

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the “Company,” and its successors and assigns, the nonexclusive right and franchise to acquire, construct, erect, maintain, and operate in the City a system for the transmission and distribution of natural gas along, under, over, and upon the streets, avenues, alleys, and public places to serve customers within and outside the City, and to furnish and sell natural gas to the City and its inhabitants. This franchise grants no rights for communications signals other than signals necessary for the operation and maintenance of the Company’s natural gas system described herein. Pursuant to Section 364.2(4)(e) of the *Code of Iowa*, the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa*, as subsequently amended or changed.

110.02 TERM OF FRANCHISE. This franchise shall remain in effect for a period of twenty-five (25) years after the effective date of the ordinance codified in this chapter.[†] The City may request amendments to the franchise by providing to the Company written notice of the City’s desire to amend said franchise. Such notice shall be given at least one hundred eighty (180) days prior to the expiration of the fifteenth (15th) or twentieth (20th) year of the agreement. If the parties are unable to agree to amend this franchise within ninety (90) days after such notice is given, the City may terminate this franchise agreement. Failure to amend or terminate the franchise at the first option does not render invalid the City’s second option to amend or terminate the franchise.

110.03 REPRESENTATIONS OF COMPANY. The Company agrees to provide, construct, install, and maintain its entire system pursuant to Iowa Utilities Board rules and regulations in such condition that it will furnish safe, adequate, efficient, and continuous service. The Company’s system shall be of sufficient capacity to supply all reasonable demands of the City and consumers within the City and to provide a reasonable reserve for emergencies. All natural gas service shall be supplied through a meter or other means that shall accurately measure the amount of natural gas supplied to a consumer. All gas pipes, mains, conduits, and other gas facilities shall be placed and maintained so as not to interfere unnecessarily with travel on the City’s streets, alleys, and public places or with the proper use

[†] **EDITOR’S NOTE:** Ordinance No. 05-02, adopting a natural gas franchise for the City, was passed and adopted on February 7, 2005, and became effective on March 28, 2005.

of the same, including ordinary drainage, or with the construction or use of the sewers, pipes, drains, and other property of the City, or the flow of water therefrom.

110.04 LOCATION OF FACILITIES. The Company shall not locate any new natural gas mains, pipes, or conduits within the City in the public right-of-way without the prior approval of the City; however, the City shall not unreasonably withhold approval of Company's location of Company facilities within public right-of-way. The City reserves to itself the power to impose reasonable regulations on the Company's use of streets. The City reserves the right, by resolution or otherwise, to designate the location of any new natural gas distribution facilities, which designation shall not conflict with Company's adherence to its design standards and such utility regulation as governs its construction of facilities. The City shall work with the Company to ensure, to the extent practicable, that the Company may locate its facilities in the least-cost manner consistent with its design standards and utility regulation and consistent with the City's desire to promote the public safety and welfare and protect public property. 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.

110.05 EXCAVATIONS AND OTHER WORK. In making excavations or performing other work in the City, the Company shall proceed with such work so as to cause the least possible inconvenience to the public. The Company shall properly protect, according to safety standards generally accepted at the time of placement, all excavations and obstructions by proper shoring, surface plates, barricades, warning lights, and such other or additional devices as circumstances may warrant. The Company shall provide the City with twenty-four (24) hours' notice to the City prior to commencing work that requires the excavation of the traveled portion of the streets, avenues, or alleys. Emergency repairs are exempted from this notification requirement. The Company shall notify the City of the emergency repair following the completion of said emergency repairs. If, in the opinion of the City's Public Works Department, such excavation or obstruction is not properly and safely protected, the City's Public Works Department shall notify the Company and the Company shall immediately comply with such reasonable instructions not in conflict with accepted utility safety rules and practices. Company excavations within the public rights-of-way, public areas, and private property within the City shall be refilled within a reasonable time thereafter consistent with accepted utility safety rules and practices. Pavements, sidewalks, curbs, gutters, vegetation, or landscape opened, disturbed, or damaged by the Company shall be promptly restored and replaced with like materials by the Company at its own expense and left in a condition as good as or better than before. In the event that the Company fails to comply with this section, the City may do such work as may be needed to properly prepare such pavements, sidewalks, curbs, gutters, vegetation, or landscape, and the cost of such repairs shall be repaid to the City by the Company.

110.06 RATES. The Company shall supply natural gas to consumers within the City at just and reasonable rates. It is recognized that under the statutes of the State of Iowa, the Iowa Utilities Board of the Iowa Department of Commerce is vested with legal authority to supervise, fix, or change rates and charges authorized to be charged by the Company to natural gas consumers. In the event rates or charges in general, or any class or type of rate or charge shall, during the term of this franchise, cease to be regulated by any State or Federal agency, the City Council reserves the right to regulate such rates within the City with the costs of such

regulation to be borne by the Company, as a part of the Company's cost of doing business and reflected in its rates.

110.07 ANNUAL REPORT. Upon request by the City, the Company shall file with the City Council a true copy of the annual report of the Company pertaining to the operation or conduct of the business of the Company under this franchise. The report may be the same as the Company shall have prepared for such year in the ordinary course of business of the Company and filed with the Iowa Utilities Board. In the event the City Council is authorized by State law and undertakes to regulate rates for service within the City, the Company shall provide all information necessary to permit the City Council to set just and reasonable rates.

