

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 FRANCHISE GRANTED. The City hereby grants a nonexclusive franchise to Black Hills/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy, a Delaware limited liability corporation (hereinafter called "Grantee"), its lessees, successors, and assigns. Grantee is hereby granted the right, privilege, franchise, permission, and authority to lay, construct, install, maintain, operate, and extend in, along, over, above, or across the present and future streets, alleys, avenues, bridges, public rights-of-way, and public easements as are now within the present or future limits of the City, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas and other operations connected therewith or incident thereto for all purposes to the inhabitants of the City and consumers in the vicinity thereof, and for the distribution of natural gas from or through the City to points beyond the limits thereof. Such facilities include (but are not limited to) all mains, services, pipes, poles, communication devices, conduits, and all other apparatus and appliances necessary or convenient for transmitting, transporting, distributing, and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of the City and in carrying on such business.

110.02 TERM. The rights and privileges granted by this Ordinance shall remain in effect for a period of 25 years from the effective date of the ordinance codified in this chapter[†]

110.03 FRANCHISE FEES OR TAXES. The City may, during the term of the franchise, in its discretion, in compliance with and as authorized by State law, after public hearing, and upon an affirmative vote of a majority of the members of the Council then present, pass an ordinance imposing a franchise fee on customers located within the corporate City limits; provided, however, the franchise fee shall not be effective, and Grantee shall not be obligated to collect and pay same, unless and until it is satisfactory to Grantee with respect to its compatibility with Grantee's billing system and the form of assessment and collection of the franchise fee is based on either: (i) a percentage of Grantee's gross receipts of regulated sales or transportation revenues collected from the Grantee's customers within the City; (ii) a volumetric fee based on the delivery of energy within corporate City limits; or (iii) a flat fee collected from customers on a nondiscriminatory basis from each of Grantee's customers who are located within the City; and (iv) the City has imposed a franchise fee on all other parties supplying energy within the corporate limits, calculated in the same manner as the franchise fee imposed on Grantee's customers.

[†] **EDITOR'S NOTE:** Ordinance No. 114, adopting a natural gas franchise for the City, was passed and adopted on July 13, 2015.

110.04 GOVERNING RULES AND REGULATIONS. The franchise granted hereunder is subject to all conditions, limitations, and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by State or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of the City and the rules and regulations regarding the character, quality, and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations, and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory, or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and the City shall renegotiate the terms of this chapter in accordance with the action taken. In determining the rights and duties of the Grantee, the terms of this chapter shall take precedence over any conflicting terms or requirements contained in any other ordinance enacted by the City.

110.05 PROVISION FOR INADEQUATE ENERGY SUPPLIES. If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing, or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be nondiscriminatory as between communities receiving service from the Grantee.

110.06 CONSTRUCTION AND MAINTENANCE OF GRANTEE'S FACILITIES. Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of City and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good a condition as existed immediately prior to excavation. Grantee agrees that for the term of this franchise, it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of City, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance and will fix its excavations within a commercially reasonable time period, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify City as soon as reasonably possible. Within a reasonable time thereafter, Grantee shall request and City shall issue any permits or authorizations required by City for the actions conducted by Grantee during the emergency situation. City will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the City will start the work, and if more than one right-of-way is involved, the order in which the work is to proceed. The notice shall be given to the Grantee as soon as practical in advance of the actual commencement of the work, considering reasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

110.07 EXTENSION OF GRANTEE'S FACILITIES. Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria as

approved by the Iowa Utilities Board, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of City.

110.08 RELOCATION OF GRANTEE'S FACILITIES. If City elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, unless otherwise reimbursed by federal, State or local legislative act or governmental agency, Grantee, upon reasonable notice from City, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference with City's facilities. If City orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference with such project, then Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. City shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. If alternative public right-of-way space is available, City shall also provide a reasonable alternative location for Grantee's facilities. City shall give Grantee written notice of an order or request to vacate a public right-of-way; provided, however, its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of way until it: (i) if applicable, receives the reasonable cost of relocating the same; and (ii) obtains a reasonable public right-of-way, dedicated utility easement, or private easement alternative location for such facilities.

110.09 CONFIDENTIAL INFORMATION. City acknowledges that certain information it might request from Grantee pursuant to this chapter may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under State or federal law. If Grantee requests that any information provided by Grantee to City be kept confidential due to its proprietary or commercial value, the City and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If the City is requested or required by legal or administrative process to disclose any such proprietary or confidential information, the City shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

110.10 FORCE MAJEURE. It shall not be a breach or default under this chapter if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; (ii) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; (iii) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (iv) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this provision shall not obligate a party to settle any labor strike.

110.11 HOLD HARMLESS. Grantee, during the term of this chapter, agrees to save harmless the City from and against all claims, demands, losses, and expenses arising directly out of the negligence of Grantee, its employees or agents, in constructing, operating, and maintaining its distribution and transmission facilities or equipment; provided, however, Grantee need not save City harmless from claims, demands, losses and expenses arising out of the negligence of City, its employees or agents.

110.12 SUCCESSORS AND ASSIGNS. All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained, and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

110.13 NO THIRD PARTY BENEFICIARIES. This chapter constitutes a franchise agreement between the City and Grantee. No provision of this chapter shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.