

Mid American Energy Franchise Ordinance

Ordinance No. 12-01

AN ORDINANCE GRANTING TO MIDAMERICAN ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF NORTH LIBERTY, 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 TWENTY (20) YEARS

BE IT ENACTED by the City Council of the City of North Liberty, Iowa:

Section 1. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the "Company," and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City of North Liberty, Iowa, hereinafter called the "City," a gas distribution system, to furnish natural gas along, under 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. For the term of this franchise the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. This franchise shall be effective for a twenty (20) year period beginning on the effective date of the franchise (see Section 26), provided, however, that either the City or the Company may, during the first ninety (90) days following the tenth (10th) anniversary of the effective date of the franchise, provide written notice to the other party of its desire to amend the franchise. The parties shall negotiate these amendments in good faith for a period of up to ninety (90) days following receipt of notice. If, at the conclusion of the negotiation period, the City determines in good faith that the franchise, if continued without amendment, will have a material or significant adverse impact on the City or the Company's natural gas customers located within the corporate limits of the City, the City may terminate the franchise. The City shall have the burden to objectively demonstrate the material or significant adverse impact.

Section 2. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa (2011) or as subsequently amended or changed.

Section 3. The 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 the construction of any water pipes, drains or sewers or the flow of water therefrom, which have

been or may hereafter be located by authority of the City.

Section 4. The Company shall, excluding facilities located in private easements (whether titled in the Company exclusively or in the Company and other entities), in accordance with Iowa law including the 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. The City and the Company shall work together to develop a suitable alternative route or construction method so as to eliminate or minimize the cost and expense to the Company for relocation of its installations. 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 the Company installations, the City should select said alternative route, or construction method. All costs associated with relocating the Company facilities within the City right-of-way for public projects shall be borne by the Company. This includes, but is not limited to, relocation plans, surveying, staking, seeding and restoration, and construction costs. A "public project" is one that is reasonably necessary for the public use of public ways of the City. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City should attempt to secure said funds and provide them to the Company to compensate the 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, the Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring it to the condition that existed prior to excavation. The Company shall not be required to restore or modify public rights of way, sidewalks or other areas in or adjacent to the Company project to a condition superior to its immediate previously existing condition or to a condition required for the City to comply with city, state or federal rules, regulations or law, but shall comply with applicable City ordinances and design standards in its restoration activities. The Company agrees any replacement of road surface shall conform to current City code regarding depth and composition.

Section 6. 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 on, below, above, or beneath the vacated property. Prior to abandoning or vacating any street, avenue, alley or public ground where the Company has natural gas facilities in the vicinity, the City shall provide the Company with not less than sixty (60) days advance notice of the City's proposed action and shall grant the Company a utility easement covering existing and future facilities and activities.

Section 7. Any costs associated with relocation of the Company facilities in the public right of way at the direction of the City within the previous five (5) years shall be open for negotiation with the City.

Section 8. Pursuant to relocation of the Company facilities as may be required by Sections 3, 4, 5, 6, 7 and 8 of this Ordinance, if the City orders or requests the Company to relocate its existing facilities or equipment in order to facilitate the project of a commercial or private developer or non-public entity, the City shall reimburse or the City shall require the developer or non-public entity to reimburse the Company for the cost of such relocation as a precondition to relocation of its existing facilities or equipment. The Company shall not be required to relocate in order to facilitate such private project at its expense.

Section 9. The 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 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 to the extent arising from the negligence of the City, its officers, employees or agents.

Section 10. 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, of all equipment which it owns or over which it has control that is located in City right of way. The Company and City recognize the information provided will, under current Iowa law, constitute public records, but that nonetheless, some information provided may be confidential under state or federal law or both. Therefore, the City shall not release any information with respect to the location or type of equipment which the Company owns or controls in the right of way which may constitute a trade secret or which may otherwise be

protected from public disclosure by state or federal law. 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.

Section 11. The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

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

Section 13. There is hereby imposed upon and shall be collected from the natural gas customers of the Company receiving service pursuant to the Tariff located within the corporate limits of the City and remitted by the Company to the City, a franchise fee from each revenue class as set forth below of the gross receipts, minus uncollectable amounts, derived by the Company from the delivery and sale of natural gas to customers within the corporate limits of the City:

- Residential Customers: zero (0) percent
- Commercial Customers: zero (0) percent
- Industrial Customers: zero (0) percent
- Public Authority Customers: zero (0) percent
- Distribution (Transportation) Customers: zero (0) percent

Section 14. The City may, as allowed by Iowa law, exempt certain types or classes of sales from imposition of the franchise fee, or modify, decrease or eliminate the franchise fee. The City does therefore exempt the customer classes or customer groups shown below from franchise fees. The City reserves the right to cancel any or all the franchise fee exemptions and also reserves the right to grant exemptions to additional customers or customer classes in compliance with Iowa law and Section 15 of this ordinance.

- Customer classes initially exempted by the City: None.

Section 15. The City agrees to modify the level of franchise fees imposed only once in any twenty-four (24) month period. Any such ordinance exempting certain types or classes of customers, or increasing, decreasing, modifying or eliminating the franchise fee shall become effective, and billings reflecting the change shall commence, on an agreed upon date which is not less than sixty (60) days following written notice to the Company by certified mail. The Company shall not be required to implement such new ordinance unless and until it determines that it has received appropriate official documentation of final action by the City Council.

