

**REGULAR COUNCIL MEETING, CITY OF STORM LAKE, IOWA, CITY HALL,
APRIL 3, 2017 5:00 P.M.**

Present: Mayor Jon Kruse, Council Members Dan Anderson, Bruce Engelmann, Mike Porsch and Tyson Rice. Absent: None. Staff present: City Manager Jim Patrick, Asst. City Manager Keri Navratil, City Attorney Phil Havens, Public Safety Director Mark Prosser, Fire Chief Mike Jones, Building Official Scott Olesen, Public Works Director Jason Etnyre, Library Director Elizabeth Huff, Water Plant Superintendent Mike Davis, Wastewater Superintendent Mark Streed, and City Clerk Mayra Martinez

Mayor Kruse called the meeting to order at 5:00 pm.

Hear the Public – None

Consent Agenda – Moved by Council Member Porsch to adopt Resolution No. 90-R-2016-2017 approving the consent agenda which included checks #549663 through #55069, minutes from the March 20th, 21st, and 27th of 2017 City Council Meeting, liquor license renewal for Restaurante La Original and Puffs, noise variance request for BVU Block Party to be held Saturday, May 6, 2017 from 2:00 pm to 11:00 pm on BVU Central Campus, 2017 BVU Fiesta Latina Events for Saturday, April 22, 2017 from 1:00 pm through 7:00 pm at Chautauqua Park which include permission to use Chautauqua Park, food vending, inflatables, informational booths, attractions and other entertainment, a noise Variance within the venue between the hours of 9:00 am and 8:00 pm, and closure of Chautauqua Park Road from Hudson Street west to Lakeshore Drive to create a safety zone at the venue. Also authorizing sidewalk sales, food vending, and a noise variance for The Zone Home Entertainment located at 700 Lake Avenue for a summer promotion. Permission for sidewalk displays and sales, food sample distribution, and a noise variance for outdoor entertainment for Thursdays from 4:00 pm until 8:00 pm and Saturdays from 12:00 pm until 5:00 pm from April 13, 2017 until May 27, 2017. Seconded by Council Member Engelmann. Vote: All ayes. Motion carried.

RESOLUTION NO. 90-R-2016-2017

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA:

To approve the Consent Agenda which includes the list of bills, list of King's Pointe and Sunrise Pointe Golf Course bills and to prorate to the appropriate funds.

To further approve the minutes as presented to the Council for the regular City Council meeting March 20, 2017 and the special City Council meeting for March 21, 2017 and March 27, 2017.

To further approve liquor license renewals for Restaurante La Original and Puffs

To further approve a noise variance for Buena Vista University Block Party scheduled for Saturday, May 6, 2017 between the hours of 2:00 pm and 11:00 pm for outdoor amplified entertainment in the central campus area.

To further approve the request for the 2017 Buena Vista University Fiesta Latina scheduled for Saturday, April 22, 2017 from 1:00 pm to 7:00 pm at Chautauqua Park. Permission to use Chautauqua Park, food vending, inflatables, informational booths, attractions and other entertainment within the venue. Noise variance for outdoor, amplified entertainment, and announcements within the venue from 9:00 am to 8:00 pm. Closure of Chautauqua Park Road from Hudson Street west of Lakeshore Drive and support from the Parks and Police Department.

To further approve the request authorizing sidewalk sales, food vending, and a noise variance for The Zone Home Entertainment located at 700 Lake Avenue for a summer promotion. Permission for sidewalk displays and sales, food sample distribution, and a noise variance for outdoor entertainment for Thursdays from 4:00 pm until 8:00 pm and Saturdays from 12:00 pm until 5:00 pm from April 13, 2017 until May 27, 2017.

PASSED AND APPROVED this 3rd day of April, 2017.

Jon F. Kruse, Mayor

ATTEST:

Mayra A. Martinez, City Clerk

Water Rate Study - Moved by Council Member Porsch to approve setting for April 17, 2017 at 5:00 pm for public hearing on water rate study and rate increase recommendations . Seconded by Council Member Engelmann. Vote: All ayes. Motion carried.

Zoning Ordinance – Moved by Council Member Anderson to approve setting for April 17, 2017 at 5:00 pm for a public hearing on a proposed text amendment and zoning change to the Storm Lake Zoning Ordinance and Zoning Map. Seconded by Council Member Rice. Vote: All ayes. Motion carried.

