

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 FRANCHISE GRANTED. The City Council of the City of Collins, Story County, Iowa (hereinafter referred to as the “City”) hereby grants unto Interstate Power and Light Company (hereinafter referred to as the “Company”), its successors and assigns, the right, privilege, and non-exclusive franchise for the term of 25 years from and after the passage, adoption, approval and acceptance of the ordinance codified in this chapter,[†] to lay down, maintain and operate the necessary pipes, mains and other conductors and appliances in, along and under the streets, avenues, alleys and public places in the City as now or hereafter constituted, for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof; also the right of eminent domain as provided in Section 364.2 of the *Code of Iowa*. The term “gas” as used in this franchise shall be construed to mean natural gas only.

110.02 MAINS AND PIPES; INDEMNIFICATION. The mains and pipes of the Company must be so placed as not to interfere unnecessarily with water pipes, drains, sewers and fire plugs which have been or may hereafter be placed in any street, alley and public places in said City nor unnecessarily interfere with the proper use of the same, including ordinary drainage, or with the sewers, underground pipe and other property of the City. The Company, its successors and assigns shall hold the City free and harmless from all damages arising from the negligent acts or omissions of the Company in the laying down, operation and maintenance of said natural gas distribution system.

110.03 EXCAVATIONS. In making any excavations in any street, alley, or public place, Company, its successors and assigns, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, and shall back fill all openings in such manner as to prevent settling or depressions in surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical. The Company shall not be required to restore or modify public right-of-way, sidewalks or other areas in or adjacent to the Company project to a condition superior to its immediate previously existing condition.

110.04 CONSTRUCTION AND MAINTENANCE. The Company shall, at its cost, 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 at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance, or repair of the street or alley or any public improvement thereof, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement.

[†] **EDITOR’S NOTE:** Ordinance No. 2016-2, adopting a natural gas franchise for the City, was passed and adopted on July 7, 2016.

1. If the City requires the Company to relocate facilities in the public right-of-way that have been relocated at Company expense at the direction of the City during the previous 10 years, the reasonable costs of such relocation will be paid by the City.
2. 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.
3. 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.
4. The City shall also provide a reasonable alternative location for the Company's facilities as part of its relocation request.

110.05 UTILITY EASEMENTS. Prior to the City abandoning or vacating any street, avenue, alley or public ground where the Company has gas facilities, the City shall grant the Company a utility easement for said facilities. If the City does not grant the Company a utility easement for said facilities prior to abandoning or vacating a street, avenue, alley or public place, the City shall at its cost and expense obtain easements for existing Company facilities.

110.06 SERVICE REQUIREMENTS. Said Company, its successors and assigns, shall throughout the term of the franchise distribute to all consumers gas of good quality and shall furnish uninterrupted service, except as interruptible service may be specifically contracted for with consumers; provided, however, that any prevention of service caused by fire, act of God or unavoidable event or accident shall not be a breach of this condition if the Company resumes service as quickly as is reasonably practical after the happening of the act causing the interruption.

110.07 FRANCHISE FEE. There is hereby imposed a franchise fee of three percent upon the gross revenue generated from sales of natural gas by the Company within the corporate limits of the City.

1. The Company shall begin collecting the franchise fee upon receipt of written approval of the required tax rider tariff from the Iowa Utilities Board.
2. The amount of the franchise fee shall be shown separately on the utility bill to each customer.
3. 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.
4. 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.
5. 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.

110.08 TERM OF FRANCHISE. The term of the franchise granted by this chapter and the rights granted thereunder shall continue for the period of 25 years from and after its written acceptance by the Company. The acceptance shall be filed with the City Clerk within 90 days from passage of the ordinance codified in this chapter.

110.09 ENTIRE AGREEMENT. This chapter 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 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, that create additional burdens upon the Company, or which delay utility operations.