110.08 INSPECTION OF COMPANY FACILITIES. The Company shall inspect its natural gas facilities used to provide natural gas service under this franchise in compliance with standards established by Federal and State laws, rules, and regulations. The replacement or repair of natural gas facilities resulting from these inspections shall be completed within a reasonable period of time thereafter. Hazardous conditions shall be corrected promptly.

110.09 COMPLIANCE WITH CITY ORDINANCES. The Company shall at all times during the term of this franchise conform with, submit to, and carry out the provisions of any and all valid ordinances in effect during the term of this franchise, to the full extent allowed by law and to the extent such provisions are not in conflict with this franchise agreement: (a) relating to any person, firm, or corporation supplying and distributing natural gas to the City or consumers within the City that are now in force or may hereafter be lawfully enacted; (b) relating to the use of City right-of-way; or (c) relating to the City's exercise of its police or regulatory powers.

110.10 FRANCHISE FEE. In consideration of the right to construct and maintain such facilities and equipment along, upon, across and under the streets, highways, avenues, alleys, bridges and public places of the City, there is hereby imposed upon the Company by the City, and the Company agrees that there shall be collected from Company's retail customers, in accordance with Company tariffs on file with and approved by the Iowa Utilities Board, and remitted by the Company to the City, a franchise fee in an amount up to and including five percent (5%) of the gross receipts derived by the Company from the transmission, distribution, transportation or sale of natural gas to retail customers within the corporate limits of the City (excluding, however, the sale of natural gas to the City for its own use), commencing with gross receipts received on or after the effective date of this franchise. The specific percentage levels for the franchise fee shall be established by separate ordinance, and may be different for diverse customer classes. The obligation to pay the fee imposed by this section is modified if: (a) the City permits any other person to sell natural gas to City consumers and pay a franchise fee or its lawful equivalent at a lesser rate than provided in this section, in which case the Company shall collect from its customers and pay at the lesser rate; or (b) if the City adds additional territory by annexation or consolidation and is unable lawfully to impose the franchise fee upon any person selling natural gas to consumers within the additional territory, in which case the franchise fee on the revenue from sales by the Company in the additional territory shall be equal to that of the lowest fee being paid by any other person selling or transmitting natural gas within the additional territory.

110.11 EXEMPTION FROM PAYMENT OF FRANCHISE FEE. If the franchise fee or the Company's ability to collect the fee from its customers is adjudged to be unlawful, invalid, or unconstitutional by final non-appealable regulatory or judicial action, the Company shall be relieved of its obligation to collect from its customers and to remit to the City the franchise

fee, the franchise fee shall be deemed to be of no further force and effect as of the date of such adjudication, and the City may request amendments to the franchise. If a refund to customers by the Company is ordered by such final non-appealable adjudication, the City agrees to repay to the Company such fees as are ordered to be refunded. If the parties are unable to agree to amend the franchise within a reasonable time after the City requests amendments thereto, the City may terminate the franchise.

110.12 REMITTANCE OF FRANCHISE FEE. The Company shall remit the franchise fee to the City Treasurer quarterly on or before May 1, August 1, November 1, and February 1 of each year for the three-month periods ending March 31, June 30, September 30, and December 31, respectively.

110.13 FORFEITURE OF FRANCHISE; CURE OF DEFAULTS. The violation of any material portion of this franchise by the Company or its successors or assigns, or its failure to promptly perform any of the provisions of this franchise, shall be cause for forfeiture of this franchise and the termination of all rights under this franchise. Such forfeiture shall be accomplished after written notice to the Company by the City, and a continuation of the violation, failure, or default specified in the notice, for at least sixty (60) days from the date the notice was served upon the Company. If either party determines that there is a default under this franchise, the other party shall be given a written notice describing the default, stating whether a forfeiture or termination of the franchise will be sought, and where the default is curable, providing a reasonable time to cure the default, which shall be not less than thirty (30) or more than one hundred eighty (180) days.

110.14 RESERVATION OF HOME RULE POWERS. This chapter is intended to be and shall be construed as consistent with the reservation of local authority contained in the Twenty-Fifth Amendment to the Iowa Constitution granting home rule powers to municipalities. To such end, any limitation on the power of the City is to be strictly construed, and the City reserves to itself the right to exercise all power and authority to regulate and control its local affairs, and all ordinances and regulations of the City shall be enforceable against the Company unless, and only to the extent, they are irreconcilable with any rights granted to the Company under this chapter.

110.15 MAPS OF DISTRIBUTION SYSTEM. Upon reasonable request, Company shall provide to the City Engineer, on a project specific basis, information indicating the horizontal location, in compliance with One-Call regulation, relative to the boundaries of the right-of-way, of all natural gas equipment which it owns or over which it has control and which is located in the project right-of-way. Project-specific mapping data shall be provided with the specificity and if reasonably possible in the format requested by the City Engineer. Mapping information provided to the City by the Company shall be for the exclusive use of the City in administering the use and occupancy of the public rights-of-way within the City and shall not be provided to or relied on by any person for any other purpose. At the request of the Company, any information requested with respect to the location or type of equipment the Company maintains or plans to install in the right-of-way that qualifies or is designated by the Company as proprietary information or as a trade-secret information under Chapter 550 of the *Code of Iowa* or qualifies to be kept confidential under *Code of Iowa* Section 22.1 *et seq.*, shall be treated as confidential information or a trade secret and shall not be released to any party by the City.