2017 Business 71 Culvert Project – Moved by Council Member Porsch to adopt Resolution No. 91-R-2016-2017 acknowledging the 2017 Business 71 Culvert Replacement Project bid goes to Midwest Contracting from Marshall, MN. Total amount of bid is \$356,319.60 of which the City is responsible for 50% of the cost of the total project. Seconded by Council Member Anderson. Vote: All ayes. Motion carried.

RESOLUTION NO. 91-R-2016-2017

RESOLUTION ACKNOWLEDGING THE 2017 BUSINESS 71 CULVERT REPLACEMENT PROJECT BID

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA:

Section 1. That the following bid for the construction of certain public improvements described in general as the 2017 Business 71 Culvert Replacement Project, described in the plans and specifications heretofore adopted by this Council on February 20, 2017 be and is hereby acknowledge, the same being the lowest responsible bid received for said work, as follows:

Contractor:	Midwest Contracting Marshall, MN
Amount of bid:	\$356,319.60
Portion of bid:	All

Section 2. That the Buena Vista County Engineer's Office are hereby expected to execute contract with the contractor for the construction of said public improvements.

PASSED AND APPROVED this 3rd day of April 2017.

Jon F. Kruse, Mayor

ATTEST:

Mayra A. Martinez, City Clerk

North Central Stormwater Improvements Phase 2 – Moved by Council Member Engelmann to adopt Resolution No. 92-R-2016-2017 approving the contract and bond for the North Central Stormwater Phase 2 from Seneca and Spooner Streets from 10th Street to 12th Street with Hulstein Excavating, Inc. of Edgerton, MN. Total contract amount of \$1,624,750.00. Seconded by Council Member Anderson. Vote: All ayes. Motion carried.

RESOLUTION NO. 92-R-2016-2017

RESOLUTION APPROVING CONSTRUCTION CONTRACT AND BOND FOR THE NORTH CENTRAL STORMWATER PHASE 2

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA;

That the construction contract and bond executed and insurance coverage for the construction of certain public improvements described in general as North Central Stormwater Phase 2 and as described in detail in the plans and specifications heretofore approved, and which have been signed by the Mayor and Clerk on behalf of the City be and the same are hereby approved as

follows:

Contractor: Hulstein Excavating, Inc. – Edgerton, Minnesota
Date of Contract: April 3, 2017
Bond Surety: United Fire & Casualty Company
Date of Bond: March 20, 2017
Portion of Project: All

PASSED AND APPROVED this 3rd day of April, 2017.

Jon F. Kruse, Mayor

ATTEST:

Mayra A. Martinez, City Clerk

3rd Addition Phase 2 Improvements –Mayor opened the public hearing on plans, specifications, form of contract, and engineer’s opinion of probable costs for 3rd addition phase 2 improvements for 13th Street Extension stating that this was the time and place for any comments. Hearing no comments Mayor Kruse then closed the public hearing.

Moved by Council Member Porsch to adopt Resolution No. 93-R-2016-2017 approving the plans, specification, form of contract, and estimate of cost for the City of Storm lake 13th Street Extension. Seconded by Council Member Carlson. Vote: All ayes. Motion carried

RESOLUTION NO. 93-R-2016-2017

RESOLUTION ADOPTING PLANS, SPECIFICATIONS, FORM OF CONTRACT AND ESTIMATE OF COST FOR THE CITY OF STORM LAKE 13TH STREET EXTENSION

WHEREAS, the plans, specifications, form of contract and estimate of cost were filed with the CITY for the construction of certain public improvements described in general as the 13TH Street Extension; and

WHEREAS, notice of hearing on plans, specifications, form of contract and estimate of cost for said public improvements was published as required by law:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA;

Section 1. That the said plans, specifications, form of contract and estimate of cost are hereby approved as the plans, specifications, form of contract and estimate of cost for said public improvements, as described in the preamble of this Resolution.

PASSED AND APPROVED this 3rd day of April 2017.

Jon F. Kruse, Mayor

ATTEST:

Mayra A. Martinez, City Clerk

Franchise Fees – Moved by Council Member Rice to pass on 3rd Reading Ordinance No. 05-O-2016-2017 repealing current franchise, granting a new franchise to MidAmerican Energy, and increasing the franchise fee to 5%. Seconded by Council Member Anderson. Vote: All ayes. Motion carried.

ORDINANCE NO. 05-O-2016-2017

AN ORDINANCE REPEALING ORDINANCE No. 09-O-2012-2013 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 STORM LAKE, IOWA, AN ELECTRIC SYSTEM AND COMMUNICATIONS FACILITIES AND TO FURNISH AND SELL ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS FOR A PERIOD OF 20 YEARS.