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CHAPTER 111

ELECTRIC FRANCHISE

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111.07 Standard of Service
111.08 Uninterrupted Service
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111.10 Term of Franchise
111.11 Entire Agreement

111.01 FRANCHISE GRANTED. The City Council of the City of Collins, Story County, Iowa (hereinafter referred to as the “City”) hereby grants unto Interstate Power and Light Company (hereinafter referred to as the “Company”), its successors and assigns, the right and non-exclusive franchise to acquire, construct, reconstruct, erect, maintain, and operate in the City, works and plants for the manufacture and generation of electricity and a distribution system for electric light, heat and power and the right to erect and maintain the necessary poles, lines, wires, conduits and other appliances for the distribution of electric current along, under and upon the streets, alleys and public places in the said City to supply individuals, corporations, communities, and municipalities both inside and outside of said City with electric light, heat and power for the period of 25 years; † also the right of eminent domain as provided in Section 364.2 of the *Code of Iowa*.

111.02 PLACEMENT OF APPLIANCES. The poles, lines, wires, circuits, and other appliances shall be placed and maintained so as not to unnecessarily interfere with the travel on said streets, alleys, and public places in said City nor unnecessarily interfere with the proper use of the same, including ordinary drainage, or with the sewers, underground pipe and other property of the City. The said Company, its successors and assigns shall hold the City free and harmless from all damages to the extent arising from the negligent acts or omissions of the Company in the erection or maintenance of said system.

111.03 EXCAVATIONS. In making any excavations in any street, alley, or public place, Company, its successors and assigns, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, and shall back fill all openings in such manner as to prevent settling or depressions in surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical. The Company shall not be required to restore or modify public right-of-way, sidewalks or other areas in or adjacent to the Company project to a condition superior to its immediate previously existing condition.

111.04 CONSTRUCTION AND MAINTENANCE. The Company shall, at its cost, 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 at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance, or repair of the street or alley or any public improvement thereof, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement.

† **EDITOR’S NOTE:** Ordinance No. 2016-1, adopting an electric franchise for the City, was passed and adopted on June 2, 2016.

1. If the City requires the Company to relocate facilities in the public right of way that have been relocated at Company expense at the direction of the City during the previous 10 years, the reasonable costs of such relocation will be paid by the City.
2. 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.
3. 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.
4. The City shall also provide a reasonable alternative location for the Company's facilities as part of its relocation request.

111.05 UTILITY EASEMENTS. Prior to the City abandoning or vacating any street, avenue, alley or public ground where the Company has electric facilities, the City shall grant the Company a utility easement for said facilities. If the City does not grant the Company a utility easement for said facilities prior to abandoning or vacating a street, avenue, alley or public place, the City shall at its cost and expense obtain easements for existing Company facilities.

111.06 VEGETATION MANAGEMENT. 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 be 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.

111.07 STANDARD OF SERVICE. During the term of this franchise, the Company shall furnish electric energy in accordance with the applicable regulations of the Iowa Utilities Board and the Company's tariffs. The Company will maintain compliance with Iowa Utilities Board regulatory standards for reliability.

111.08 UNINTERRUPTED SERVICE. Service to be rendered by the Company under this franchise shall be continuous unless prevented from doing so by fire, acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Company's equipment, and in such event service shall be resumed as quickly as is reasonably possible.

111.09 FRANCHISE FEE. There is hereby imposed a franchise fee of three percent upon the gross revenue generated from sales of electricity by the Company within the corporate limits of the City.

1. The Company shall begin collecting the franchise fee upon receipt of written approval of the required tax rider tariff from the Iowa Utilities Board.
2. The amount of the franchise fee shall be shown separately on the utility bill to each customer.

3. 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.
4. 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.
5. 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.

111.10 TERM OF FRANCHISE. The term of the franchise granted by this chapter and the rights granted thereunder shall continue for the period of 25 years from and after written acceptance by the Company. The acceptance shall be filed with the City Clerk within 90 days from passage of the ordinance codified in this chapter.

111.11 ENTIRE AGREEMENT. This chapter 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 chapter, that create additional burdens upon the Company or which delay utility operations.