110.16 CUSTOMER SATISFACTION SURVEYS. At the request of the City, the Company shall provide the City with summaries of the findings of its annual and other

periodic customer satisfaction surveys and research. The Company also agrees to respond promptly and fully to the City's concerns and questions about specific service quality and customer satisfaction matters as and when they are communicated to the Company.

110.17 EXERCISE OF EMINENT DOMAIN POWERS. The Company shall have the power to condemn private property for the purpose of providing natural gas utilities to the extent necessary to serve a public use and in a reasonable relationship to an overall plan of transmitting or delivering natural gas in the public interest upon approval of the City Council. The Company must establish the necessity for each taking of private property, and when so established, the City Council may approve the condemnation of the private property by resolution. Any such exercise of the eminent domain powers shall be conducted in accordance with this Code of Ordinances.

110.18 INDEMNITY. The Company shall indemnify and hold the City, and its officers, agents, and employees, free and harmless from any and all claims, demands, lawsuits, liability, and damages whatsoever, including all costs and expenses incident thereto, for any and all loss, damage, injury, or death caused or occasioned, in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the natural gas 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.

110.19 LEASE OR ASSIGNMENT OF FRANCHISE. This franchise shall apply to, inure to, and bind the parties hereto and their successors.

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CHAPTER 111

ELECTRIC FRANCHISE

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111.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the “Company,” and its successors and assigns, the nonexclusive right and franchise to acquire, construct, erect, maintain, and operate in the City a system for the transmission and distribution of electric energy along, under, over, and upon the streets, avenues, alleys, and public places to serve customers within and outside the City, and to furnish and sell electric energy to the City and its inhabitants. This franchise grants no rights for communications signals other than signals necessary for the operation and maintenance of the Company’s electric system described herein. Pursuant to Section 364.2(4)(e) of the *Code of Iowa*, the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa*, as subsequently amended or changed.

111.02 TERM OF FRANCHISE. This franchise shall remain in effect for a period of twenty-five (25) years from the effective date of the ordinance codified in this chapter. † The City may request amendments to the franchise by providing to the Company written notice of the City’s desire to amend said franchise. Such notice shall be given at least one hundred eighty (180) days prior to the expiration of the fifteenth (15th) or twentieth (20th) year of the agreement. If the parties are unable to agree to amend this franchise within ninety (90) days after such notice is given, the City may terminate this franchise agreement. Failure to amend or terminate the franchise at the first option does not render invalid the City’s second option to amend or terminate the franchise.

111.03 REPRESENTATIONS OF COMPANY. The Company agrees to provide, construct, install, and maintain its entire system pursuant to Iowa Utilities Board rules and regulations in such condition that it will furnish safe, adequate, efficient, and continuous service. The Company’s system shall be of sufficient capacity to supply all reasonable demands of the City and consumers within the City and to provide a reasonable reserve for emergencies. All electric energy service shall be supplied through a meter or other means that shall accurately measure the amount of electric energy supplied to a consumer. All poles, wires, conduits, and appliances shall be placed and maintained so as not to interfere unnecessarily with travel on the City’s streets, alleys, and public places or with the proper use

† **EDITOR’S NOTE:** Ordinance No. 05-01, adopting an electric franchise for the City, was passed and adopted on February 22, 2005, and became effective on March 28, 2005.

of the same, including ordinary drainage, or with the construction or use of the sewers, pipes, drains, and other property of the City, or the flow of water therefrom.

111.04 LOCATION OF FACILITIES. The Company shall not locate any new electrical distribution or service line, including poles or other facilities, within the City in the public right-of-way without the prior approval of the City; however, the City shall not unreasonably withhold approval of Company's location of Company facilities within public right-of-way. The City reserves to itself the power to impose reasonable regulations on the Company's use of streets. The City reserves the right, by resolution or otherwise, to designate the location of any new electric distribution or service line, including poles and other facilities, which designation shall not conflict with Company's adherence to its design standards and such utility regulation as governs its construction of facilities. The City shall work with the Company to ensure, to the extent practicable, that the Company may locate its facilities in the least-cost manner consistent with its design standards and utility regulation and consistent with the City's desire to promote the public safety and welfare and protect public property. 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.

111.05 EXCAVATIONS AND OTHER WORK. In making excavations or performing other work in the City, the Company shall proceed with such work so as to cause the least possible inconvenience to the public. The Company shall properly protect, according to safety standards generally accepted at the time of placement, all excavations and obstructions by proper shoring, surface plates, barricades, warning lights, and such other or additional devices as circumstances may warrant. The Company shall provide the City with twenty-four (24) hours' notice to the City prior to commencing work that requires the excavation of the traveled portion of the streets, avenues, or alleys. Emergency repairs are exempted from this notification requirement. The Company shall notify the City of the emergency repair following the completion of said emergency repairs. If, in the opinion of the City's Public Works Department, such excavation or obstruction is not properly and safely protected, the City's Public Works Department shall notify the Company and the Company shall immediately comply with such reasonable instructions not in conflict with accepted utility safety rules and practices. Company excavations within the public rights-of-way, public areas, and private property within the City shall be refilled within a reasonable time thereafter consistent with accepted utility safety rules and practices. Pavements, sidewalks, curbs, gutters, vegetation, or landscape opened, disturbed, or damaged by the Company shall be promptly restored and replaced with like materials by the Company at its own expense and left in a condition as good as or better than before. In the event that the Company fails to comply with this section, the City may do such work as may be needed to properly prepare such pavements, sidewalks, curbs, gutters, vegetation, or landscape, and the cost of such repairs shall be repaid to the City by the Company. The Company is authorized and empowered to prune or remove, at Company expense, any tree extending into any street, alley, or public grounds in order to maintain electric reliability and 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, as well as all other vegetation management activities undertaken by the Company, shall be in compliance with standards established in Chapter 151 of this Code of Ordinances, the Company's Electric Facility Inspection and Vegetation Management Plan on file with the Iowa Utilities Board, and the rules and regulations of the Iowa Utilities Board or its successor.

