

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 FRANCHISE GRANTED. That there is hereby granted to Black Hills Energy (“Grantee”), its successors or assigns, the right, permission, authority, and power and privilege to maintain, build, lay, and operate in and along the streets, highways, and other public grounds within said City, a system of mains, pipes, conduits, and other necessary attachments and appurtenances for the storage, conveyance, distribution, and sale of gas, for heat and other purposes in the City, and the right, permission, authority, power, and privilege to maintain, use, own, and operate such gas works within the corporate limits of said City, as may be necessary to carry out the terms of this grant. Such right, authority, permission, and power are hereby granted for the term of 25 years, from and after the date of the final acceptance thereof by the Grantee.[†]

110.02 SYSTEM ESTABLISHED. The Grantee, by the acceptance of this franchise, agrees to acquire, build, lay, maintain, and operate in and along the streets, highways, and other public grounds within said City a system of mains, pipes, conduits, and other necessary attachments and appurtenances for the storage, conveyance, distribution, and sales of gas, either artificially manufactured or natural gas, for light, fuel, power, heat, and other purposes in the City; and said equipment shall be sufficient for the supply of such gas as may, from time to time, be reasonably needed and consumed by said City and its inhabitants, and may maintain, construct, use, own, and operate a gas works within the corporate limits of said City but that nothing herein shall limit the right and power of the Grantee to sell or furnish gas to consumers outside the corporate limits of said City nor from using all of the Grantee’s works, mains, and equipment for such purposes, provided that in no manner shall the City or the inhabitants thereof be discriminated against by the supplying of gas outside the City. The Grantee, however, shall not be liable to the City or its inhabitants by reason of the failure of the Grantee to lay additional equipment or to deliver gas as required by this franchise chapter as result of Acts of God or the public enemy, inability of the Grantee’s pipeline supplier to furnish an adequate supply of gas, due to an emergency, temporary or permanent including, but without restricting it to, the securing of materials, due to an order or decision of a public regulatory body or other acts or conditions wholly beyond the control of the Grantee. During a period of shortage of gas caused as aforesaid, the Grantee shall have the right and authority, subject to the approval of the Council, to adopt reasonable rules and regulations in connection with the limiting, curtailing, or allocating extension of service, or supplying as to any customer or prospective customer, and withholding the supplying of gas to new customers, provided that such rules and regulations shall be just and reasonable and uniform as applied to each class of customers.

[†]**EDITOR’S NOTE:** Ordinance No. 778 adopting a natural gas franchise for the City, was passed and adopted on October 3, 2005.

110.03 PUBLIC CONVENIENCE AND INDEMNIFICATION OF CITY. The Grantee shall not lay its gas mains and service pipes so as to interfere with or obstruct the drainage of said City or the construction of sewers or underground fixtures for the conveyance of water or the necessary and proper use of said street, alleys, and public places. The Grantee shall with reasonable promptness restore the surface of streets in which it makes excavations to as good a condition as they were before the commencement of such work, and during the progress of such work the Grantee shall be responsible for keeping streets and other places guarded, in order to prevent accident to persons or property. If at any time the City is subjected to liability for injury to persons or property growing out of the negligence of the Grantee, its agents, servants, or employees in connection with the operations of the Grantee, the Grantee shall fully indemnify and hold the City harmless from any and all such liability, provided, however, that in case suit is instituted against the City, the City shall promptly notify the Grantee of such suit, giving it ample time to appear and defend the same.

110.04 EXTENSIONS OF SERVICE. The Grantee, its lessees, successors, or assigns shall make such reasonable extensions of time mains from time to time as may be necessary thereto; provided, however, that the Grantee, its lessees, successors, or assigns shall not be required to make any extensions of its mains for the purpose of serving any new consumer or consumers which shall necessitate the installation of more than 100 feet of main for each consumer to be served, (nor where the estimated revenue to be derived from serving such new consumer or consumers is insufficient to show an adequate return computed on the remainder of the period of this franchise upon the total investment required to serve such new consumer or consumers).

110.05 SERVICE CONNECTIONS. Grantee agrees to extend customer service connections from the main to the customer's property line, at nearest point to the main, as part of the distribution system. Grantee may charge the customer a reasonable rate per foot for installation of the service connection from the property line to the customer's premises. In the event the customer decides to dig and back fill the trench on their property, credit shall be given for such work in applying the charge.