Section 16. The City recognizes the administrative burden collecting franchise fees imposes upon the Company and the Company requires lead time to commence collecting said franchise fees. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety (90) days from receipt of information required of the City to implement the franchise fee, including the City's documentation of consumers subject to or exempted from City-imposed franchise fees. The City shall provide the information and data required in a form and format acceptable to the Company. The Company will, if requested by the City, provide the City with a list of premises considered by the Company to be within the corporate limits of the City.

Section 17. The City shall be solely responsible for identifying customers subject to or exempt from paying the City imposed franchise fee. The City shall be solely responsible for notifying the Company of changes to its corporate limits, including, over time, annexations, severances, or other alterations thereto, and customers that it wishes to be subject to or, to the extent permitted by law, exempt from paying the franchise fee. The City shall provide to the Company, by certified mail, copies of annexation ordinances in a timely manner to ensure appropriate franchise fee collection from customers within the corporate limits of the City. The Company shall have no obligation to collect franchise fees from customers in annexed areas until and unless such ordinances have been provided to the Company by certified mail. The Company shall commence collecting franchise fees in the annexed areas no sooner than sixty (60) days after receiving annexation ordinances from the City.

Section 18. The City shall indemnify the Company from claims of any nature arising out of or related to the imposition and collection of the franchise fee, except to the extent such claims result from the Company's own negligence. In addition, the Company shall not be liable

for collecting franchise fees from any customer originally or subsequently identified, or incorrectly identified, by the City as being subject to the franchise fee or being subject to a different level of franchise fees or being exempt from the imposition of franchise fees.

Section 19. The Company shall remit franchise fee revenues to the City no more frequently than on or before the last business day of the month following each quarter as follows:

- January, February and March
- April, May and June
- July, August and September, and
- October, November and December

The Company shall provide the City with notice at least thirty (30) days in advance of any changes made in this collection schedule, including any alterations in the calendar quarters or any other changes in the remittance periods.

Section 20. The City recognizes that the costs of franchise fee administration are not charged directly to the City and agrees it shall, if required by the Company, reimburse the Company for any initial or ongoing costs incurred by the Company in collecting franchise fees that the Company deems to be in excess of typical costs of franchise fee administration.

Section 21. The Company shall not under any circumstances be required to return or refund any franchise fees that have been collected from City 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.

Section 22. At any time after the City enters into a franchise agreement with another person to sell natural gas at retail to City consumers and a franchise fee or its lawful equivalent is imposed at zero or at a lesser rate than provided in this ordinance, either the City or the Company may provide written notice to the other to amend the franchise agreement to address the level of the franchise fees then imposed or scheduled to take effect during the term of this franchise agreement. The parties shall have a ninety (90) day period after the date of

the written notice to negotiate such an amendment to the franchise agreement. The parties may negotiate changes in the levels of fees during this period, or, if they cannot agree upon such an amendment, either party shall have the unilateral right to terminate the franchise.

Section 23. The obligation to collect and remit the fee imposed by this ordinance is modified or repealed if legislation is enacted by the Iowa General Assembly or if the Supreme Court of Iowa issues a final ruling regarding franchise fees or if the Iowa Utilities Board issues a final nonappealable order (collectively, “final franchise fee action”) that modifies, but does not repeal, the ability of the City to impose a franchise fee or the ability of the Company to collect from City customers and remit franchise fees to City. Within sixty (60) days of final franchise fee action, the City shall notify the Company and the parties shall meet to determine whether this ordinance can be revised, and, if so, how to revise the franchise fee on a continuing basis to meet revised legal requirements. After final franchise fee action and until passage by the City of revisions to the franchise fee ordinance, the Company may temporarily discontinue collection and remittance of the franchise fee if in its sole opinion it believes it is required to do so in order to comply with revised legal requirements.

The other provisions of this ordinance to the contrary notwithstanding, the Company shall be completely relieved of its obligation to collect and remit to the City the franchise fee, effective as of the date specified below, with no liability therefore, under each of any of the following circumstances as determined to exist in the sole discretion of the Company:

1. The imposition, collection or remittance of a franchise fee is ruled to be unlawful by the Supreme Court of Iowa, effective as of the date of such ruling or as may be specified by that Court.
2. The Iowa General Assembly enacts legislation making imposition, collection or remittance of a franchise fee unlawful, effective as of the date lawfully specified by the General Assembly.
3. The Iowa Utilities Board, or its successor agency, denies the Company the right to impose, collect or remit a franchise fee, provided such denial is affirmed by the Supreme Court of Iowa, effective as of the date of the final agency order from which the appeal is taken.

Section 24. The City shall not, pursuant to Section 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 25. Either the City or the 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 federal law, state law, and this ordinance. 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 26. 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 27. 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 the Company with an original signed and sealed copy of this ordinance within ten (10) days of its final passage. The Company shall, within thirty (30) days after the City Council’s 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 that MidAmerican Energy 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 28. Upon the effective date of this ordinance, all prior natural gas franchises granted to the 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.

First reading passed on _____, 2012.

Second reading passed on _____, 2012.

PASSED AND APPROVED on third and final reading on _____, 2012.

CITY OF NORTH LIBERTY

By: _____
Thomas A. Salm, Mayor

Attest:

Tracey Mulcahey, City Clerk

Drafted and approved as to form by City Attorney:

Scott C. Peterson, City Attorney

I certify that the forgoing was published as Ordinance No. ___ in the *North Liberty Leader* on the ___ day of _____, 2012.

Tracey Mulcahey, City Clerk