F3abc

DRAFT

ORDINANCE NO. _____

City of Hiawatha, Iowa
Electric Franchise

An Ordinance granting to Linn County Rural Electric Cooperative Association, ("Company"), its successors and assigns, the right and franchise to acquire, construct, reconstruct, erect, maintain and operate in the City of Hiawatha, Linn County, Iowa works and plants for a distribution system for electric light, heat and power and the right to erect and maintain the necessary poles, lines, wires conduits and other appurtenances for the distribution of electric current along, under and upon the streets, alleys and public places in the City of Hiawatha, Linn County, Iowa to supply individuals, corporations, communities and municipalities both inside and outside of said City with electric light, heat and power for the period of twenty-five (25) years beginning July 1,2016 and granting to said Company the right of eminent domain.

BE IT ORDAINED BY THE City Council of the City of Hiawatha, Linn County, Iowa hereinafter referred to as the "City":

Section 1. The Code of Ordinances of the City of Hiawatha, Iowa, 1996, is hereby amended adding Chapter 111A establishing Linn County Rural Electric Cooperative Association ("Company") as an electric franchise within the city limits of Hiawatha.

Chapter 111A

111A.01	**Franchise Granted**	**111A.14**	**Indemnification**
111A.02	**Placement Not To Interfere**	**111A.15**	**Franchise Fee Remitted**
111A.03	**Excavating**	**111A.16**	**Notice**
111A.04	**Existing Facilities**	**111A.17**	**Responsibility on Use**
111A.05	**Tree Maintenance**	**111A.18**	**Refund of Fee**
111A.06	**Service Provided**	**111A.19**	**Termination of Collection**
111A.07	**Franchise Non-Exclusive**	**111A.20**	**No Other Fee For Use**
111A.08	**Services Continuous**	**111A.21**	**No Right Of Way Management Fee**
111A.09	**Franchise Fee Billing**	**111A.22**	**Term**
111A.10	**Franchise Fee Shown Separately**	**111A.23**	**Expense of Publication**
111A.11	**Franchise Fee Collection**	**111A.24**	**Conditions Upon Acceptance**
111A.12	**Franchise Fee Administration Cost**	**111A.25**	**Severability**
111A.13	**Annexation**	**111A.26**	**Entire Agreement**

111A.01 FRANCHISE GRANTED

There is hereby granted to **Linn County Rural Electric Cooperative Association,** hereinafter referred to as the "Company", its electrical energy suppliers as necessary to provide Company distribution at 25,000 Volts or less, its successors and assigns, the right and franchise to construct, reconstruct, repair, maintain and operate in the City of Hiawatha, Linn County, Iowa, systems for the distribution of electric power, and the right to construct, reconstruct, repair, maintain and operate the necessary poles, lines, wires, conduits and other appurtenances for the distribution of electric power and energy along, under and upon the streets, avenues, alleys and public ways in the City of Hiawatha, Linn County, Iowa; also the right to erect and maintain upon the streets, avenues, alleys and public ways, distribution lines through the said City of Hiawatha, Linn County, Iowa to supply individuals, corporations, communities and municipalities both inside and outside of said City with electric light and power appurtenances for the period of twenty-five (25) years; also the right of eminent domain as provided in section 364.2 of the Code of Iowa.

111A.02 PLACEMENT NOT TO INTERFERE

The poles, lines, wires, circuits, and other appurtenances shall be placed and maintained so as not to unnecessarily interfere with the travel on said streets, alleys, and public places in said City nor unnecessarily interfere with the proper use of the same, including ordinary drainage, or with the sewers, underground pipe and other property of the City, and the said Company, its successors and assigns shall hold the City free and harmless from all damages to the extent arising from the negligent acts or omissions of the Company in the erection or maintenance of said system.

111A.03 EXCAVATING

In making any excavations in any street, alley, or public place, Company, its successors and assigns, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, and shall back fill all openings in such manner as to prevent settling or depressions in the surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical. The Company shall not be required to restore or modify public right of way, sidewalks or other areas in or adjacent to the Company project to a condition superior to its immediate previously existing condition.

111A.04 EXISTING FACILITIES

The Company shall, at its cost, 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 thereof, 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 any reason other than as specified above, or as the result of the initial request of a commercial or private developer, 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 as part of its relocation request.

Prior to the City abandoning or vacating any street, avenue, alley or public ground where the Company has electric facilities, the City shall grant the Company a utility easement for said facilities. If the City fails to grant the Company a utility easement for said facilities prior to abandoning or vacating a street, avenue, alley or public place, the City shallat its cost and expense obtain easements for existing Company facilities. 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 precious ten years.