110.06 EXCAVATIONS. Whenever the Grantee shall desire to excavate in any street or alley for the purpose of laying gas mains, it shall give the City at least three days' notice thereof by filing a written notice with the Clerk and shall not, during the progress of the work, unnecessarily obstruct the passage or proper use of such street, or alley, and it shall, within a reasonable time, restore as far as practical, said street or alley to as good a condition as it was before such excavations were made; provided it shall in no case interfere with any improvements being made by the City without the consent of the engineer.

110.07 INSURANCE. The Grantee for itself, successors, and assigns agrees to furnish the City a complete schedule of insurance carried by the Grantee to fully protect the City from any and all obligations, liabilities, or claims of any nature whatsoever, growing out of the operations, constructions, and maintenance of the said gas plant and gas distribution system. If the City at any time determines the insurance inadequate, the Grantee will add to the insurance coverage to the extent required by the City

110.08 AUTHORITY OF CITY. The Grantee agrees for and in behalf of itself, its lessees, successors, and assigns that all authority and right in this chapter contained shall at all times be subject to all right, power, and authority now or hereafter possessed by the said City, or any other regulatory tribunal having jurisdiction thereover to regulate, fix, and control just, reasonable, and compensatory gas rates, and to regulate, control and direct the manner in

which the Grantee, its lessees, successors, and assigns shall use the streets, alleys, bridges, and public places in said City.

110.09 RULES AND REGULATIONS. The Grantee shall at all times have the right to make and promulgate such reasonable regulations and rules in respect to requiring money deposits or guarantees from persons desiring gas that it may deem necessary for its protection.

110.10 FINANCIAL STATEMENT. The Grantee shall file annually, not later than 60 days after each fiscal year, in the office of the Clerk, a statement showing the capitalization of the Grantee and the profit and loss statement for the previous fiscal year, all as related to the Grantee's gas operations in the City. This statement shall be properly certified. The City shall be accorded the right to examine the books of the Grantee and to require such verifications as the City may reasonably request.

110.11 ACCEPTANCE. The Company, its successors, lessees, or assigns, shall, within 90 days after passage and publication of this chapter, file with the Clerk in writing its acceptance thereof and shall start installation of a distribution system under the franchise, in the City, within 120 days after notification by Northern Natural Gas Company as to availability of natural gas for distribution in said City, and in the event no gas is available for distribution in the City within three years after the granting of the franchise, as contemplated in this chapter, the franchise and this chapter may be revoked and repealed at the option of the Council.

110.12 SEVERABILITY. If this chapter, having become final and operative as herein provided, shall be declared in part illegal or void, then nevertheless, the lawful provisions hereof which are separate from the unlawful provisions, shall be and remain in full force and effect.

110.13 GRANTEE TO PAY EXPENSES. The Grantee agrees to pay all expenses incurred in connection with the holding of a general election by the people of the City in authorizing the granting of this franchise.

110.14 OPTION TO PURCHASE. The Grantee grants to the City the option to purchase the distribution system and business at any fifth anniversary of the introduction of natural gas into the system for commercial use. The City shall give the Grantee 12 months prior notice of its intention to exercise this option. The price to be paid shall be equal to the unamortized portion of the total investment in the distribution system, plant, and business, plus the difference between the amount actually earned, net after all taxes, and a return of six percent per year on the Grantee's total capital investment for the period from the date of introduction of natural gas into the system for commercial use to the date of sale. The investment of the Grantee shall, for the purposes of this paragraph, be amortized over a period equal to the unexpired portion of the franchise on the date of introduction of natural gas into the system for commercial use.