111.06 RATES. The Company shall supply electric energy to consumers within the City at just and reasonable rates. It is recognized that under the statutes of the State of Iowa, the Iowa Utilities Board of the Iowa Department of Commerce is vested with legal authority to supervise, fix or change rates and charges authorized to be charged by the Company to electric energy consumers. In the event rates or charges in general, or any class or type of rate or charge shall, during the term of this franchise, cease to be regulated by any State or Federal agency, the City Council reserves the right to regulate such rates within the City with the costs of such regulation to be borne by the Company, as a part of the Company's cost of doing business and reflected in its rates.

111.07 ANNUAL REPORT. Upon request by the City, the Company shall file with the City Council a true copy of the annual report of the Company pertaining to the operation or conduct of the business of the Company under this franchise. The report may be the same as the Company shall have prepared for such year in the ordinary course of business of the Company and filed with the Iowa Utilities Board. In the event the City Council is authorized by State law and undertakes to regulate rates for service within the City, the Company shall provide all information necessary to permit the City Council to set just and reasonable rates.

111.08 INSPECTION OF COMPANY FACILITIES. The Company shall inspect its electric lines and other facilities used to provide electric service under this franchise in compliance with standards established by the Company's Electric Facility Inspection and Vegetation Management Plan on file with the Iowa Utilities Board and the rules and regulations of the Iowa Utilities Board or its successor. The replacement or repair of electric facilities resulting from these inspections shall be completed within a reasonable period of time thereafter. Hazardous conditions shall be corrected promptly.

111.09 COMPLIANCE WITH CITY ORDINANCES. The Company shall at all times during the term of this franchise conform with, submit to, and carry out the provisions of any and all valid ordinances in effect during the term of this franchise, to the full extent allowed by law and to the extent such provisions are not in conflict with this franchise agreement: (a) relating to any person, firm or corporation supplying and distributing electric energy to the City or consumers within the City that are now in force or may hereafter be lawfully enacted; (b) relating to the use of City right-of-way; or (c) relating to the City's exercise of its police or regulatory powers.

111.10 FRANCHISE FEE. In consideration of the right to construct and maintain such facilities and equipment along, upon, across and under the streets, highways, avenues, alleys, bridges, and public places of the City, there is hereby imposed upon the Company by the City, and the Company agrees that there shall be collected from Company's retail customers, in accordance with Company tariffs on file with and approved by the Iowa Utilities Board, and remitted by the Company to the City, a franchise fee in an amount up to and including five percent (5%) of the gross receipts derived by the Company from the transmission, distribution or sale of electric energy to retail customers within the corporate limits of the City (excluding, however, the sale of electric energy to the City for its own use), commencing with gross receipts received on or after the effective date of this franchise. The specific percentage levels for the franchise fee shall be established by separate ordinance, and may be different for diverse customer classes. The obligation to pay the fee imposed by this section is modified if: (a) the City permits any other person to sell electrical energy to City consumers and pay a franchise fee or its lawful equivalent at a lesser rate than provided in this section, in which case the Company shall collect from its customers and pay at the lesser rate; or (b) the City adds additional territory by annexation or consolidation and is unable lawfully to impose the

franchise fee upon any person selling electrical energy to consumers within the additional territory, in which case the franchise fee on the revenue from sales by the Company in the additional territory shall be equal to that of the lowest fee being paid by any other person selling or transmitting electrical energy within the additional territory.

111.11 EXEMPTION FROM PAYMENT OF FRANCHISE FEE. If the franchise fee or the Company's ability to collect the fee from its customers is adjudged to be unlawful, invalid, or unconstitutional by final non-appealable regulatory or judicial action, the Company shall be relieved of its obligation to collect from its customers and to remit to the City the franchise fee, the franchise fee shall be deemed to be of no further force and effect as of the date of such adjudication, and the City may request amendments to the franchise. If a refund to customers by the Company is ordered by such final non-appealable adjudication, the City agrees to repay to the Company such fees as are ordered to be refunded. If the parties are unable to agree to amend the franchise within a reasonable time after the City requests amendments thereto, the City may terminate the franchise.

111.12 REMITTANCE OF FRANCHISE FEE. The Company shall remit the franchise fee to the City Treasurer quarterly on or before May 1, August 1, November 1, and February 1 of each year for the three-month periods ending March 31, June 30, September 30, and December 31, respectively.