111A.05 TREE MAINTENANCE

The Company is authorized and empowered to prune or remove at Company expense any tree extending into any street, alley or public grounds to maintain electric reliability, safety, to restore utility service and to prevent limbs, branches or trunks from interfering with the wires and facilities of the Company. The pruning and removal of trees shall performed in accordance with Company's then current line clearance vegetation plan as filed and approved by the Iowa Utilities Board, as well as all applicable codes and standards referenced therein.

111A.06 SERVICE PROVIDED
During the term of this franchise, the Company shall furnish electric energy in accordance with the applicable regulations of the Iowa Utilities Board and the Company's tariffs. The Company will maintain compliance with Iowa Utilities Board regulatory standards for reliability.

111A.07 FRANCHISE NON-EXCLUSIVE
The franchise granted by this Ordinance shall not be exclusive.

111A.08 SERVICE CONTINUOUS
Service to be rendered by the Company under this franchise shall be continuous unless prevented from doing so by fire, acts of God, unavoidable accidents or casualties, or reasonable interruptions necessary to properly service the Company's equipment, and in such event service shall be resumed as quickly as is reasonably possible.

111A.09 FRANCHISE FEE BILLING
In its monthly billing the Company shall include a franchise fee of three (3%) on the gross receipts from the sale of electricity to the Company's electric customers located within the corporate limits of the City.

111A.10 FRANCHISE FEE SHOWN SEPARATELY
The franchise fee shall be applied to all customers' bills in accordance with Iowa Code Chapter 364.2 and 423B.5. The amount of the franchise fee shall be shown separately on the utility bill to each customer.

111A.11 FRANCHISE FEE COLLECTION
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. This information shall include but not be limited to a copy of the City's Revenue Purpose Statement and written proof of legal adoption and publication of the Revenue Purpose Statement, City's list of City utility accounts exempt per Iowa law from the franchise fee, signed Nondisclosure Agreement pertaining to the protection of the confidentiality of utility service address information provided by the Company to the City, and the City's verified utility customer service address list.

111A.12 FRANCHISE FEE ADMINISTRATION COST
The City recognizes that the costs of franchise fee administration are not charged directly to the City and the City and Company agree that the Company may only charge such administrative fees as are provided for in state statute.

111A.13 ANNEXATION
Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the corporate approval authorizing annexation, or changes in the corporate limits of said City, the City Clerk shall prvide written notification by certified mail 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 corporate limits of the City, commencing on an agreed upon date which is not less than ninety (90) days from receipt of the information required of the City to implement the franchise fee.

The Company shall have no obligation to collect granchise fees from customers iin any annexed area until and unless the following have all be provided to the Company by certified mail; such final and unappealable orders or approvals, the City's list of City utility accounts exempt from the franchise fee in the annexed area, and the City's verified utility customer service address list for the annexed area.

111A.14 INDEMNIFICATION
The City shall indemnify the Company from claims of any nature arising out of or related to the imposition and collection of the franchise fee. In addition, the Company shall not be liable for collecting franchise fees from any customer originally or subsequently identified, or incorrectly identified, by the City as being subject to the franchise fee or being exempt from the imposition of franchise fees.

111A.15 FRANCHISE FEE REMITTED
The Company shall remit franchise fee receipts to the City no more frequently than on or before the last business day of the month following each calendar year quarter. Company shall notify City at least thirty (30) days in advance of any changes made in this collection schedule, including any alterations in the calendar quarters or any other changes in the remittance periods.

111A.16 NOTICE
The City shall give the Company a minimum 6-month notice prior to the request to implement any adjustment in the percentage of franchise fee to be collected pursuant to Section 9 hereof. The City agrees to modify the level of franchise fees imposed only once in any 24-month period. When any such Ordinance increasing, decreasing, modifying or eliminating the franchise fee shall become effective, billings reflecting the change shall commence on an agreed upon date which is not less than ninety (90) days following written notice to the Company by certified mail. The Company shall not be required to implement such new percentage unless and until it determines that it has received appropriate official documentation of final action by the city council. In no event may the percentage of franchise fee exceed the statutory amount authorized by Iowa law.

111A.17 RESPONSIBILITY ON USE
The City shall be solely responsible for the proper use of any amounts collected as franchise fees, and shall only use such fees as collected for a purpose as allowed by applicable law.

111A.18 REFUND OF FEE
The Company shall not, under any circumstance be required to return or refund any franchise fees that have been collected from City 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 customers or individual customers, the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information.

111A.19 TERMINATION OF COLLECTION
Collection of the franchise fee shall cease at the earlier of the modification or repeal of the franchise fee or the end of the Ordinance term.

