

ORDINANCE NO. \_\_\_\_

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 SHELDON, 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 15 YEARS.

BE IT ENACTED by the City Council of the City of Sheldon, 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 non-exclusive franchise to acquire, construct, erect, maintain, and operate in the City of Sheldon, Iowa (hereinafter called the “City”), a gas distribution system to furnish natural gas along, under and upon the public right-of-way, streets, avenues, and alleys of the City (collectively “public street” or “public streets”) 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 fifteen (15) year period from and after the effective date of this ordinance; provided, however, that either the City or the Company may, during the first ninety (90) days following the fifth and tenth anniversaries of the effective date of the franchise, provide written notice to the other party of its desire to amend the franchise. The parties may negotiate 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. Failure to amend the franchise at the first date option does not render invalid the City’s second option to amend or terminate. If neither party requests such negotiations at year five or year ten, the franchise will continue through the conclusion of fifteen years from its initial approval date. Nothing in this Section or this ordinance shall limit the City’s right to amend, at any time but subject to the provisions, restrictions, and limitations of Chapter 364 of the Code of Iowa, this ordinance to impose a franchise fee.

**Section 2.** The rights and privileges hereby granted are subject to the provisions, restrictions,

and limitations of Chapter 364 of the Code of Iowa, as amended from time to time. Further, the Company shall comply with all applicable federal, state, and local regulations regarding reporting, including, but not limited to, those described in Chapter 114 of the Code of Ordinances of Sheldon, Iowa, as amended from time to time.

**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 (i) the same shall be placed in accord with this franchise and the regulations of the City regarding the placement of equipment, structures, facilities, accessories, or other objects in public streets, including ordinances that assign corridors or other placements to users of the right-of-way and ordinances that may be adopted regarding separation of structures, facilities, accessories, or other objects; and (ii) the same shall be so placed as not to unreasonably interfere with any above or below-ground utility services or facilities that have been or may hereafter be located by or under 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 in the City in such a manner as the City may reasonably require for the purposes of facilitating the use, construction, reconstruction, maintenance, or repair of the public street or other public improvement. If the City has a reasonable alternative route for the public street or a reasonable alternative construction method that would not cause the relocation of Company installations, or would minimize the cost or expense of relocation of Company installations, the City and the Company shall work together to consider said alternative route or construction method. The City shall be responsible for surveying and staking the public streets for City projects that require the Company to relocate Company facilities. If requested, the City shall provide, at no cost to the Company, copies of its relocation plan and profile and cross section drawings. If tree/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 tree/vegetation removal does not coincide with the Company's facilities relocation schedule and the Company must remove trees/vegetation that are included in the City's portion of the project, the City shall either remove the trees/vegetation

at its cost or reimburse the Company for the reasonable expenses incurred to remove said trees/vegetation. 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 the Company to compensate the Company for the costs of relocation.

**Section 5.** All facilities and equipment comprising the Company's gas distribution system and located in public streets shall be located so as to cause minimum interference with the proper use of the public streets and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin the public streets. In making excavations in any public streets for the installation, maintenance, or repair of gas pipes, conduits or apparatus, the Company shall not unreasonably obstruct the use of the public streets. The Company in making such excavations shall, if required by ordinance, obtain a City permit therefore and provide City representatives with advance notice prior to the actual commencement of the work. In emergencies that require immediate excavation, the Company may proceed with the work without first applying for or obtaining the permit; provided, however, that the Company shall apply for and obtain the excavation permit as soon as possible after commencing such emergency work. The Company shall comply with all provisions and requirements of the City in its regulation of the use of public streets in performing all work. The Company shall also comply with all City ordinances regarding paving cuts, placement of facilities, and restoration of pavement and other public infrastructure. In the event of an excavation, the Company shall, in a commercially reasonable manner approved by the City, replace the surface of the public street, restoring the public street to the condition as existed prior to the Company's excavation. However, the Company shall not be required to improve or modify the public street, or other areas adjacent to the Company project, to a condition superior to its immediate previously existing condition, except that any replacement of any surface shall conform to current City Code regarding its depth and composition. The Company shall complete all repairs in a timely manner. In the event that the Company does not timely comply with its obligations under this Section after receiving at least forty-eight (48) hours' notice from the City, the City may perform the work and recover its actual, verified cost from the Company upon notice to the Company.

**Section 6.** The City's vacation of a public street shall not deprive the Company of its right to operate and maintain existing facilities on, below, above, or beneath the vacated property. Prior to the City vacating any public street where the Company has facilities, the City shall provide the Company with not less than thirty (30) days advance notice of the City's proposed action and, upon

request grant the Company a utility easement covering existing and future facilities and activities. If the City fails to grant the Company a utility easement for said facilities prior to vacating a public street, the City shall at its cost and expense obtain easements for the existing Company facilities.

**Section 7.** For five (5) years after the Company has initiated construction to relocate, at its cost and expense, Company facilities or equipment in a public street at the direction of the City, the Company shall not be required to relocate, at its cost and expense, Company facilities or equipment within the same portion of that public street.