111.13 FORFEITURE OF FRANCHISE; CURE OF DEFAULTS. The violation of any material portion of this franchise by the Company or its successors or assigns, or its failure to promptly perform any of the provisions of this franchise, shall be cause for forfeiture of this franchise and the termination of all rights under this franchise. Such forfeiture shall be accomplished after written notice to the Company by the City, and a continuation of the violation, failure, or default specified in the notice, for at least sixty (60) days from the date the notice was served upon the Company. If either party determines that there is a default under this franchise, the other party shall be given a written notice describing the default, stating whether a forfeiture or termination of the franchise will be sought, and where the default is curable, providing a reasonable time to cure the default, which shall be not less than thirty (30) or more than one hundred eighty (180) days.

111.14 RESERVATION OF HOME RULE POWERS. This chapter is intended to be and shall be construed as consistent with the reservation of local authority contained in the Twenty-Fifth Amendment to the Iowa Constitution granting home rule powers to municipalities. To such end, any limitation on the power of the City is to be strictly construed, and the City reserves to itself the right to exercise all power and authority to regulate and control its local affairs, and all ordinances and regulations of the City shall be enforceable against the Company unless, and only to the extent, they are irreconcilable with any rights granted to the Company under this chapter.

111.15 MAPS OF DISTRIBUTION SYSTEM. Upon reasonable request, Company shall provide to the City Engineer, on a project specific basis, information indicating the horizontal location, in compliance with One-Call regulation, relative to the boundaries of the right-of-way, of all equipment which it owns or over which it has control and which is located in the project right-of-way. Project-specific mapping data shall be provided with the specificity and if reasonably possible in the format requested by the City Engineer. Mapping information provided to the City by the Company shall be for the exclusive use of the City in administering the use and occupancy of the public rights of way within the City and shall not be provided to or relied on by any person for any other purpose. At the request of the

Company, any information requested with respect to the location or type of equipment the Company maintains or plans to install in the right-of-way that qualifies or is designated by the Company as proprietary information or as a trade-secret information under Chapter 550 of the *Code of Iowa* or qualifies to be kept confidential under *Code of Iowa* Section 22.1 *et seq.*, shall be treated as confidential information or a trade secret and shall not be released to any party by the City.

111.16 CUSTOMER SATISFACTION SURVEYS. At the request of the City, the Company shall provide the City with summaries of the findings of its annual and other periodic customer satisfaction surveys and research. The Company also agrees to respond promptly and fully to the City's concerns and questions about specific service quality and customer satisfaction matters as and when they are communicated to the Company.

111.17 EXERCISE OF EMINENT DOMAIN POWERS. The Company shall have the power to condemn private property for the purpose of providing electric utilities to the extent necessary to serve a public use and in a reasonable relationship to an overall plan of transmitting electricity in the public interest upon approval of the City Council. The Company must establish the necessity for each taking of private property, and when so established, the City Council may approve the condemnation of the private property by resolution. Any such exercise of the eminent domain powers shall be conducted in accordance with this Code of Ordinances.

111.18 INDEMNITY. The Company shall indemnify and hold the City and its officers, agents, and employees free and harmless from any and all claims, demands, lawsuits, liability, and damages whatsoever, including all costs and expenses incident thereto, for any and all loss, damage, injury, or death 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, 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.

111.19 LEASE OR ASSIGNMENT OF FRANCHISE. This franchise shall apply to, inure to, and bind the parties hereto and their successors.

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CHAPTER 112

FRANCHISE FEES

112.01 Electric Franchise Fee

112.02 Gas Franchise Fee

112.03 Gas Sold by Third-Party Suppliers

112.04 Exemptions

112.01 ELECTRIC FRANCHISE FEE. Commencing with electric bills rendered by MidAmerican Energy Company (the “Company”) to utility customers within the corporate limits of the City on or after May 1, 2005, and for so long as the franchise granted by Ordinance No. 05-01 is in effect, there is hereby imposed on the Company, and it shall be the Company’s obligation to collect from its customers and remit to the City, a franchise fee in an amount equal to a percentage of the gross receipts, minus uncollectible amounts, derived by the Company from the transmission, distribution, and sale of electric energy to retail customers within the corporate limits of the City at the following percentage levels:

1. Residential Customers – five percent (5%)
2. Commercial Customers – three percent (3%)
3. Public Authority Customers (other than the City and public schools) – three percent (3%)

112.02 GAS FRANCHISE FEE. Commencing with natural gas bills rendered by the Company to its customers within the corporate limits of the City on or after May 1, 2005, and for so long as the franchise granted by Ordinance No. 05-02 is in effect, there is hereby imposed on the Company, and it shall be the Company’s obligation to collect from its customers and remit to the City, a franchise fee in an amount equal to a percentage of the gross receipts, minus uncollectible amounts, derived by the Company from the transmission, distribution, transportation and sale of natural gas to retail customers within the corporate limits of the City at the following percentage levels:

1. Residential Customers – five percent (5%)
2. Commercial Customers – three percent (3%)
3. Public Authority Customers (other than the City and public schools) – three percent (3%)

112.03 GAS SOLD BY THIRD-PARTY SUPPLIERS. With respect to the distribution or transportation by the Company of natural gas sold to the customer by a third-party supplier of the commodity, the percentage of gross receipts shall be applied to the customer’s full cost of gas delivered within the City, including all costs of acquisition, ownership, and transportation whereof, wherever incurred. In determining the amount of the fee, the Company may presume that the customer’s commodity cost of gas is the same as if the gas were sold by the Company, unless a different cost is provided.