A. The obligation to collect and remit the fee imposed by this Ordinance if modified if:
   1. Any other person is authorized to sell electricity to customers within the corporate limits of the City and the City imposes a franchise fee or its lawful equivalent at zero or a lesser rate than provided in this Ordinance, in which case the obligation of Company to collect and remit franchise fee shall be modified to zero or the lesser rate; or
   2. The City adds additional territory by annexation or consolidation and is unable or unwilling to impose the franchise fee upon all persons selling electricity to consumers within the additional territory, in which case the franchise fee imposed on the revenue from sales by Company in the additional territory shall be zero or equal to that of the lowest fee being paid by any other retail seller of electricity within the City; or
   3. The Iowa General Assembly enacts legislation, or any Iowa court issues a final judicial decision regarding franchise fees, or the Iowa Utilities Board issues a final nonappealable

order (collectively, "Final Franchise Fee Action") that modifies, but does not repeal, the ability of the City to impose a franchise fee or the ability of Company to collect from City customers and remit franchise fees to City. Within sixty (60) days of Final Franchise Fee Action, the City shall notify Company and the parties shall meet to determine whether this Ordinance can be revised, and, if so, how to revise the franchise fee on a continuing basis to meet revised legal requirements. After Final Franchise Fee Action and until passage by the City of revisions to the franchise fee Ordinance, Company may temporarily discontinue collection and remittance of the franchise fee if in its sole opinion it believes it is required to do so in order to comply with revised legal requirements.

B. The obligation to collect and remit the fee imposed by this Ordinance is repealed, effective as of the date specified below with no liability therefore, if:
   1. Any of the imposition, collection or remittance of a franchise fee is ruled to be unlawful by the Supreme Court of Iowa, effective as of the date of such ruling or as may be specified by that Court; or
   2. The Iowa General Assembly enacts legislation making imposition, collection or remittance of a franchise fee unlawful, effective as of the date lawfully specified by the General Assembly; or
   3. The Iowa Utilities Board, or any successor agency, denies the Company the right to impose, collect or remit a franchise fee provided such denial is affirmed by the Supreme Court of Iowa effective as of the date of the final agency order from which the appeal is taken.

111A.20 NO OTHER FEE FOR USE

The franchise fee shall be in lieu of any other payments to the City for the Company's use of streets, alleys and public places in the said City and other administrative or regulatory costs with regard to said franchise; and said poles, lines, wires, conduits and other appurtenances for the distribution of electric current along, under and upon the streets, alleys and public places in the said City to supply individuals, corporations ,communities, and municipalities both inside and outside of said City with electric light, heat and power shall be exempt from any special tax, assessment, license or rental charge during the entire term of this Ordinance.

111A.21 NO RIGHT OF WAY MANAGEMENT FEE

The City shall not, pursuant to Chapter 480A.6 of the Code of Iowa, impose or charge right-of-way management fees upon the Company or fees for permits for Company construction, maintenance, repairs, excavation, pavement cutting or inspections of Company work sites and projects or related matters.

111A.22 TERM

The term of the franchise granted by this Ordinance and the rights granted thereunder shall continue for the periods of twenty-five (25) years from and after its acceptance by the said Company, as herein provided.

111A.23 EXPENSE OF PUBLICATION

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

111A.24 CONDITION UPON ACCEPTANCE

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 ninety (90) days from passage of this Ordinance.

111A.25 SEVERABILITY
If any section or provision of this ordinance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other provisions of this ordinance which can be given effect without the invalid portion or portions and to this end each section and provision of this ordinance is severable.

111A.26 ENTIRE AGREEMENT
This Ordinance sets forth and constitutes the entire agreement between the Company and the City with respect to the rights contained herein, and may not be superseded, modified or otherwise amended without the written approval and acceptance of the Company. Notwithstanding the foregoing, in no event shall the City enact any Ordinance or place any limitations, either operationally or through the assessment of fees other than those approved and accepted by the Company within this Ordinance, that create additional burdens upon the Company, or which delay utility operations.

SECTION 2. CONFLICT AND REPEAL. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval, written acceptance by the Company, and publication as required by law.

Read First Time _____

Read Second Time _____

Read Third Time _____

PASSED AND APPROVED this ____ day of May, 2016.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kelly Kornegor, City Clerk

DRAFT

I, Kelly Kornegor, City Clerk of the City of Hiawatha, Iowa, do hereby certify that the foregoing ORDINANCE was PASSED and APPROVED by the City Council of the City of Hiawatha, Iowa, on the _____ day of May, 2016, and was posted as Ordinance No. _____ on the _____ day of May, 2016.

_____
Kelly Kornegor, City Clerk