City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Honorable Mayor and City Council Members

FROM: Mike Pogge-Weaver, City Manager MPW

DATE: October 8, 2020

SUBJECT: MidAmerican Energy Company

- An ordinance repealing Ordinance No. 9506 and 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 Carroll, Iowa, an electric system and communications facilities and to furnish and sell electric energy to the city and its inhabitants and authorizing the city to collect franchise fees for a period of 20 years.
- Resolution adopting revenue purpose statement regarding use of revenues from proposed electric franchise fees pursuant to Iowa Code § 364.2(4)(f).

With the expiration of the current MidAmerican Energy Company electric franchise, City staff negotiated a new electric franchise for the City with MidAmerican Energy. Overall negotiations went well and resulted in a tentative agreement on a new 20-year franchise agreement.

At the September 28, 2020 meeting, Council approved a resolution that began the process to adopt the proposed Ordinance granting a franchise agreement to MidAmerican Energy Company and a revenue purpose statement regarding use of revenues from proposed electric franchise fees. The notice of tonight's public hearings was published on October 2, 2020 in the Carroll Times Herald.

The key highlights on the proposed ordinance includes:

- While the franchise runs for 20 years, either the City or MidAmerican may, during the first ninety (90) days following the fifth, tenth, or fifteenth anniversaries of the effective date of the franchise, provide written notice to the other party of its desire to amend the franchise. If, at the conclusion of the negotiations, 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 electric customers located within the corporate limits of the City, the City may terminate the franchise. If neither party requests such negotiations at year five, year ten, or year fifteen, the franchise will continue through the conclusion of twenty years from its initial approval date.

- Usually, the City does not pay for the relocation of any MidAmerican infrastructure in public right of way due to a City project. MidAmerican will not be required to relocate, at its cost and expense, facilities in the public right of way that have been relocated at by them at their expense and the direction of the City in the previous five (5) years.

- A 1% franchise fee will be collected with the proposed franchise on all MidAmerican electrical sales within the corporate limits of the City. The collection of the 1% Local Option Sales Taxes would be discontinued with the new franchise fee; therefore, the consumer will see no financial change in their utility bills.

The key highlights on the proposed revenue purpose statement includes:

- Funds collected with the 1% franchise fee in excess of the amounts necessary for costs associated with inspecting, supervising or otherwise regulating its franchises may be expended for any of the following: the construction, reconstruction, or repair of streets, highways, bridges, sidewalks, pedestrian underpasses and overpasses, street lighting fixtures, and public grounds, and the acquisition of real estate needed for such purposes; public safety, including the equipping of fire, police, emergency services, sanitation, street, and civil defense departments; the establishment, construction, reconstruction, repair, equipping, remodeling, and extension of public works, public utilities, and public transportation systems; the repair, remediation, restoration, cleanup, replacement, and improvement of existing public improvements and other publicly owned property, buildings, and facilities; projects designed to prevent or mitigate future disasters as defined in Iowa Code § 29C.2; energy conservation measures for low-income homeowners, low-income energy assistance programs, and weatherization programs; abatement of fees for property damaged by a disaster as defined in Iowa Code § 29C.2; and economic development activities and projects.

After the public hearing, if the Council finds the proposed ordinance granting a franchise agreement to MidAmerican Energy Company acceptable and finds the proposed revenue purpose statement regarding use of revenues from proposed electric franchise fees acceptable then the Council should approve the proposed Ordinance and Resolution.

RECOMMENDATION: After the respective public hearings, consider approving an ordinance repealing Ordinance No. 9506 and 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 Carroll, Iowa, an electric system and communications facilities and to furnish and sell electric energy to the city and its inhabitants and authorizing the city to collect franchise fees for a period of 20 years and consider approving a resolution adopting revenue purpose statement regarding use of revenues from proposed electric franchise fees pursuant to Iowa Code § 364.2(4)(f).

ORDINANCE NO. _____

AN ORDINANCE REPEALING ORDINANCE NO. 9506 AND 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 CARROLL, IOWA, AN ELECTRIC SYSTEM AND COMMUNICATIONS FACILITIES AND TO FURNISH AND SELL ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS AND AUTHORIZING THE CITY TO COLLECT FRANCHISE FEES FOR A PERIOD OF 20 YEARS.

BE IT ENACTED by the City Council of the City of Carroll, Iowa:

Section 1. Ordinance No. 9506 (City Code Sections 111.01 through 111.07 both inclusive) and all amendments and supplements thereto shall upon the effective date of this Ordinance be repealed and replaced by this Ordinance. Upon the effective date of this Ordinance, all prior electric franchises granted to MidAmerican Energy Company to furnish electric service to the City and its inhabitants are hereby repealed and all other ordinances or parts of ordinances in conflict herewith are also hereby repealed.