BE IT ENACTED by the City Council of the City of Storm Lake, Iowa:

Section 1. Ordinance No. 09-O-2012-2013 is hereby repealed and replaced.

Section 2. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called “Company,” and to its successors and assigns the right and non-exclusive franchise to acquire, construct, erect, maintain and operate in the City of Storm Lake, Iowa, hereinafter called the “City,” a system for the transmission and distribution of electric energy and communications signals along, under, over and upon the streets, avenues, alleys and public places to serve customers within and without the City, and to furnish and sell electric energy to the City and its inhabitants. The term of this franchise is twenty (20) years from and after the effective date of this ordinance. The Company is granted the right to appropriate and condemn private property if each such use is approved by the City Council prior to the exercise of powers of eminent domain in regard to a specific project or projects.

Section 3. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa (2017) or as subsequently amended or changed.

Section 4. The Company shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures and accessories as well as excavate and bury conductors for the distribution of electric energy and communications signals in and through the City, but all

said conduits and poles shall be placed as not to interfere with the construction of any water pipes, drain or sewer, or the flow of water therefrom, which have been or may hereafter be located by authority of the City. The Company is authorized and empowered to cut and trim at its expense, any trees extending into any right of way, street, alley, or public ground so as to prevent limbs or branches from interfering with the wires and facilities of the Company. Tree trimming will be done to current nationally accepted standards and practices.

Section 5. The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such 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. If the City has a reasonable alternative route for the street, alley or public improvements which alternative route would not cause the relocation of the Company installations, the City shall select said alternative route. If relocation of the Company facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Company's, the City shall select the route which requires the other franchisees or users to relocate. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

Section 6. In making excavations in any streets, avenues, alleys and public places for the excavation of conduits or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets, and shall replace the surface, restoring the original condition as nearly as practicable. The Company shall be required to restore or modify public right of way, sidewalks or other areas disrupted by the Company project to a condition that meets all current standards, codes, and regulations, federal, state, or local. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition.

Section 7. 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 8. Pursuant to relocation of Company facilities as may be required by Sections 5, 6 and 7, if the City orders or requests the Company to relocate its existing facilities or equipment in order to facilitate the 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 of its existing facilities or equipment. The Company shall not be required to relocate in order to facilitate such private project at its expense.

Section 9. The Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses, on account of injury or damage to any person or property, caused or occasioned in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the electric facilities authorized by this franchise; provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees or agents.

Section 10. The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

Section 11. During the term of this franchise, the Company shall furnish electric energy in the quantity and quality consistent with applicable Iowa laws and regulations.

Section 12. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

Section 13. The use of the streets and right of way by the Company shall be subject to reasonable regulations by the City Council not inconsistent with this franchise and shall be consistent with the use of the streets and right of way for proper street and right of way purposes by the public, by the City, by the public utilities, and others; and, in the case of public grounds, shall be consistent with the use of such public grounds by the City and by the public for the purpose for which they are used and intended. This Ordinance and grant of franchise is not intended in any way to affect or modify or surrender any powers now held by the City or which may hereafter be granted to the City by the State legislature.

Section 14. There is hereby imposed upon and shall be collected from the retail electric customers of the Company receiving service, pursuant to the tariff, located within the corporate limits of the City and remitted by the Company to the city, a franchise fee of three percent (3%) of the gross revenue generated from the sales, minus uncollectible amounts, within the corporate limits of the City from and after the effective date of this Ordinance until July 1, 2017, and a franchise fee of five percent (5%) of the gross revenue generated from the sales, minus uncollectible amounts, within the corporate limits of the City from and after July 1, 2017. Franchise fees shall be remitted on or before the last business day of the month following the close of the calendar quarter in which fees were charged.

Section 15. This Ordinance and the rights and privileges herein granted shall not become effective or binding until this Ordinance has been approved in accordance with Iowa law. The cost and expense of any municipal election relating to the ordinance and franchise shall be paid by the Company. Within thirty (30) days after the approval of this Ordinance, the Company shall file in the office of the clerk of City its acceptance in writing of all the terms and provisions of this Ordinance.

Section 16. Upon the effective date of this Ordinance, all prior electric franchises granted to the 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.

This Ordinance shall be effective once approved in accord with Iowa law.

PASSED AND APPROVED this 3rd day of April, 2017.