**Section 8.** If the City orders or requests the Company to relocate its existing facilities or equipment in order to directly facilitate the private portion of a 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) the Company for the cost of such relocation as a precondition to relocation. The Company shall not be required to relocate its facilities or equipment in order to facilitate such a private project at its expense, unless the relocation is necessary to complete a public street or similar public infrastructure that will serve the area being developed.

**Section 9.** Nothing in this ordinance may be deemed to create civil liability on the part of the City for actions, omissions, or negligence of the Company, or of the Company's agents, contractors, employees, licensees, or invitees. Further, nothing in this ordinance may be deemed to create civil liability on the part of the Company for actions, omissions, or negligence of the City, or of the City's agents, contractors, employees, licensees, or invitees. This ordinance may not be interpreted or construed to provide any third parties (including, but not limited to, the Company's customers) with any remedy, claim, liability, reimbursement, cause of action, or any other right as against the Company or the City. The Company and the City shall bear responsibility for their own actions, omissions, and negligence. The Company shall defend, indemnify, and hold harmless the City from any and all claims, suits, losses, damages, costs, reasonable attorneys' fees, or other expenses, on account of (i) any personal injury, death, or damage to property arising from the Company's performance of its rights or obligations pursuant to its franchise and this ordinance; or (ii) any act or omission of the Company, its agents, contractors, employees, licensees, or invitees in, on, or around public streets. Notwithstanding the foregoing provisions, the Company shall not be obligated to defend, indemnify, and hold harmless the City for any costs or damages 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 public streets, of all equipment which it owns or over which it has control that is located in public streets, including documents, maps, and other information in paper or electronic or other forms (“Information”). The Company and the City recognize the Information may in whole or part be considered a confidential record under state or federal law or both. Therefore, City shall not release any Information without prior consent of the Company and shall return the Information to the Company upon request. The City recognizes that the Company claims the Information may constitute a trade secret or is otherwise protected from public disclosure by state or federal law on other grounds, and agrees to retain the Information in its non-public files. Furthermore, the City agrees that no documents, maps, or other 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, or Chapter 22 of the Code of Iowa, as such statutes and regulations may be amended from time to time. In the event any action at law, in equity, or administrative is brought against the City regarding disclosure of any document which the Company has designated as a trade secret or as otherwise protected from disclosure, the Company shall assume, upon request of the City, the defense of said action and reimburse the City any and all costs, including attorney fees and penalties to the extent allowed by law.

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

**Section 12.** The Company shall construct, operate, and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors and Iowa law. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent with and in accordance with the applicable regulations of the Iowa Utilities Board, the 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 the Company. The Company shall, at all times during the term of this franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide.

**Section 14.** The Company shall, at its expense, procure and maintain a policy or policies of liability insurance insuring the Company and the City against all claims, demands, or actions for injury or death sustained by one or more persons as a result of any one occurrence in an amount of not less than \$1,000,000.00, and for damage to property in an amount of not less than \$1,000,000.00, and general aggregate in the amount of not less than \$2,000,000, made by or on behalf on any person or entity arising from, related to, or connected with, the conduct and operation of the Company's business in, on, or around public streets. The Company shall provide evidence of such insurance upon the City's request therefor.

**Section 15.** This franchise shall apply to and bind the City and the Company and their successors and assigns; provided, however, that any assignment by the Company shall be subject to the approval of the City Council by resolution, which approval shall not be unreasonably withheld, except that no consent shall be required for any assignment or transfer by merger, consolidation, or reorganization. Upon any sale or assignment by the Company, the Company shall file with the City Clerk written notice of the proposed sale, transfer, disposition, or assignment and clearly summarize the proposed procedure and the terms and conditions thereof. If the City determines it needs additional information, the Company shall provide the requested information. The Company shall reimburse the City for the City's reasonable costs incurred in reviewing all matters relating to the sale or assignment, including the reasonable costs for consultants and technical experts. The City shall have sixty (60) days from the effective date of the assignment to adopt the resolution. If the City fails to adopt a resolution affirming or rejecting the assignment during the sixty (60) day period, the assignment shall be deemed approved.

**Section 16.** 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 and pursue any other right or remedy available under law or in equity, including, but not limited to, a claim to recover all damages, costs of enforcement, and reasonable attorneys' fees. A party shall not be considered to be in breach of this franchise if it has operated in compliance with state and 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 provision of this ordinance shall be adjudged to be illegal or void, such adjudication shall not affect the validity of the ordinance as a whole, and the remaining provisions of this ordinance shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

**Section 18.** To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under, or in connection with this ordinance. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

**Section 19.** This ordinance and the rights and privileges herein granted shall become effective and binding upon its approval, passage, and publication 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 days of its final passage. The Company shall, within thirty (30) days after the City Council 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 the 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 20.** 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.

PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF SHELDON, IOWA

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(OFFICIAL SEAL)

I, Angie Beckman, City Clerk of the City of Sheldon, Iowa, hereby certify that the above and foregoing is a true copy of Ordinance No. \_\_\_\_\_, passed by the City Council of said City at a meeting held \_\_\_\_\_, 2019, and signed by the Mayor on \_\_\_\_\_, 2019, and published/posted as provided by law on \_\_\_\_\_, 2019.

\_\_\_\_\_  
City Clerk

(OFFICIAL SEAL)