

CHAPTER 112

MIDLAND POWER COOPERATIVE ELECTRIC FRANCHISE

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112.01 FRANCHISE GRANTED. Midland Power Cooperative, an Iowa cooperative association, is hereby granted and vested with the right, franchise and privilege for a period of 25 years from the effective date of the ordinance codified in this chapter[†] to acquire, construct, operate and maintain in the City the necessary facilities for the production, distribution, transmission and sale of electricity for public and private use and to construct and maintain along, upon, across and under the streets, highways, avenues, alleys, bridges, and public places the necessary fixtures and equipment for such purposes.

112.02 TERMS AND CONDITIONS. The Grantee shall be subject to the following terms and conditions during the term of the franchise granted hereunder:

1. **Service Requirements.** The Grantee shall furnish reasonable, adequate and efficient electric service to the residents of the City and shall maintain its system in reasonable repair and working order and provide adequate facilities for such maintenance. Nothing in this section shall require the Grantee to provide electric service unless the services requested are reasonably within its range of performance and there is a reasonable expectation that the consumption of electricity will warrant the necessary expenditure.
2. **Ownership, Installation and Maintenance of Service Facilities.** The Grantee's plant and equipment, including all street lights, transmission lines and other distribution facilities, shall be owned by the Grantee, installed in accordance with good engineering practices and shall be located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated so as not to endanger or interfere with the lives of persons, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic to public ways, places and structures. The erection, installation, construction, replacement, removal, repair, maintenance and operation of the electric system shall be in accordance with all applicable laws, regulations and codes of the State and application ordinances, regulations and codes of the City.
3. **Transmission and Distribution Facilities - General Location Requirements.** All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.
4. **Conditions for Use and Occupancy of City Rights-of-Way and Utility Easements.** The Grantee shall be allowed to use and occupy the City rights-of-way for

[†] **EDITOR'S NOTE:** Ordinance No 2003-1000, adopting an electric franchise, was passed and adopted on December 29, 2003.

the emplacement of its equipment; provided, however, Grantee shall be required to use subdivision utility easements to the extent such easements provide for the construction and operation of electric equipment therein. Further provided, in such use and occupancy of City rights-of-way and subdivisions utility easements, Grantee shall be subject to all generally applicable City ordinances and obligations therein including, but not limited to, those provisions of this Code of Ordinances regulating the use and occupancy of such rights-of-way, pertaining to excavations and pertaining to streets and sidewalks, and further provided that Grantee shall not construct any plant or system equipment until Grantee has secured the necessary permits from the City, or other applicable governmental authorities. Grantee shall have the right to trim brush, remove obstructions and do all other things reasonably necessary to prevent interference with its use and occupancy of said rights of way and easements.

5. Grantee's Duty to Restore Ground Surface. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall at its own cost and expense and in a manner approved by the City Engineer, replace and restore all sod, paving, sidewalk, driveway or surface of any street or alley disturbed in as good a condition as before said work was commenced.

6. Alteration of Grade. If at any time the City elects to alter or change the grade of any street, alley or public way, and such alteration requires the relocation of Grantee's facilities located along, upon, across and under the streets, highways, avenues, alleys, bridges and public places of the City, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cable, underground conduits, manholes, or other distribution fixtures at its own expense.

7. Street Obstructions. Any opening or obstruction in the streets or other public ways made by the Grantee in the course of its operation, pursuant to the authority granted hereunder, shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding, the bounds of which during periods of dusk and darkness shall be clearly designated by warning lights.

8. Mapping Data. Grantee shall provide to the City Engineer information indicating the horizontal and approximate vertical location, relative to the boundaries of the right-of-way, of all equipment which it owns or over which it has control and which is located in any right-of-way. Mapping data shall be provided with the specificity and in the format requested by the City Engineer for inclusion in the mapping system used by the City Engineer. Grantee shall submit complete and accurate mapping data for all of its equipment at the time any permit is sought. Within six months of the acquisition, installation or construction of additional equipment or any relocation, abandonment or disuse of existing equipment, the Grantee shall supplement the mapping information required herein.

9. Insurance Requirements. The Grantee shall purchase and maintain insurance to protect the Grantee and the City throughout the duration of the franchise. Said insurance shall be provided by insurance companies approved by the insurance commissioner of the State of Iowa and having no less than an A.M. Best rating of "A-." All policies shall be written on a per-occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the City. Certificates of insurance confirming required insurance coverage shall be submitted to the City prior to contract execution or commencement of work and/or services.

A. Worker's Compensation Insurance: The Grantee shall procure and maintain during the life of the franchise Worker's Compensation Insurance,

including Employer's Liability Coverage, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000.00 each accident for Bodily Injury by Accident, \$500,000.00 each accident for Bodily Injury by Disease, and \$500,000.00 policy limit for Bodily Injury by Disease.