112.04 EXEMPTIONS. Gross receipts derived from the transmission, distribution, transportation, and sale of natural gas and the transmission, distribution, and sale of electric energy to public schools and to the City for its own use are exempt from the franchise fee, and the franchise fee shall not be assessed to such customers.

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CHAPTER 113

CABLE TELEVISION FRANCHISE

113.01 Definitions

113.02 Grant of Franchise

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113.04 Use of Property

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113.06 Insurance

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113.08 Hold Harmless

113.09 Assignment

113.10 Change of Structure or Ownership

113.11 Insolvency of Grantee

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113.14 Defenses of Grantee

113.15 Arbitration

113.01 DEFINITIONS. The following words and phrases, when used in this chapter, have the meanings ascribed to them in this section:

1. “Cable television system” means any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals, by wire or cable, to subscribing members of the public who pay for such services.
2. “Channel” means the segment of the electromagnetic spectrum to which a source of television transmission is assigned.
3. “City” includes, when the context so requires, the City’s officers, agents, employees, servants, and independent contractors.
4. “FCC” means the Federal Communications Commission.
5. “Franchise” means the rights, privileges, and authority granted by the City to the Grantee hereunder and includes all of the terms and conditions of this chapter.
6. “Grantee” means Mediacom Communications, its successors and assigns. When the context so requires, the term “Grantee” includes the Grantee, its officers, agents, employees, servants, and independent contractors.
7. “Private property” means all property, real, personal, or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.
8. “Property of the Grantee” means all property, real, personal, or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.
9. “Public property” means all property, real, personal, or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

113.02 GRANT OF FRANCHISE. Subject to the terms and conditions of this chapter, the City hereby grants to the Grantee the nonexclusive right, privilege, and authority to construct, operate, maintain, repair, replace, renew, reconstruct, and remove a cable television system within the corporate limits of the City, including the nonexclusive right, privilege, and authority:

1. To sell and supply audio and video communications services to persons within the City;
2. To use public property within the City;
3. To engage in such further activities within the City as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system.

113.03 TERM OF FRANCHISE. The term of the franchise shall be a period of twenty-five (25) years commencing on the effective date of the franchise, unless sooner terminated, as hereinafter provided. †

113.04 USE OF PROPERTY. The Grantee may use public property within the City and, with the written consent of the owner thereof, private property within the City, in furtherance of such activities within the City as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system, subject, however, to the following restrictions:

1. The Grantee shall comply with all governmental laws, ordinances, rules, or regulations which may now or hereafter be applicable thereto.
2. The Grantee shall not use or occupy or permit public property or private property to be used or occupied or do or permit anything to be done on or about public property or private property which will, in any manner:
 - A. Impair the owner's interest in or title thereto;
 - B. Impair any mortgage or lease as may now or hereinafter be applicable thereto;
 - C. Adversely affect the then value or character thereof;
 - D. Cause or be likely to cause structural damage thereto, or any part thereof;
 - E. Cause or be likely to cause any damage or injury to any utility service available thereto;
 - F. Create a public or private nuisance, cause any offensive or obnoxious vibration, noise, odor or undesirable effect or interfere with the safety, comfort or convenience of the owner thereof, and persons lawfully on or about the same;
 - G. Violate the rules, regulations and requirements of any person furnishing utilities or services thereto; or
 - H. Make void or voidable any insurance then in force affecting the same or cause an increase in the rates applicable thereto.

† **EDITOR'S NOTE:** Ordinance No. 82-2, awarding a cable television franchise to Heritage Cablevision, Inc., was passed and adopted on July 19, 1982. Voters approved the franchise at an election held on September 21, 1982. The franchise was accepted by the Grantee on September 28, 1982. The franchise was subsequently transferred to Mediacom.

113.05 TAXES. The Grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees, and other charges of a like nature which may be taxed, charged, assessed, levied, or imposed upon the property of the Grantee and upon any services rendered by the Grantee.

113.06 INSURANCE. The Grantee shall, during the initial term of the franchise, or any extension thereof, maintain the broadest form of general comprehensive public liability insurance available to insure against claims for personal injury or property damage however arising from or related to or connected with the construction, operation, maintenance, repair, replacement, renewal, reconstruction, and removal of the cable television system of the Grantee and/or the obligations and liabilities assumed by the Grantee under the franchise. The limits of said coverage shall be at least \$100,000/\$300,000 for personal injury and \$100,000 for property damage, with so-called umbrella coverage of at least \$1,000,000. The insurance shall be issued by an insurance company of recognized responsibility licensed to do business in Iowa. The insurance shall not be changed or cancelled without 15 days' written notice to and approval by the City. The insurance shall name the City, its officers, agents, employees, servants, and independent contractors as additional named insured. Within ten (10) days after the commencement of the initial term of the franchise, and thereafter within 10 days prior to the expiration of the insurance, the Grantee shall deliver to the City certificates of insurance certifying that the insurance is in full force and effect.

113.07 REPAIRS. During the term of the franchise, Grantee shall, at its own expense, make all necessary repairs and replacements to the property of the Grantee. Such repairs and replacements, interior and exterior, ordinary as well as extraordinary, and structural as well as non-structural, shall be made promptly, as and when needed.