CITY OF STORM LAKE, IOWA

By: _____
Jon F. Kruse, Mayor

ATTEST:

Mayra A. Martinez, City Clerk

Moved by Council Member Porsch to pass on 3rd Reading Ordinance No. 06-O-2016-2017 repealing current franchise, granting a new franchise to Interstate Power and Light Company, and increasing the franchise fee to 5%. Seconded by Council Member Carlson. Vote: All ayes. Motion carried.

ORDINANCE NO. 06-O-2016-2017

AN ORDINANCE REPEALING ORDINANCE NO. 02-O-2007-2008, AS AMENDED BY ORDINANCE NO. 10-O-2012-2013, AND GRANTING TO INTERSTATE POWER & LIGHT COMPANY ("COMPANY"), ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF STORM LAKE, BUENA VISTA COUNTY, IOWA, AND THE RIGHT TO LAY DOWN, OPERATE AND MAINTAIN THE NECESSARY PIPES, MAINS, AND OTHER CONDUCTORS AND APPLIANCES IN, ALONG AND UNDER THE STREETS, AVENUES, ALLEYS AND PUBLIC PLACES OF THE CITY OF STORM LAKE, BUENA VISTA COUNTY, IOWA, AS NOW OR HEREAFTER CONSTITUTED FOR A PERIOD OF TWENTY (20) YEARS, FOR THE PURPOSE OF DISTRIBUTING, SUPPLYING AND SELLING NATURAL GAS TO THE CITY AND ITS INHABITANTS THEREOF AND TO PERSONS AND CORPORATIONS BEYOND THE LIMITS THEREOF.

BE IT ORDAINED by the City Council of the City of Storm Lake, Buena Vista County, Iowa:

Section 1. Ordinance No. 02-O-2007-2008, as amended by Ordinance No. 10-O-2012-2013, is hereby repealed and replaced.

Section 2. There is hereby granted to **INTERSTATE POWER & LIGHT COMPANY**, herein referred to as the "Company," its successors and assigns, the right, franchise and privilege for the term of twenty (20) years from and after the passage, adoption, approval and acceptance of this Ordinance, to lay down, maintain and operate the necessary pipes, mains and other conductors and appliances in, along and under the streets, avenues, alleys and public places in the City of Storm Lake, Buena Vista County, Iowa as now or hereafter constituted, for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof; also the right of eminent domain as provided in Section 364.2 of the Code of Iowa. The term "gas" as used in this franchise shall be construed to mean natural gas only.

Section 3. The mains and pipes of the Company must be so placed as not to interfere unnecessarily with water pipes, drains, sewers and fire plugs which have been or may hereafter be placed in any street, alley and public places in said City nor unnecessarily interfere with the proper use of the same, including ordinary drainage, or with the sewers, underground pipe and other property of the City, and the Company, its successors and assigns shall hold the City free and harmless from all damages arising from the negligent acts or omissions of the Company in the laying down, operation and maintenance of said natural gas distribution system.

Section 4. In making any excavations in any street, alley, avenue 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, shall back fill all openings in such manner as to prevent settling or depressions in surface, and shall replace the surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical and if defects are caused shall repair the same.

Section 5. The Company shall, at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City orders or requests the Company to relocate its existing facilities or equipment 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 Company shall receive payment for the cost of such relocation as a precondition to relocating its existing facilities or equipment. 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. 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, until the reasonable cost of relocating the same are paid to the Company.

Section 6. Said Company, its successors and assigns, shall throughout the term of the franchise distribute to all consumers gas of good quality and shall furnish uninterrupted service, except as interruptible service may be specifically contracted for with consumers; provided,

however, that any prevention of service caused by fire, act of God or unavoidable event or accident shall not be a breach of this condition if the Company resumes service as quickly as is reasonably practical after the happening of the act causing the interruption.

Section 7. The franchise granted by this Ordinance shall not be exclusive.

Section 8. There is hereby imposed a franchise fee of three percent (3%) upon the gross revenue generated from sales of natural gas by the Company within the corporate limits of the City from the effective date of this ordinance to July 1, 2017, and a franchise fee of five percent (5%) upon the gross revenue generated from sales of natural gas by the Company within the corporate limits of the City from and after July 1, 2017. The franchise fee shall be remitted by the Company to the City on or before the last business day of the calendar month following close of the calendar quarter in which the franchise fee is charged, with the first remittance due July 31, 2017. City shall be solely responsible for the proper use of any amounts collected as a franchise fee, and shall only use such fees collected for purposes as allowed by applicable law.