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CHAPTER 111

ELECTRIC FRANCHISE

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111.01 GRANT OF FRANCHISE. There is hereby granted to SOO Green HVDC Link Projectco, LLC, hereinafter referred to as “SOO Green” or the “Company,” its successors and assigns, the right and franchise to construct, reconstruct, repair, replace, maintain, and operate in the City of New Hampton, Iowa (“City”), the necessary conduits, and other appliances or equipment for the transmission of electric current and communication facilities (collectively, the “Facilities”) and the right to construct, reconstruct, relocate, repair, replace, maintain, and operate the Facilities under the streets, avenues, alleys, and public places and in a certain railroad right-of-way in the City of New Hampton, Chickasaw County, Iowa. This franchise shall be effective for a 25-year period from and after the effective date defined in Section 111.15 herein (“Effective Date”). SOO Green is also granted the right of eminent domain, as provided in Section 364.2(4) of the *Code of Iowa*, as reasonably necessary to carry out the purposes of this franchise. (“Franchise” or “Ordinance”).[†]

111.02 PLACEMENT OF FACILITIES; INDEMNIFICATION. The Facilities shall be placed and maintained so as not to necessarily interfere with travel on the streets, alleys, and public places in the City or unnecessarily interfere with the proper use of the same, including ordinary drainage, or with the sewers, underground pipe, and other property of the City, and the Company shall hold the City free and harmless from all damages arising from the negligent acts or omissions of the Company in the installation or maintenance of the Facilities.

111.03 EXCAVATIONS. In making any excavations in any street, alley, or public place, the Company shall protect the site while work is in progress, shall not unnecessarily obstruct the use of 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.

111.04 RELOCATION FOR CITY PROJECT. The Company shall, at its cost and expense, locate and relocate its Facilities in, on, over or under any public street or alley or other public place 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 of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement (“City Project”). The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right-

[†]**EDITOR’S NOTE:** Ordinance No. 846, adopting an electric franchise for the City, was passed and adopted on January 17, 2022.

of-way that have been relocated at Company expense at the direction of the City in the previous three years. The City and the Company desire to minimize, to the fullest extent possible, the risk that any of the Facilities would require relocation for the purposes of a future City Project. The City has reviewed the engineering plans for the Facilities and used its best available information to identify any areas where a City Project may occur during the term of this franchise and could potentially result in a Facilities relocation. The City and the Company will work together to revise the location of the Facilities prior to construction to reduce the risk of any conflict. For future City Projects, the following will apply:

1. In developing a City Project, the City shall consider reasonable alternatives so as not arbitrarily to cause the Company unreasonable additional expense.
2. If there is a potential conflict between a City Project and the Facilities, the City and the Company will work together to identify alternatives that would avoid relocation of Facilities. When such alternative is available, SOO Green will have the option to pay the incremental cost, if any, associated with the alternative to avoid relocation and the City will implement that alternative if SOO Green so elects.
3. If a relocation of Facilities cannot be avoided, the City will provide a reasonable alternative location for the Company's facilities within City right-of-way. The Company shall be solely responsible for any additional cost to the City, as determined by the City Engineer in the City Engineer's sole discretion, for providing such alternative location. If the alternative location the City can provide within the City right-of-way is not acceptable to the Company, the Company is granted the power of eminent domain to acquire the land rights necessary to relocate the Facilities to a suitable location. The Company will not be required to deactivate and relocate existing Facilities until the relocated Facilities are operational.

111.05 RELOCATION FOR PRIVATE PROJECT. If the City orders or requests the Company to relocate its Facilities for the primary benefit of a commercial or private project, or as the result of the initial request of a commercial or private developer or other non-public entity, the City shall require advance payment to the Company for all construction and transactions costs and the provision of an alternative location for the Facilities of such relocation from such developer or other non-public entity as a precondition to relocating the Facilities. If such pre-payment is made, the Company will not be required to deactivate and relocate existing Facilities until the relocated Facilities are operational.

111.06 VACATION OF PUBLIC RIGHT-OF-WAY. The City shall give the Company reasonable advance written notice to vacate a public right-of-way. Vacating a public right-of-way shall not deprive the Company of its right to operate and maintain existing Facilities within the vacated right-of-way and the City shall grant the Company a utility easement in the vacated public right-of-way until the City orders or requests the Company to relocate its Facilities. If such relocation is for the primary benefit of a commercial or private project, or as the result of the initial request of a commercial or private developer or other non-public entity Section 111.05 of this franchise shall control. If the relocation is for a Public Project, Section 111.04 shall control.