113.08 HOLD HARMLESS. During the term of the franchise, Grantee absolutely assumes and agrees to pay the City for, and the Grantee forever indemnifies the City against, and agrees to hold and save the City harmless from, any and all loss, damage, injury, costs, expenses, liability, claims, settlements, judgments, decrees and awards of every kind and nature whatsoever, including attorney's fees, costs and disbursements, that may ever be claimed against the City by any person whatsoever, or on account of any actual or alleged loss, damage or injury to any property whatsoever, however arising from or related to or connected with, directly or indirectly: (i) injury to or death of any person, or loss, damage or injury to any property owned or used by any person, while on, about, or adjacent to any property of the Grantee; and/or (ii) the non-observance by the Grantee of the provisions of any laws, statutes, ordinances, resolutions, regulations, or rules duly promulgated by any governmental entity which may be applicable, directly or indirectly, to rights, privileges and authority, and the obligations and liabilities, assumed by the Grantee under the franchise; and/or (iii) the non-observance by the Grantee of any of the terms and conditions of the franchise; and/or (iv) the granting of the franchise.

113.09 ASSIGNMENT. The Grantee shall not assign or transfer the franchise, or any part of the rights, privileges, and authority granted thereunder, without the written consent of the City.

113.10 CHANGE OF STRUCTURE OR OWNERSHIP. The Grantee shall not change its corporate structure or change the ownership of its capital stock outstanding on the effective date of the franchise to the extent of 25 percent, or more, without the written consent of the City.

113.11 INSOLVENCY OF GRANTEE. In the event that the Grantee shall become insolvent, or be declared a bankrupt, or the property of the Grantee shall come into the possession of any receiver, assignee, or other officer acting under an order of court, and any such receiver, assignee, or other such officer shall not be discharged within sixty (60) days after taking possession of such property, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee.

113.12 DEFAULT OF GRANTEE. In the event the Grantee fails to comply with any of the terms and conditions of the franchise within thirty (30) days after receipt of notice in writing from the City specifying the failure or default, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee. This section shall not apply to failures or defaults beyond the reasonable control of the Grantee.

113.13 TERMINATION. Upon termination of the franchise for any cause, the Grantee shall remove the property of the Grantee from all public property and private property within the City and shall return such public property and private property to the owner thereof in the same condition as when the property of the Grantee was placed thereon, ordinary wear and tear excepted.

113.14 DEFENSES OF GRANTEE. In the event that the Grantee should set up against the City any claim that any term or condition of the franchise is unreasonable, arbitrary, illegal, or void, or that the City did not have the power or authority to make such term or condition, the City may, at its option, terminate the franchise in the manner hereinbefore provided.

113.15 ARBITRATION. Except as otherwise provided herein, any controversy between the City and the Grantee regarding the rights, duties, or liabilities of either party under the franchise shall be settled by arbitration. This section does not apply to termination proceedings under 113.13 of this chapter. Such arbitration shall be before three disinterested arbitrators, one named by the City, one named by the Grantee, and one named by the two thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State of Iowa.

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CHAPTER 114

CABLE TELEVISION REGULATIONS

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114.16 Channel Capacity and Performance	114.35 Access
114.17 Subscriber Terminals in City Buildings and Schools	114.36 Discrimination Prohibited
114.18 Use of Education and Local Government Access Channels	114.37 Other Business Activities Prohibited
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114.01 DEFINITIONS. The words and phrases defined in Section 113.01 have the same meanings ascribed to them for use in this chapter.

114.02 COMPLIANCE WITH APPLICABLE LAWS. During the initial term of the franchise, or any extension thereof, the Grantee shall comply with all governmental laws, ordinances, rules, or regulations as may now or hereafter be applicable to the construction, operation, maintenance, repair, replacement, renewal, reconstruction, and removal of a cable television system, the sale and supply of audio and video communications services, the use of public property and private property, and the engagement in such further activities as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system. Any modifications to Section 76.31 of Subpart C of Regulations of the FCC applicable to a cable television system shall be incorporated into the franchise by amendment to this chapter within one year of the effective date of such modification, or at the time of renewal of the franchise, whichever occurs first.

114.03 CERTIFICATE OF COMPLIANCE. Within ninety (90) days after the effective date of the franchise, the Grantee shall make application to the FCC for a certificate of compliance.

114.04 CONSTRUCTION AND OPERATION SCHEDULE. Within one year after receiving FCC certification, the Grantee shall complete its studios and cablecasting facilities and the same shall be fully operational. Within one year after receiving FCC certification, the Grantee shall extend energized trunk cable to at least 20 percent of the potential subscriber terminals in the City. Thereafter, the Grantee shall extend energized trunk cable to at least 20 percent of the potential subscriber terminals in the City each year until the system is complete.

114.05 INSTALLATION AND MAINTENANCE OF PROPERTY. During the initial term of the franchise, or any extension thereof, the property of the Grantee shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed, and removed in

accordance with generally accepted engineering principles so as not to endanger or interfere with the lives of persons or to interfere with improvements which the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

114.06 INTERFERENCE. The Grantee's cable television system shall be so designed, engineered, and maintained so as not to interfere with the radio and television reception of persons who are not subscribers of the Grantee.

