operate and maintain the system in accordance with the applicable regulations of the Iowa Utilities Board, or its successors, and Iowa law.

**Section 12.** During the term of this franchise, Company shall furnish natural gas in the quantity and quality consistent with and in accordance with the applicable regulations of the Iowa Utilities Board, Company’s tariff made effective by the Iowa Utilities Board, or its successors, and Iowa law.

**Section 13.** All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of Company.

**Section 14.** A franchise fee of zero percent (0%) is imposed upon, and shall be collected from, the natural gas customers of Company receiving service and located within the corporate limits of the City. The franchise fee shall be imposed upon the gross receipts, minus uncollectible accounts, generated from sales of natural gas and distribution service:

**A.** The City agrees to modify the level of franchise fees imposed only once in any 24-month period.

**B.** Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety (90) days after receipt of information required from the City to implement the franchise fee, including the City’s documentation of customer classes subject to or exempted from the City-imposed franchise fee.

**C.** The City shall be solely responsible for identifying customer classes subject to or exempt from paying the City-imposed franchise fee. Company shall have no obligation to collect franchise fees from customers in annexed areas until and unless such ordinances have been provided to Company by certified mail. Company shall commence collecting franchise fees in the annexed areas no sooner than sixty (60) days after receiving annexation ordinances from the City.

**D.** 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 Company is required to provide data or information in defense of the City's imposition of franchise fees, or if 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 Company for the expenses incurred by Company to provide such data or information.

**Section 15.** Upon implementation of a franchise fee, the City shall not, pursuant to Chapter 480A.6 of the Code of Iowa, impose or charge Company right of way management fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting, or inspections of Company work sites and projects, or related matters.

**Section 16.** Either the 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 sixty (60) days to cure the breach, unless it notifies the non-breaching party, and the parties agree upon a shorter or 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.

**Section 17.** 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.

**Section 18.** 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 Company. The City shall provide Company with an original signed and sealed copy of this ordinance within ten (10) days of its final passage. Company shall, within thirty (30) days after City Council approval of this ordinance, file in the office of the City Clerk, 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 that Company does not file its written acceptance of this ordinance within thirty (30) days after its approval by the City Council, this ordinance shall be void and of no effect.

**Section 19.** Upon the effective date of this ordinance, all prior natural gas franchises granted to Company to furnish natural gas to the City and its inhabitants are hereby repealed, and all other ordinances or parts of ordinances in conflict herewith are also hereby repealed.

PASSED AND APPROVED this 11th day of September, 2017.

CITY OF HILLS, IOWA

By: Tim Kemp  
Tim Kemp, Mayor/Mayor Pro Tem

ATTEST:

Cathy Fitzmaurice Hill  
Cathy Fitzmaurice-Hill, City Clerk

(OFFICIAL SEAL)

First Reading: 9/11/17

Second Reading: Waived

Third Reading: Waived

I, Cathy Fitzmaurice-Hill, City Clerk of the City of Hills, Iowa, hereby certify that the above and foregoing is a true copy of Ordinance No. 2017-02, passed by the City Council of said City at a meeting held Sept. 11, 2017, and signed by the mayor Sept. 11, 2017, and published as provided by law on Sept. 12, 2017.

Cathy Fitzmaurice Hill  
City Clerk

(OFFICIAL SEAL)