

**CITY OF CRESTON, IOWA
ELECTRIC FRANCHISE**

ORDINANCE NO. _____

An Ordinance granting to Interstate Power and Light Company, its successors and assigns, the right and non-exclusive franchise to acquire, construct, reconstruct, erect, maintain and operate in the City of Creston, Union County, Iowa, an electric system and to furnish and sell electric energy to the City of Creston and its inhabitants and authorizing the City to collect franchise fees for a period of twenty-five (25) years.

BE IT ENACTED BY THE City Council of the City of Creston, Union County, Iowa:

Section 1. There is hereby granted to 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, replace, erect, maintain and operate in the City of Creston, hereinafter referred to as the "City", a system for the distribution of electric energy along, under, over and upon the streets, avenues, rights of way, alleys, public places or public grounds (excluding parks) to serve customers within the City, and to furnish and sell electric energy to the City and its inhabitants. The City Council reserves to itself the right to extend this franchise to specific areas or corridors within parks at the request of the Company. The Company is granted the right to exercise of powers of eminent domain as provided in Section 364.2 of the Code of Iowa. This franchise shall be effective for a twenty-five (25) year period from and after the effective date of this ordinance.

Section 2. The Company shall have the right to erect all necessary poles and to place thereon and attach thereto the necessary wire, guys, anchors, fixtures and accessories as well as excavate and bury conduits or conductors and related equipment and appurtenances for the distribution of electric energy in and through the City provided the same shall be placed in accord with this franchise and the City Code and regulations of the City regarding the placement, replacement, repair or construction of structures, facilities, accessories or other objects in the right of way by utilities and other users of the right of way, including ordinances which assign corridors or other placements to users of the right of way and requirements which may be adopted regarding separations of structures, facilities, accessories or other objects. 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.

Section 3. 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, avenues, alleys or public places 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 to current standards. The Company shall comply with all provisions and requirements of the City in its regulation of the use of City right of way in performing any excavations. The Company shall comply with all city ordinances regarding paving cuts, placement of facilities and restoration of pavement and other public infrastructure. The Company shall replace the surface, restoring the condition as existed prior to the Company's excavation, but shall not be required to improve or modify the public right of way unless said improvement is necessary to meet a SUDAS (Statewide Urban Design and Specifications) standard, a requirement of the Americans with Disabilities Act, or any other standard mandated by state or federal law, provided however, if any improvement is requested or required for aesthetic, cosmetic or similar purposes not mandated by state or federal law the City shall reimburse the Company the incremental cost of such improvements. The Company shall complete all repairs in a timely and prompt manner. Company agrees any replacement of road surface shall conform to current City ordinances regarding its depth and composition.

Section 4. The City may require the Company for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street, avenue, right of way or alley, public places or grounds in accord with the ordinances of the City at the Company's cost and expense in accordance with Iowa law, including Company's Tariff on file with and made effective by the Iowa Utilities Board as may subsequently be amended, to construct, replace, repair, locate and relocate its existing facilities or equipment in, on, over or under any public street, avenue, right of way, alley, public places or grounds in the City

in such a manner as the City may reasonably require, except the Company shall not be required to construct, replace, repair, locate and relocate existing facilities where Company facilities are located in private easements (whether titled in the Company or other entities) unless said private easement is upon land owned by the City.

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 of a commercial 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.

The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right of way that have been relocated at Company expense at the direction of the City in the previous three (3) years.

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. The City shall also provide a reasonable alternative location for the Company's facilities as part of its relocation request.

Section 5. The City when 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 and their replacements on, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley, right of way or other public ground where the Company has electric facilities, the City shall grant the Company a utility easement for said facilities. This paragraph shall not apply to the realignment, reconstruction, or vacation of streets or alleys in a designated urban renewal area provided, however, the City shall identify, reserve and make available alternate locations for facilities to serve the designated urban renewal area consistent with the technical needs of the Company.

Section 6. The pruning and removal of trees shall be done in accordance with current nationally accepted safety and utility industry standards and federal and state law, rules and regulations. The Company is authorized and empowered to prune or remove at Company expense, any tree extending into any street, avenue, right of way, alley, public place 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 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.

Section 7. 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.

Section 8. 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.