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CHAPTER 115

RIGHTS-OF-WAY

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115.01 PURPOSE AND RULE OF INTERPRETATION. The purpose of this chapter is to establish uniform rules and controls to ensure public safety and provide efficient delivery of services by the City and others wishing to utilize streets and other public property for the delivery of utility or other services, in order to protect public and private investment, ensure orderly use of public property and ensure the health, safety and welfare of the population, to provide for the regulation and administration of the public streets and other public property and secure the rights of the City to a return on its investment in public property. This chapter is to be interpreted in light of these findings for the benefit of the public and users of the streets and other public property.

115.02 FRANCHISE, LICENSE, OR LEASE REQUIRED. No person or other entity shall use the public right-of-way or other public property without first obtaining a franchise, license or lease from the City. The City shall not enter into or issue any franchise, license or lease that grants exclusive rights. An application for a license or lease shall be filed with the Clerk on a form provided by the City and shall include as a minimum the following information: the name, address and telephone number of the applicant; the name, address and telephone number of a person whom the City may notify or contact at any time concerning the license or lease; an engineering site plan showing the proposed location of the facilities including any manholes, the size, type and proposed depth of any conduit or other enclosures; and any additional information the City may require. All licenses or leases required by this section shall be granted by the Council.

115.03 FEES REQUIRED. No franchise, license or lease for the use of public right-of-way or other public property shall be granted without requiring the grantee thereof to pay a reasonable and competitively neutral fee for the use of public right-of-way or other public property. The fees will be as follows:

1. All new franchises shall be assessed a franchise fee of up to five percent of the gross receipts of customers within the City limits.
2. A license or lease fee will be assessed on all new licenses or leases for space in the right-of-way. This license or lease fee is a one-time fee for the term of the license or lease. Payment is expected when the license or lease is signed; however, a payment schedule may be entered into between the City and the licensee or lessee. Any payment schedule must require full payment of the fee by the end of the fifth year of the license or lease. If the license or lease is renewed, a new license or lease fee will be assessed. The fee shall be based on State methodology such as acquisition and development cost and is established as set by resolution of the Council.
3. In addition to the license or lease fee, an annual right-of-way management fee will be assessed on July 1 of each year that the license or fee is in force. The fee is based on the number of linear feet of wire laid in the City right-of-way, and reflects the actual management cost the City incurs while managing the right-of-way. The fee is established as follows: \$0.10 per linear foot.

4. In addition to the license or lease fee and annual management fee, any person or other entity shall pay a fee every time their facility requires excavation in the right-of-way. This fee will cover costs for street degradation and replacement, inspection and obstruction and routing of pedestrian and vehicle traffic. The fee schedule is established as set by resolution of the Council. All or part of this fee may be waived if work is done in conjunction with City construction.

115.04 LIMIT ON TERM. No franchise, license, or lease for use of the public right-of-way or other public property shall be granted for a term of more than five years, unless both parties agree to a longer time.

115.05 PLACEMENT OF FACILITIES. The facilities, fixtures and equipment of the distribution, transmission or sale of any utility services, or services provided under license or lease or easement, shall be placed and maintained so as not to unnecessarily or unreasonably interfere with the travel on the streets, highways, avenues, alleys, bridges and public places in the City, nor shall such facilities, fixtures and equipment interfere with the proper use of the same, including, but not limited to, ordinary drainage, or the functioning of the sewers, underground pipe or other property of the City. In the event that facilities, fixtures and equipment of any person or other entity located within a public right-of-way must be relocated because of paving, road construction or road reconstruction, sewer construction or sewer reconstruction or the construction or reconstruction of public drainage systems or similar public works or the construction or reconstruction of the facilities of any City-owned utility, such relocation, at the written request of the City, shall be completed by the owner of such facilities at the owner's cost. The City shall upon request of any person or other entity holding a franchise, license or lease, review any plans for the construction of facilities, fixtures and equipment within the public right-of-way and advise the person or other entity of any conflict such construction may have with planned or anticipated public improvements, but failure of the City to so advise such person or other entity will not relieve the owner of such facilities of its obligations under this chapter. Notwithstanding the foregoing, the Council may require placement of equipment or facilities belonging to any holder of a franchise, license or lease be limited to locations designated by the Council if such limitation is deemed by the Council to be necessary to protect the integrity of use of present and future users of the public right-of-way or other public property.