SECTION 2. 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 Carroll, Iowa (hereinafter called the "City"), a system for the transmission and distribution of electric energy and communications signals along, under, over, and upon the public streets, avenues, rights-of-way, and alleys of the City (collectively "public street" or "public streets") to serve customers within the City, and to furnish and sell electric energy to the City and its inhabitants. The Company is granted the right to exercise of powers of eminent domain, subject to City Council approval by resolution. The term "communications signals" refers to Company owned equipment that is used solely to monitor and communicate the status of the electric energy system to the Company's control center. The City Council reserves to itself the right to extend this franchise to other public places or public grounds at the request of the Company. This franchise shall be effective for a twenty (20) 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, tenth, or fifteenth 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 electric customers located within the corporate limits of the City, the City may terminate the franchise. Failure to amend the franchise at the first or second date option does not render invalid the City's second option or third option to amend or terminate. If neither party requests such negotiations at year five, year ten, or year fifteen, the franchise will continue through the conclusion of twenty years from its initial approval date.

SECTION 3. 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 113 of the Code of Ordinances of Carroll, Iowa, as amended from time to time.

SECTION 4. The Company shall have the right to erect all necessary poles on public streets and to place thereon the necessary wires, fixtures, and accessories as well as to excavate and bury conduits or conductors in public streets for the distribution of electric energy and communications signals in and through the City, provided (i) the same shall be placed in accord with this franchise, ordinances, and policies of the City adopted by resolution or motion of the Council regarding the placement of equipment, structures, facilities, accessories, or other objects in public streets, including regulations that assign corridors or other placements to users of the public streets that may be adopted regarding separation of structures, facilities, accessories, or other objects; (ii) the same shall be so placed as not to interfere with any above- or below-ground utility services or future facilities that have been or known to be located by or under authority of the City; and (iii) the same shall be placed, when possible and in accordance with MidAmerican's Tariff and Iowa Utilities Board rules, underground. The Company shall comply with all federal and state regulations regarding joint use of its poles and trenches for telecommunication carriers as defined in 47 C.F.R. § 1.1402.

SECTION 5. 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 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 an alternative construction method that would not increase the City's cost, 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, in the extension or modification of public streets, make provision for the placement of Company service lines and facilities in, on, over, or under those public streets without charge to the Company. In planning for the extension or modification of public streets, the City shall to the extent practicable consider design of such changes to limit the need for relocation of Company facilities. 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 and if the use of such funds for relocation of utility facilities does not impact the funds available for the project, the City shall attempt to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

SECTION 6. All facilities and equipment comprising the Company's electric distribution system located in the 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 conductors, conduits, or the erection of poles, wires, or other

appliances, 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 twenty-four (24) hours 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 providing advance notice or applying for or obtaining the permit; provided that the Company shall apply for and obtain the 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 regulations regarding paving cuts, placement of facilities, and restoration of pavement and other public infrastructure. In the event of an excavation, the Company shall 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 regulations regarding its depth and composition and any sidewalk replacement shall conform to the requirements of the Americans with Disabilities Act. 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 cost from the Company upon notice to the Company.

SECTION 7. The City's vacation of a public street 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 public street where the Company has facilities, the City shall grant the Company a utility easement for said 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, retain a public easement covering existing and future facilities and activities. The City shall not be obligated to provide a utility easement if the Company is properly noticed and the Company does not make a timely request.

SECTION 8. 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 five (5) years.

SECTION 9. 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 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

SECTION 10. 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 negligent performance of its rights or obligations pursuant to its franchise and this ordinance; or (ii) any negligent 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 sole negligence of the City, its officers, employees, or agents.

SECTION 11. The pruning and removal of trees/vegetation shall be done in accordance with current nationally accepted safety and utility industry standards and federal, state, and local laws, rules, and regulations. The Company is authorized and empowered to prune or remove, at the Company's expense, any tree extending into any public street 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/vegetation shall be completed in accordance with nationally accepted safety and utility standards, NSI Z133.1-2012, American National Standard for Arboricultural Operations-Safety Requirements, and ANSI A300(part 1) – 2008 Pruning, (Revision of ANSI A300 part 1-2001) American National Standard for Tree, Shrub, and other Woody Plant Management – Standard of Practices (Pruning) or subsequent revisions to these standards, and City ordinances regarding the pruning of trees that incorporate by reference that standard.

SECTION 12. Upon 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, the City shall not release the 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 13. 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 electric energy 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 14. There is hereby imposed a franchise fee of one percent (1%) upon the gross revenue generated from the sale of electricity by the Company within the corporate limits of the City. The franchise fee shall be remitted by the Company to the City on or before the last business day of the calendar quarter following the close of the calendar quarter in which the franchise fee is charged.

A. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety (90) days of receipt of information required of the City to implement the franchise fee, including the City's documentation of customer classes subject to or exempted from City-imposed franchise fee.