Section 9. There is hereby imposed a franchise fee of two percent(2%)on October 1, 2015; three percent (3%) on April 1, 2016; four percent (4%) on April 1, 2018; five percent (5%) on April 1, 2020, upon the gross revenue generated from sales of electricity by the Company within the corporate limits of the City. Upon notice, the Company shall promptly seek a tax rider tariff from the Iowa Utilities Board and the company shall begin collecting the franchise fee upon receipt of written approval of the required tax rider tariff from the Iowa Utilities Board.

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.

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. 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 10. The City will provide to the Company, by certified mail, copies of annexation ordinances and all new property

addresses in the annexed areas to which the franchise fee will be applied. The Company shall commence collecting the franchise fee in the annexed areas sixty (60) days thereafter.

Section 11. The Company agrees that, unless there are extenuating circumstances because of damage, supply shortage or other reason beyond the Company's control, the Company shall replace any street light which is burned out or otherwise not functioning within ten days of receipt of notice specifying the street light in need of replacement or repair. If because of extenuating circumstances the Company will not be able to replace or repair a street light within ten (10) days after notice, the Company shall notify the City within ten (10) days of the receipt of notice from the City what the extenuating circumstances are, including a date when the street light will be repaired or replaced.

The Company agrees that, unless there are extenuating circumstances because of damage, supply shortage or other reason beyond the Company's control, the Company will convert all street lights in the City to Light Emitting Diode (LED) lights within five (5) years of the effective date of this franchise. The Parties agree that should an improved technology be developed and commercially reasonable during this franchise, thereafter, the Company may, at its option, substitute different lighting technologies that provide an amount and quality of light that is at least equal to that provided by the LED technology.

Section 12. The Company shall make an annual written report to the City Council summarizing community contributions, subject to confidentiality or privacy concerns, that benefit the people of the City which have been made by the Company or its foundation.

Section 13. The City shall be privileged upon thirty (30) days advance notice to the Company, without charge, to make use of the distribution poles of the Company that are placed within City right of way for any City alarm, City control, or City communication function, including City cameras, excluding any paid subscriber services (but including any City owned cable or wire line communication system for which use the City shall pay an amount consistent with federal law), to the extent that such use shall not interfere with their use by the Company, but the City shall hold the Company harmless from any and all causes of action, litigation or damages arising through the placing of the facilities of the City upon the Company's poles. If at the sole discretion of the Company, it is determined that said attachments

may create a clearance violation or other hazardous situation, or that wind or other conditions may place undue stress on specific Company facilities, the City shall not be authorized to attach to those facilities. If attachments are in place, upon notification by the Company of damage or potential damage, the City shall promptly remove said attachments. The Company will contact the City Manager in the event of an emergency.

Section 14. The Company will provide to the City the Company's energy efficiency literature and rebate forms for display in the building permit department and other City departments if requested by the City. The Company will participate in neighborhood and community events, when possible at the Company's discretion, and upon a request from the City or neighborhood organization, to encourage City residents to utilize the Company's energy efficiency programs.

Section 15. In the event that the Company should have real estate or any interest in real estate within the City or within two (2) miles of the then current boundaries of the City, which it intends to sell, transfer or which it otherwise intends to divest the Company, it shall first offer to sell or transfer said property to the City upon the terms and conditions upon which the Company intends to sell, transfer or divest itself and in no case shall the Company sell, transfer or divest itself of any said interest in real property without first offering equal terms to the City. The City shall have sixty (60) days to respond to any offer of sell or transfer or divestiture. The failure of the City to respond in sixty (60) days shall be deemed a refusal by the City and the Company may then sell, transfer or otherwise divest of such real estate or interest in real property free of any claim or hindrance by the City.

Section 16. The City reserves to itself all home rule authority under the Constitution of Iowa.

Section 17. The term of the franchise granted by this Ordinance and the rights granted thereunder shall continue for the period of twentyfive (25) years from and after written acceptance by the Company. The acceptance shall be filed with the City Clerk within sixty (60) days from passage of this Ordinance.

Section 18. If any section or provision of this ordinance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other provisions of this ordinance which can be given effect without the invalid portion or portions and to this end each section and provision of this

ordinance is severable.

Section 19. The expense of the publication of this Ordinance shall be paid by the Company.

Section 20. This Ordinance 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 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 Ordinance, that create additional burdens upon the Company, or which delay utility operations.

PASSED and ADOPTED by the Creston City Council on the _____ day of _____, 2015.

WARREN WOODS, Mayor

Attest:

LISA WILLIAMSON, City Clerk

(CITY SEAL)