111.07 VEGETATION MANAGEMENT. The Company is authorized and empowered to prune or remove, at Company expense, any trees, shrubs, or vegetation extending over or into any street, alley, right-of-way, or public grounds to construct and operate the transmission line and to maintain electric reliability, safety, or restore utility service. Any such pruning or

removal shall be done in accordance with accepted safety and utility industry standards and federal and State laws, rules, and regulations.

111.08 PUBLIC PLACES. “Public places” means any property owned by the City.

111.09 NON-EXCLUSIVITY. The franchise granted by this chapter shall not be exclusive.

111.10 REPEAL OF CONFLICTING ORDINANCES. All ordinances, or parts of ordinances, insofar as they are in direct conflict herewith, are hereby repealed.

111.11 ASSIGNMENTS. No sale, assignment, or lease of this franchise shall be effective until it is approved by the Council and after the Company 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 Council shall not be unreasonably withheld. The proposed vendor, assignee, or lessee shall similarly file an instrument, duly executed, reciting such proposal, accepting the terms of this franchise, and agreeing to perform all the conditions thereof. This provision shall not apply, however, to collateral assignments in connection with a project financing of the project.

111.12 CONFIDENTIAL INFORMATION. Upon reasonable request, the Company shall provide the City, on a project-specific basis, with information indicating the horizontal location relative to boundaries of the right-of-way of all equipment which the Company owns or over which it has control located within City right-of-way. The Company and City recognize the information provided may, under current State law, constitute public records, but that nonetheless, some information provided may be confidential under State or federal law, or both. Therefore, the City shall not release any information with respect to the location or type of equipment which the Company owns or controls in City right-of-way that the Company certifies may constitute a trade secret or which may otherwise be protected from public disclosure by State or federal law. The City further agrees that no documents, maps, or 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 applicable State or federal law. Any documents, maps, or other information submitted to the City which the Company regards as exempt or protected from public disclosure shall be clearly marked as confidential by the Company. Upon request of the City, the Company shall provide citation to legal authority supporting its designation. The City shall inform the Company of any request for disclosure of such confidential documents, and upon notification from the City of any request or legal action regarding such confidential information.

111.13 SEVERABILITY. If any of the provisions of this franchise are for any reason declared to be illegal or void, the lawful provisions of this franchise, which are severable from said unlawful provisions, shall be and remain in full force and effect, the same as if the franchise contained no illegal or void provisions.

111.14 NOTICES. Any written notice required by this franchise shall be sent by first class mail to the persons and addresses below.

For SOO Green

Raj Rajan
Vice President - Project Development
Direct Connect Development Company

1600 Utica Ave S, 9th Floor
St. Louis Park, Minnesota 55416

For the City of New Hampton
City Clerk
112 E. Spring Street
New Hampton, Iowa 50659

111.15 EFFECTIVE AND BINDING. This chapter and the rights and privileges herein granted shall become effective and binding upon its approval, passage in accordance with State law, the written acceptance by the Company, publication, and notice by the Company as provided below. The City shall provide the Company with an original signed and sealed copy of this chapter within 10 days of its final passage. The Company shall, within 30 days after the Council approval of this chapter, file in the office of the Clerk of the City, its acceptance in writing of all the terms and provisions of this chapter. Following Council approval and Company acceptance, this chapter shall be published in accordance with the *Code of Iowa*. The Effective Date of this chapter shall be the earlier of (a) the date the Company provides written notice to the City Manager that any mobilization, staging, or construction of the Facilities will commence within the City limits or (b) December 31, 2026. In the event the Company does not file its written acceptance of this chapter within 30 days after its approval by the Council this chapter shall be void and of no effect.

111.16 COMPLETE AGREEMENT. This franchise 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 superseded, modified, or otherwise amended without the approval and acceptance of the Company.

111.17 PUBLICATION EXPENSES. The expense of the publication of this chapter shall be paid by the Company.

111.18 RENEWAL. The City and the Company will meet at least 12 months prior to the expiration of this franchise to discuss renewal of the franchise.

111.19 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 superseded, modified, or otherwise amended without the approval and acceptance of the Company. In no event shall the City enact any ordinance or place any limitations, either operationally or through the assessment of fees, that create additional burdens upon the Company, or that delay utility operations.