115.06 INDEMNIFICATION AND BOND. The holder of any franchise, license or lease shall indemnify and hold the City harmless at all times during the term of the franchise, license or lease from and against all claims for injury or damage to any person or property, including payments under worker's compensation laws, caused by the construction, erection, operation or maintenance of its facilities, fixtures or equipment, or the negligence of its contractors or its employees. In case of any suit or action at law being commenced against the City, upon any claim for damage arising out of any loss, injury or damage claimed to have been caused by any installation, improvement, obstruction or excavation made or left in, under or upon such street, sidewalk, alley or public place by the holder of a franchise, license or lease, its agents, contractors or employees, upon being notified in writing by the City of such action or proceeding, the holder of said franchise, license or lease shall appear and make proper defense thereto at the expense of the holder of the franchise, license or lease; and if any judgment or decree shall in any such case be rendered against the City therein, the holder of said franchise, license or lease shall assume, pay and satisfy such judgment or decree, with the cost thereof. Immediately upon issuance of the franchise, license or lease, the holder of the franchise, license or lease shall purchase general liability insurance. The amount of insurance shall be a minimum of \$1,000,000.00 with a maximum deductible of \$5,000.00. The holder of the franchise, license or lease shall file with the Clerk a certificate of insurance which clearly discloses on its face coverage in conformity with these requirements. Upon request of the City, the holder of the franchise, license or lease shall submit a certified copy of the policy.

115.07 REGULATION BY THE CITY. The City reserves the right to make reasonable general regulations for the use of streets and other public property which unless otherwise specifically provided shall apply to any holder of a franchise, license or lease.

115.08 CONSTRUCTION AND EXCAVATION BY HOLDERS. A written permit will be obtained from the Council whenever it becomes necessary for the holder of any franchise, license or lease to excavate in streets or public grounds of the City. Such permits shall state a particular part or point of the street where the excavation is to be made and the length of time in which such permit shall authorize the work to be done. An exception to a requirement for a permit shall be made in cases of emergency involving public safety, in which case a permit will be obtained at the earliest opportunity after the work has started. In making excavations in the streets, the holder of any franchise, license or lease shall proceed with such work as to cause the least possible inconvenience to the public. The holder of any franchise, license or lease shall properly protect, according to safety standards generally accepted at the time of placement as may be determined from time to time by the Council, all excavations and obstructions by proper placement of shoring, surface plates, barricades, warning lights and such other or additional devices as circumstances may warrant. If in the opinion of the Council such excavation or obstruction is not properly and safely protected, the Council shall notify such holder of a franchise, license or lease, who shall immediately comply with such reasonable instructions. Immediately after use, any trenches for excavations which the holder of a franchise, license or lease has opened shall be filled. However, no trench or excavation in the streets shall be filled or covered without giving the City the right to inspect the same. All backfilling in streets will be according to City specifications. Temporary street surfacing will be placed in such excavations as soon as the same has been backfilled. Pavements, sidewalks, curbs and gutters or other portions of streets and public places opened, disturbed or damaged shall be promptly restored and replaced with like materials at the expense of the holder of a franchise, license or lease and left in as good condition as before the opening, disturbance or damage occurred. In the event like replacement materials are not available, the holder of the franchise, license or lease shall notify the Council, who must approve the use of any alternate materials. In the event that the holder of a franchise, license or lease fails to comply with the provision of this section, after having been given reasonable notice, the City may do such work as may be needed to properly repair such pavements, sidewalks, curbs and gutters or other portions of streets and public places and the cost thereof shall be repaid to the City by the holder of the franchise, license or lease. In cases where a cut or disturbance is made in a section of street paving or sidewalks, but causes greater disturbance than to just the area cut, rather than replace only the area cut, the holder of a franchise, license or lease shall replace that area as may be ordered by the Council, which in no event shall exceed the panel or panels disturbed.