B. Commercial General Liability Insurance: The Grantee shall procure and maintain during the life of the franchise Commercial General Liability insurance on a per-occurrence basis with limits of liability not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate combined single limit including; Personal Injury, Bodily Injury, and Property Damage. Coverage shall include the following extensions: (i) Contractual Liability, (ii) Premises and Operations, (iii) Products and Completed Operations, (iv) Independent Contractor's Coverage, (v) Personal and Advertising Injury, and (vi) Explosion, Collapse and Underground [XCU], where applicable. Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy [ISO CG 00 0110 93] with standard exclusions. Any additional exclusions shall be clearly identified on the Certificate of Insurance and shall be subject to the review and approval of the City.

C. Automobile Liability Insurance: The Grantee shall procure and maintain during the life of this franchise Automobile Liability Insurance with limits of liability of not less than \$1,000,000.00 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. Umbrella/Excess Insurance: The coverage specified in B and C above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per-occurrence basis and shall include the same endorsement as required of the primary policies.

E. Insurance for Other Losses: The Grantee shall assume, during the life of the franchise, full responsibility for all loss or damage from any cause whatsoever to any property brought onto City property that is owned or rented by the Grantee, or by any of the Grantee's employees, agents, subcontractors, suppliers or their employees, to the extent that such property is utilized in carrying out the provisions of the franchise, except to the extent caused by the City's acts or negligence.

F. Changes in Coverage, Limits, Endorsements and Terms. The City shall be notified of any changes in coverage, limits, endorsements and terms.

G. Subcontractors: The Grantee shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of the franchise meet the same insurance requirements as are required of the Grantee.

H. Proof of Insurance: The Grantee shall provide to and maintain on a current basis with the City Certificates of Insurance evidencing all required insurance coverage as provided in A through D above utilizing the latest version of the ACORD form. Any deductible or self-insured retention must be

disclosed on the face of the Certificate of Insurance and must be accepted by the City.

10. Indemnification. To the fullest extent permitted by law, the Grantee agrees to defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees, volunteers, and others working on behalf of the City against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed, or recovered against or from the City, its elected and appointed officials, employees, volunteers, or others working on behalf of the City, by reason of personal injury, including bodily injury or death, and property damages, including loss of use thereof, which arises out of or is in any way connected or associated with the work and/or services provided by the Grantee pursuant to the provisions of the franchise, except to the extent caused by the City's acts or negligence. It is the intention of the parties that the City, its elected and appointed officials, employees, volunteers, or others working on behalf of the City shall not be liable or in any way responsible for injury, damage, liability, loss, or expense resulting to the Grantee, its officers, employees, subcontractors, and others affiliated with the Grantee due to accidents, mishaps, misconduct, negligence, or injuries either to person or property caused by the work and/or services performed by the Grantee under the franchise, except to the extent caused by the City's acts or negligence. The Grantee expressly agrees to pay the City for all damages caused to the City's premises resulting from the activities of the Grantee, its officers, employees, subcontractors, and others affiliated with the Grantee.

A. The indemnification obligations of Grantee are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Worker's Compensation, disability, or other employee benefit acts, acceptance of insurance certificates required under the franchise, or the terms, applicability, or limitations of any insurance held by Grantee.

B. Grantor does not, and shall not, waive any rights against Grantee which it may have by reasons of the indemnification provided for in this chapter, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this chapter.

C. 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.

D. The Grantee's indemnification obligations under this chapter shall survive the expiration, cancellation, or termination of the Franchise Agreement.

E. To the extent permitted by law, the Grantee hereby releases the City, its elected and appointed officials, employees, volunteers, and others working on behalf of the City, from any and all liability or responsibility to the Grantee or anyone claiming through or under the Grantee, for any loss or damage to property caused by fire or other casualty, except to the extent such fire or other casualty shall have been caused by the fault or negligence of the City, its elected and appointed officials, employees, volunteers, or others working on behalf of the City. This provision shall be applicable and in full force and effect only with respect to loss or damages occurring during the time of the Grantee's occupancy or use.

11. Electric Revenue Tax. If, during the term of the franchise, there shall be enacted by the Iowa General Assembly a valid taxing statute authorizing the City to collect a tax on the electric revenue received by Grantee from its customers in the City, then if such tax is levied by the City, said Grantee will include, subject to the approval of the Iowa Utilities Board, such tax as a separate item on bills to its customers within the City, and remit the sums collected to the City under the terms and provisions of such enacted statute.

12. Termination of Franchise.

A. Grounds for Revocation. In addition to any other lawful remedies the City may have, it reserves the right to revoke the franchise and rescind all rights and privileges associated therewith in the event of a material breach of the franchise. A material breach or cause for revocation, by way of example, would include:

(1) If Grantee should default in the performance of any of its material obligations under the franchise and fails to cure the default within 60 days after receipt of written notice of the default from the City or such longer time as specified by the City.