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CHAPTER 115

CEMETERY

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115.03 Cemetery Superintendent Appointed

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115.05 Records

115.06 Sale of Interment Rights

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115.09 Annual Care

115.10 Rules and Regulations

115.01 DEFINITION. The term “cemetery” means the New Hampton Cemetery (Graceland), which is a municipal cemetery under the provisions of Chapter 523I of the *Code of Iowa* and which shall be operated under the provisions of Chapter 523I of the *Code of Iowa* and this chapter.

(Code of Iowa, Sec. 523I.501)

115.02 TRUSTEESHIP. Pursuant to Section 523I.502 of the *Code of Iowa*, the City Council hereby states its willingness and intention to act as the trustee for the perpetual maintenance of the cemetery property.

(Code of Iowa, Sec. 523I.502)

115.03 CEMETERY SUPERINTENDENT APPOINTED. The Council shall appoint a Cemetery Superintendent who shall operate the cemetery in accordance with applicable rules and regulations and under the direction of the Council.

(Code of Iowa, Sec. 372.13[4])

115.04 DUTIES OF SUPERINTENDENT. The duties of the Cemetery Superintendent are as follows:

(Code of Iowa, Sec. 372.13[4])

1. Supervise Openings. Supervise the opening of all graves and be present at every interment in the cemetery.
2. Maintenance. Be responsible for the maintenance of the cemetery buildings, grounds and equipment and make a monthly report of the cemetery operation to the Council.

115.05 RECORDS. It is the duty of the Clerk to make and keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:

(Code of Iowa, Sec. 523I.311)

1. Sales or Transfers of Interment Rights.
 - A. The name and last known address of each owner or previous owner of interment rights.
 - B. The date of each purchase or transfer of interment rights.
 - C. A unique numeric or alphanumeric identifier that identifies the location of each interment space sold by the cemetery.

2. Interments.
 - A. The date the remains are interred.
 - B. The name, date of birth, and date of death of the decedent interred, if those facts can be conveniently obtained.
 - C. A unique numeric or alphanumeric identifier that identifies the location of each interment space where the remains are interred.

115.06 SALE OF INTERMENT RIGHTS. The sale or transfer of interment rights in the cemetery shall be evidenced by a certificate of interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price. The agreement for interment rights shall disclose all information required by Chapter 523I of the *Code of Iowa*. The payment of all fees and charges shall be made at the office of the Clerk where receipts will be issued for all amounts paid. Said fees and charges shall be based upon the charges as established by the Council.

(Code of Iowa, Sec. 523I.310)

115.07 PERPETUAL CARE. The Council, by resolution, shall accept, receive, and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of interment space sales or permanent charges made against interment spaces which has been set aside in a perpetual care fund. The assets of the perpetual care fund shall be invested in accordance with State law. The Council, by resolution, shall provide for the payment of interest annually to the appropriate fund, or to the cemetery, or to the person in charge of the cemetery, to be used in caring for or maintaining the individual property of the donor in the cemetery or interment spaces that have been sold with provisions for perpetual care, all in accordance with the terms of the donation or bequest or the terms of the sale or purchase of an interment space and Chapter 523I of the *Code of Iowa*.

(Code of Iowa, Sec. 523I.503, 523I.507 and 523I.508)

115.08 ANNUAL CARE. The City reserves the right to refuse to furnish maintenance service, or to permit the erection of any monumental work on those lots not under perpetual or endowed care or when the annual care on such lot has not been paid in advance.

115.09 RULES AND REGULATIONS. Rules and regulations for the cemetery may be adopted, and may be amended from time to time, by resolution of the Council and may cover such things as the use, care, control, management, restrictions and protection of the cemetery as necessary for the proper conduct of the business of the cemetery. The rules shall specify the cemetery's obligations in the event that interment spaces, memorials, or memorializations are damaged or defaced by acts of vandalism. Any veteran, as defined in Section 35.1 of the *Code of Iowa*, who is a landowner or who lives within the City shall be allowed to purchase an interment space and to be interred within the cemetery. In addition, any veteran who purchases an interment space within the cemetery shall be allowed to purchase an interment space for interment of the spouse of the veteran if such a space is available, and the surviving spouse of a veteran interred within the cemetery shall be allowed to purchase an interment space and be interred within the cemetery if such a space is available.

(Code of Iowa, Sec. 523I.304)