115.09 CITY CONSTRUCTION AND PAVING. Whenever the City shall pave or repave any street or shall change the grade line of any street or public place or shall construct or reconstruct any conduit, water main service or water connection, sewer or other City-owned public works or City-owned utility, it shall be the duty of the holder of any franchise, license or lease, when so ordered by the City, to relocate its service lines and other property in the streets or other public places at its own expense so as to conform to the established grade or line of such street or public place and so as not to interfere with the public improvements so constructed or reconstructed. In the case of other public improvements, including but not limited to urban renewal projects, the City may require the holder of a franchise, license or lease to relocate its poles, service lines and appurtenances in the streets at the owner's expense. The City may at its discretion assign personnel for inspection of excavation and related work being performed by the holder of a franchise, license or lease. Should the holder of the franchise, license or lease fail or refuse to do and perform the things provided in this section, the City may, after reasonable notice, perform the work and charge the expense thereof to the holder of the franchise, license or lease and the holder of the franchise, license or lease shall promptly pay said charges.

115.10 DESIGN NOTICE TO CITY. The holder of a franchise, license or lease shall promptly, upon request, furnish the Council a detailed map or maps of its distribution system both within the City limits and the area within two miles surrounding the City unless that area is within another city. The holder of a franchise, license or lease shall thereafter update the map or maps at least annually or upon request, showing all subsequent additions or deletions to the distribution system. Prior to any excavation by the City or its agents, a representative must contact the holder of any franchise, license or lease regarding current information on the location of underground lines or facilities in the area concerned. The obligation to contact the holder of a franchise, license or lease under this section shall be satisfied if contact is made with the corporation organized pursuant to Chapter 480 of the *Code of Iowa* or an entity with a similar function utilized by both the City and the Company, currently the Iowa One Call System.

115.11 ABOVE-GROUND CABLES, WIRES, CONDUITS, AND POLES. All cables, wires, and conduits shall be placed underground except where above-ground connection to buildings or other locations above ground is reasonably necessary. Such above-ground connection shall be by means of poles located, as far as reasonably practical, within alleys. No such poles shall be installed or erected until the Council has approved the proposed location, construction and pole heights.

115.12 ASSIGNMENT. No sale or assignment of any franchise, license or lease of the use of the public right-of-way or other public property shall be effective until it is approved by the Council and until the holder thereof has filed in the office of the Clerk written notice of the proposed sale, transfer, disposition or assignment, such notice to clearly summarize the proposed procedure and the terms and conditions thereof. Such approval by the City shall not be unreasonably withheld. The proposed vendee, assignee or lessee shall similarly file an instrument, duly executed, reciting such proposal, accepting the terms of the franchise, license or lease and agreeing to perform all of the conditions thereof.

115.13 FORFEITURE. The violation of any material portion of a franchise, license or lease by the holder thereof or its successors or assigns or its failure promptly to perform any of the provisions of this chapter shall be cause for forfeiture of said franchise, license or lease and the termination of all rights thereunder. Such forfeiture shall be accomplished by ordinance of the City after written notice to the holder thereof and a continuation of the violation, failure or default specified on the notice for at least 30 days from the date the notice was served.

115.14 APPLICATION. This chapter shall apply to all franchises, licenses or leases and easements granted by the City, including all existing franchises, licenses or leases and easements.

115.15 HOME RULE. This chapter is intended to be and shall be construed as consistent with the reservation of local authority contained in the 25th Amendment to the Iowa Constitution granting cities Home Rule powers. To such end, any limitation on the power of the City contained herein is to be strictly construed and the City reserves to itself the right to exercise all power and authority to regulate and control its local affairs and all ordinances and regulations of the City shall be enforceable against the holder of any franchise, license or lease.

115.16 NEW TECHNOLOGIES. Should, within the term of any franchise, license or lease, developments within the field for which the grant was made offer to the holder thereof the opportunity to effectively, efficiently and economically serve its customers through use of a substance or material other than those for which the grant was originally made, then the holder of the franchise, license or lease may petition the Council, which, with such requirements or limitation as it deems necessary to protect public health, safety and welfare, may allow the use of such substances under the terms and conditions of the franchise, license or lease.

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