(2) If the Grantee should fail to provide or maintain in full force and effect the insurance and indemnification coverage as required in this chapter.

(3) If a petition is filed by or against Grantee under the Bankruptcy Act, as amended, or any other insolvency or creditors' rights law, State or federal, and the Grantee shall fail to have it dismissed.

(4) If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of the Grantee's assets.

(5) If the Grantee makes an assignment for the benefit of creditors.

(6) To the extent an order or ruling has effect on the franchise, if the Grantee violates any order or ruling of the City, or any State or federal regulatory body having jurisdiction over the Grantee, unless the Grantee is lawfully contesting the legality or applicability of such order or ruling and has received a stay from the appropriate forum.

(7) If the Grantee practices any fraud or deceit upon the subscribers, the City, or the general public.

(8) If Grantee misrepresented a material fact in the application for or negotiation of the franchise or in any other appearance before or document submitted to the City Council or to subscribers.

(9) If Grantee violates any material rule, order, regulation or determination of the City Council made pursuant to its police powers or any material provision of this chapter.

B. Procedure Prior to Revocation. The City shall give at least 60 days' written notice to the Grantee citing the reasons alleged to constitute cause for revocation, if the reason is of a nature that can be cured, set a reasonable time in which the Grantee must remedy the cause. If, during the 60-day period (or such longer period as the City may set), the cause shall be cured to the satisfaction of the City, the City may declare the notice to be null and void. If

the Grantee fails to remedy the cause within the time specified or if the breach is of a nature that cannot be remedied, the City Council may, after public hearing and making a written finding of a material violation, revoke the franchise. In any event, before the franchise may be terminated, the Grantee shall be provided with an opportunity to be heard before the City Council.

C. Effect of Pending Litigation. Unless a stay is issued by a court of appropriate jurisdiction, pending litigation or any appeal to any regulatory body or court having jurisdiction over the Grantee shall not excuse the Grantee from the performance of its obligations under this chapter or other applicable laws. Failure of the Grantee to perform material obligations because of pending litigation or petition may result in forfeiture or revocation pursuant to the provisions of this section.

D. Restoration of Public and Private Property. In removing its plants, structures and equipment, the Grantee shall refill at its own expense, any excavation made by it and shall leave all public ways and places and private property in as good condition as existed prior to Grantee's removal of its equipment and appliances. The City shall inspect and approve the condition of the public ways and public places. Liability insurance and the indemnity provided in this chapter shall continue in full force and effect during the period of removal.

E. Restoration by City; Reimbursement of Costs. If the Grantee fails to complete any work required by or any work required by other law or ordinance within the time established and to the satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the costs thereof within 30 days after receipt of any itemized list of such costs.

F. Lesser Sanctions. Nothing shall prohibit the City from imposing lesser sanctions or censures than revocation.

112.03 ASSIGNMENT OF FRANCHISE. Grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the franchise and/or electric system or any of the rights or privileges granted by the franchise, to any entity not controlled by Grantee without the prior written consent of the City, and then only upon such terms and conditions as may be lawfully prescribed by the City, which consent shall not be unreasonably denied or delayed provided that any transferee shall agree to accept all of Grantee's obligations under this chapter. Any attempt to sell, assign, transfer, lease, sublet or otherwise dispose of all or any part of the franchise and/or electric system or Grantee's rights therein without the prior written consent of the City shall be null and void and shall be grounds for termination of the franchise.

112.04 FRANCHISE FEE. In consideration of the right and franchise granted to the Company in Section 112.01 herein, a franchise fee is hereby imposed equal to one percent of the gross receipts minus uncollectable amounts derived by the Company in the City for the delivery and sale of electric energy, effective beginning on March 1, 2020.

1. The amount of franchise fee shall be shown separately on the utility bill to each customer. The Company shall remit collected franchise fees to the City on a quarterly basis, within 30 days after the last day of the last revenue month of each quarter of the calendar year (i.e. remitted by April 30, July 31, October 31, and January 31). The City

shall not modify the level of the franchise fee more frequently than once in any 12-month period.

2. The City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such franchise fees for purposes allowed by Iowa law and as set forth in the Revenue Purpose Statement previously adopted by the City.

3. The franchise fee shall be applied to all customers' bills in accordance with Iowa Code Chapters 364.2(f) and 423B.5, except for the City's bills which shall be exempt from the franchise fee.

4. Upon receipt of a final and unappealable order or approval authorizing annexation or changes in the corporate boundaries of the City, the City Clerk shall provide written notification to the Company of such annexation or change in the corporate boundaries of the City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in the corporate boundaries of the City, commencing no more than 90 days after receipt of the written notice and City's verification of the area added to the City.

5. To fulfill the purpose and intent of this section, the City and the Company may enter into an agreement addressing the implementation of the collection of the franchise fee, which agreement shall be approved by resolution of the City.

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