Section 9. The franchise fee shall be applied to all customers' bills in accordance with Iowa Code. The Company shall not grant exemptions or refunds of the franchise fee beyond that granted by the Code of Iowa. If at any time the Iowa Utilities Board or another authority having proper jurisdiction, prohibits the collection or payment of a franchise fee, the Company shall be relieved of its obligation to collect and pay to the City the franchise fee.

Section 10. City agrees that Company's obligations related to the franchise fee are limited to those obligations set forth in Sections 8 and 9 herein. City further agrees to bear all costs (including attorney fees), and to defend, indemnify and hold Company harmless from any and all liability, claims, or causes of action associated with disputes related to the billings and/or collection of the franchise fee, provided that the City shall not be obligated to bear such costs or to defend, indemnify and hold Company harmless if such disputes arise from claims or inaccurate billings by the Company.

Section 11. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the limits of said City, the City Clerk shall provide written notification to an officer of Company of such annexation or change in the limits of said City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in the limits of the City, commencing six (6) months from receipt of the written notice.

Section 12. The sum of such additional charges for the franchise fee and any additional charges related to Sections 8 and 9 above shall be shown separately on the utility bill to each customer.

Section 13. That said franchise fee shall be in lieu of any other payments to the City for the Company's use of streets, avenues, alleys and public places in the said City and other administrative or regulatory costs with regard to said franchise; and said pipes, mains, and other conductor and appliances in, along and under the streets, avenues, alleys and public places in the said City for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof shall be exempt from any special tax, assessment, license or rental charge during the entire term of this ordinance.

Section 14. The term of the franchise granted by this Ordinance and the rights granted thereunder shall continue for the period of twenty (20) years from and after its acceptance by said Company as herein provided.

Section 15. The expense of the publication of this Ordinance shall be paid by the Company.

Section 16. The franchise granted by this Ordinance shall be conditioned upon acceptance by the Company in writing. The acceptance shall be filed with the City Clerk within thirty (30) days from passage of this Ordinance.

Section 17. This Ordinance sets forth and constitutes the entire agreement between the Company and the City of Storm Lake with respect to the rights contained herein, and may not be superseded, modified or otherwise amended without the approval and acceptance of the Company. Upon acceptance by the Company, this Ordinance shall supersede, abrogate and repeal the prior gas system ordinance between the Company and the City of Storm Lake as of the date this Ordinance is accepted by the Company. Notwithstanding the foregoing, in no event shall the City of Storm Lake 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 APPROVED this 3rd day of April, 2017.

Jon F. Kruse, Mayor

ATTEST:

Mayra A. Martinez, City Clerk

Moved by Council Member Engelmann to pass on 3rd Reading Ordinance No. 07-O-2016-2017 repealing current franchise, granting a new franchise to Iowa Lake's Electric Cooperative, and increasing the franchise fee to 5%. Seconded by Council Member Porsch. Vote: All ayes. Motion carried.

ORDINANCE NO. 07-O-2016-2017

AN ORDINANCE REPEALING ORDINANCE NO. 11-O-2012-2013 AND GRANTING TO IOWA LAKES ELECTRIC COOPERATIVE, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND NON-EXCLUSIVE FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF STORM LAKE, IOWA, AN ELECTRIC SYSTEM AND COMMUNICATIONS FACILITIES AND TO FURNISH AND SELL ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS FOR A PERIOD OF 20 YEARS.

BE IT ENACTED by the City Council of the City of Storm Lake, Iowa:

Section 1. Ordinance No. 11-O-2012-2013 is hereby repealed and replaced.

Section 2. There is hereby granted to Iowa Lakes Electric Cooperative, an Iowa electric cooperative corporation, hereinafter called "Cooperative," and to its successors and assigns the right and non-exclusive franchise to acquire, construct, erect, maintain and operate in the City of Storm Lake, Iowa, hereinafter called the "City," a system for the transmission and distribution of electric energy and communications signals along, under, over and upon the streets, avenues, alleys and public places to serve customers within and without the City, and to furnish and sell electric energy to the City and its inhabitants. The term of this franchise is twenty (20) years from and after the effective date of this ordinance. The Cooperative is granted the right to appropriate and condemn private property if each such use is approved by the City Council prior to the exercise of powers of eminent domain in regard to a specific project or projects.

Section 3. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa (2017) or as subsequently amended or changed.