B. The City shall be solely responsible for identifying customer classes subject to or exempt from paying the City imposed franchise fee. The Company shall have no obligation to collect franchise fees from customers in annexed areas until and unless notice of such annexation has been provided to the Company by certified mail. The Company shall commence collecting franchise fees in the annexed areas no sooner than sixty (60) days after receiving notice from the City.

C. 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 reasonable expenses incurred by the Company to provide such data or information.

SECTION 15. Upon implementation of a franchise fee, the City shall not, pursuant to Section 480A.6 of the Code of Iowa, collect any right of way management fees from the Company.

SECTION 16. The City reserves to itself all home rule powers and authority.

SECTION 17. The Company shall continually, at its expense, procure and maintain coverage and annually provide evidence of financial resources to pay losses and damages through a combination of self-insurance and commercial insurance or full self-insurance in amounts satisfactory to the City insuring against all claims, demands, or actions for injury, death and damage of property sustained as a result of any one occurrence in an amount of not less than $2,500,000, and aggregate in the amount of not less than $5,000,000 arising from, related to, or connected with, the conduct and operation of Company's business in, on, or around the City's public streets and right of ways. The City shall be listed as the additional insured.

SECTION 18. This franchise shall apply to and bind the City and the Company and their successors and assigns. 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 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 costs incurred in reviewing all matters relating to the sale or assignment, including the costs for consultants and technical experts. The City shall have sixty (60) days from the date of written notice

of the sale or assignment to adopt a resolution. If the City fails to adopt a resolution affirming or rejecting the sale or assignment within the sixty (60) day period, the sale or assignment shall be deemed approved.

SECTION 19. 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 20. 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, which are severable from said unlawful provisions, shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 21. 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 to 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 22. 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 copy of this ordinance within ten (10) 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 City Clerk, 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.

Passed and approved by the Carroll City Council this ____ day of _____, 2020.

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

First Reading: _____

Second Reading: _____

Third Reading: _____

I certify that the foregoing was published as Ordinance No._____ on the _____ day of _____, 20___.

_____
Laura A. Schaefer, City Clerk

RESOLUTION NO. _____

RESOLUTION ADOPTING REVENUE PURPOSE STATEMENT REGARDING USE OF REVENUES FROM PROPOSED ELECTRIC FRANCHISE FEES PURSUANT TO IOWA CODE § 364.2(4)(f)

WHEREAS, the City of Carroll, Iowa is considering an amendment to its current electric franchise with MidAmerican Energy Company (under which a franchise fee will be assessed); and

WHEREAS, the City Council of the City of Carroll will hold a public hearing regarding any amendment to its electric franchise prior to adoption of any amended franchise; and

WHEREAS, Iowa Code § 364.2(4)(f) requires adoption of a "Revenue Purpose Statement" by a city council prior to the adoption of any franchise containing a franchise fee or any ordinance imposing a franchise fee specifying the purpose or purposes for which any revenue generated by a franchise fee will be used, and

WHEREAS, as required by Iowa Code § 364.2(4)(f) a copy of the proposed "Revenue Purpose Statement" has been published in the manner provided by Iowa Code § 362.3.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Carroll:

Section 1: The following "Revenue Purpose Statement" is hereby adopted by the City Council of the City of Carroll, to wit:

REVENUE PURPOSE STATEMENT REGARDING USE OF REVENUE FROM MIDAMERICAN ENERGY COMPANY FRANCHISE FEES

Pursuant to Iowa Code § 364.2(4)(f) the City of Carroll states that all revenue generated from franchise fees assessed on the sales of electricity within the city shall be deposited in the franchise fee account in the general fund and shall be used to reimburse the City for all costs associated with inspecting, supervising or otherwise regulating its franchises. Moneys in the franchise fee account in the general fund in excess of the amounts necessary for costs associated with inspecting, supervising or otherwise regulating its franchises shall be expended for any of the following: the construction, reconstruction, or repair of streets, highways, bridges, sidewalks, pedestrian underpasses and overpasses, street lighting fixtures, and public grounds, and the acquisition of real estate needed for such purposes; public safety, including the equipping of fire, police, emergency services, sanitation, street, and civil defense departments; the establishment, construction,

reconstruction, repair, equipping, remodeling, and extension of public works, public utilities, and public transportation systems; the repair, remediation, restoration, cleanup, replacement, and improvement of existing public improvements and other publicly owned property, buildings, and facilities; projects designed to prevent or mitigate future disasters as defined in Iowa Code § 29C.2; energy conservation measures for low-income homeowners, low-income energy assistance programs, and weatherization programs; abatement of fees for property damaged by a disaster as defined in Iowa Code § 29C.2; and economic development activities and projects.

Section 2. The City Clerk shall cause this "Revenue Purpose Statement Regarding Use of Revenue from MidAmerican Energy Company Franchise Fees" as adopted to be published in the manner required by Iowa Code § 362.3.

Adopted the 12th day of October, 2020.

_____
Mayor

ATTEST:

_____
City Clerk