Section 4. The Cooperative shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures and accessories as well as excavate and bury conductors for the distribution of electric energy and communications signals in and through the City, but all said conduits and poles shall be placed as not to interfere with the construction of any water pipes, drain or sewer, or the flow of water therefrom, which have been or may hereafter be located by authority of the City. The Cooperative is authorized and empowered to cut and trim at its expense, any trees extending into any right of way, street, alley, or public ground so as to prevent limbs or branches from interfering with the wires and facilities of the Cooperative. Tree trimming will be done to current nationally accepted standards and practices.

Section 5. The Cooperative shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such 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. If the City has a reasonable alternative route for the street, alley or public improvements which alternative route would not cause the relocation of the Cooperative installations, the City shall select said alternative route. If relocation of the Cooperative facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Cooperative's, the City shall select the route which requires the other franchisees or users to relocate. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Cooperative to compensate the Cooperative for the costs of relocation.

Section 6. In making excavations in any streets, avenues, alleys and public places for the excavation of conduits or the erection of poles and wires or other appliances, the Cooperative shall not unreasonably obstruct the use of the streets, and shall replace the surface, restoring the original condition as nearly as practicable. The Cooperative shall be required to restore or modify public right of way, sidewalks or other areas disrupted by the Cooperative project to a condition that meets all current federal, state, or local standards, codes, and regulations. Cooperative agrees any replacement of road surface shall conform to current City code regarding its depth and composition.

Section 7. The Cooperative shall not be required to relocate, at its cost and expense, Cooperative facilities in the public right of way that have been relocated at Cooperative expense at the direction of the City in the previous five (5) years.

Section 8. Pursuant to relocation of Cooperative facilities as may be required by Sections 5, 6 and 7, if the City orders or requests the Cooperative to relocate its existing facilities or equipment in order to facilitate the 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 Cooperative for the cost of such relocation as a precondition to relocation of its existing facilities or equipment. The Cooperative shall not be required to relocate in order to facilitate such private project at its expense.

Section 9. The Cooperative shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses, on account of injury or damage to any person or property, caused or occasioned in whole or in part, by the Cooperative's negligence in construction, reconstruction, excavation, operation or maintenance of the electric facilities authorized by this franchise; provided, however, that the Cooperative shall not be obligated to defend, indemnify and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees or agents.

Section 10. The Cooperative shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

Section 11. During the term of this franchise, the Cooperative shall furnish electric energy in the quantity and quality consistent with applicable Iowa laws and regulations.

Section 12. All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Cooperative.

Section 13. The use of the streets and right of way by the Cooperative shall be subject to reasonable regulations by the City Council not inconsistent with this franchise and shall be consistent with the use of the streets and right of way for proper street and right of way purposes by the public, by the City, by the public utilities, and others; and, in the case of public grounds, shall be consistent with the use of such public grounds by the City and by the public for the purpose for which they are used and intended. This Ordinance and grant of franchise is not intended in any way to affect or modify or surrender any powers now held by the City or which may hereafter be granted to the City by the State legislature.

Section 14. There is hereby imposed upon and shall be collected from the retail electric customers of the Cooperative receiving service, pursuant to the tariff, located within the corporate limits of the City and remitted by the Cooperative to the city, a franchise fee of three percent (3%) of the gross revenue generated from the sales, minus uncollectible amounts, within the corporate limits of the City from and after the effective date of this Ordinance until July 1, 2017, and a franchise fee of five percent (5%) of the gross revenue generated from the sales, minus uncollectible amounts, within the corporate limits of the City from and after July 1, 2017. Franchise fees shall be remitted on or before the last business day of the month following the close of the calendar quarter in which fees were charged.

Section 15. This Ordinance and the rights and privileges herein granted shall not become effective or binding until this Ordinance has been approved in accordance with Iowa law. The cost and expense of any municipal election relating to the ordinance and franchise shall be paid by the Cooperative. Within thirty (30) days after the approval of this Ordinance, the Cooperative shall file in the office of the clerk of City its acceptance in writing of all the terms and provisions of this Ordinance.

Section 16. Upon the effective date of this Ordinance, all prior electric franchises granted to the Cooperative 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.

This Ordinance shall be effective once approved in accord with Iowa law.

PASSED AND APPROVED this 3rd day of April, 2017.

CITY OF STORM LAKE, IOWA

By: _____
Jon F. Kruse, Mayor

ATTEST:

Mayra A. Martinez, City Clerk

Adjournment – Moved by Council Member Porsch to adjourn the meeting at 5:18 pm.
Seconded by Council Member Engelmann Vote: All ayes. Motion carried.

Jon F. Kruse, Mayor

ATTEST:

Mayra A. Martinez, City Clerk