114.07 INSTALLATION OF CABLES. The Grantee shall have the right, privilege, and authority to lease, rent, or in any other manner obtain the use of wooden poles with overhead lines, conduits, trenches, ducts, lines, cable, and other equipment and facilities from any and all holders of public licenses and franchises within the City, and to use such poles, conduits, trenches, ducts, lines, and cable in the course of its business. The Grantee shall install its cable on existing poles owned by other holders of public licenses and franchises with the City whenever possible for the installation of its cable. When installation of cable on poles is insufficient, or when the holder of another public license or franchise has installed underground cable, then in that event, the cable used by the Grantee shall be installed underground.

114.08 CITY USE OF EXISTING POLES. The City shall and does hereby retain the right to utilize the existing poles for future City use, and to require the removal of the cable by the Grantee where existing poles are not sufficient to adequately handle the proposed City use and the Grantee's cable.

114.09 PRIOR APPROVAL OF UNDERGROUND INSTALLATIONS. The Grantee shall submit detailed drawings of all proposed underground cable installations to the City for approval prior to commencement of construction and shall not deviate therefrom without approval of the City.

114.10 RESTORATION OF GROUND SURFACE. In case of any disturbance of pavement, sidewalk, driveway, or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, or surface of any street or alley disturbed in as good a condition as before said work was commenced.

114.11 ALTERATION OF GRADE. In the event that, during the initial term of the franchise, or any extension thereof, the City shall elect to alter or change the grade of any street, alley, or public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

114.12 TEMPORARY REMOVAL OF CABLES. The Grantee shall, on the request of any person holding a building permit issued by the City, temporarily raise or lower its cables to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of cables shall be paid by the person requesting the same and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five (5) days' advance notice to arrange for such temporary cable changes.

114.13 TREE TRIMMING. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the

branches of such trees from coming in contact with the cable of the Grantee. All trimming shall be done under the supervision and direction of the City and at the expense of the Grantee.

114.14 SERVICE REQUIREMENTS. During the initial term of the franchise, or an extension thereof, the Grantee shall furnish reasonable, adequate, and efficient cable television service to subscriber terminals. The foregoing requirement may be temporarily suspended due to circumstances beyond the reasonable control of the Grantee.

114.15 PERFORMANCE STANDARDS. The Grantee shall produce a picture in black and white or in color that is undistorted, free from ghost images, and accompanied by proper sound on typical standard television sets in good repair. The Grantee shall also transmit signals of adequate strength to produce good pictures with good sound at all subscriber terminals throughout the City without causing cross modulation in the cables or interfering with other electrical or electronic systems.

114.16 CHANNEL CAPACITY AND PERFORMANCE. During the initial term of the franchise, or any extension thereof, the cable television system of the Grantee shall conform to the channel capacity and performance requirements contained in the then current regulations of the FCC.

114.17 SUBSCRIBER TERMINALS IN CITY BUILDINGS AND SCHOOLS. During the initial term of the franchise, or any extension thereof, the Grantee shall, at its sole cost, install and maintain subscriber terminals in such buildings owned or used by the City, and in such buildings owned or used by recognized educational authorities within the City, both public and private, as may be designated by the governing body having jurisdiction thereof. Such subscriber terminals shall be placed in such location or locations within such buildings as may be designated by the governing body having jurisdiction thereof.

114.18 USE OF EDUCATION AND LOCAL GOVERNMENT ACCESS CHANNELS. During the initial term of the franchise, or any extension thereof, the Grantee shall, at its sole cost, make available to the City, or its assigns, at least one channel to be used by the City, or its assigns, for any purpose. During the initial term of the franchise, or any extension thereof, the Grantee shall, at its sole cost, make available to recognized educational authorities within the City, both public and private, at least one channel to be used by them for any purpose. During the initial term of the franchise, or any extension thereof, the Grantee shall, at its sole cost, make available to the City and recognized educational authorities within the City, both public and private, at reasonable times and on reasonable notice, the use of its studio, other production facilities, and related equipment for origination cablecasting. In addition thereto, the Grantee shall provide, at its sole cost, such technical assistance as may be reasonably necessary to produce such origination cablecasting.

114.19 EMERGENCY WARNING SYSTEM. The Grantee shall equip its cable television system with an emergency warning override so that emergency information can be given simultaneously on all channels of the system. During an emergency, the Grantee shall allow the City the complete use of the system.

114.20 TELECAST OF EDUCATIONAL ACTIVITIES. The Grantee shall not cablecast, tape, reproduce, or otherwise convey to its subscribers the activities of any recognized educational authority, public or private, without the written consent of the governing body of such authority.

114.21 COLOR CABLECASTING. The cable television system of the Grantee shall be capable of color cablecasting. Any signal received by the Grantee in color shall be cablecast in color.

114.22 PROGRAM ALTERATION. Any signal received by the Grantee from a television broadcast station shall be cablecast by the Grantee in its entirety, as received, without alteration.

114.23 SUBSCRIBER RATES AND CHARGES. All rates for service shall be reasonable, compensatory, and nondiscriminatory. Subscriber rates and charges may be raised once in every calendar year thereafter by a percentage not to exceed the percentage increase of the Consumer Price Index, All Urban Consumers, United States City Average, All Items, for the period of time that has elapsed since the last increase of Grantee's rates and charges. The index figures provided by the Bureau of Labor Statistics, United States Department of Labor, shall be determinative for this purpose. Prior to the effective date of any increase of rates and charges based on the Consumer Price Index, the Grantee shall file with the City Clerk a schedule of new rates and charges together with their effective date. In the event the Grantee shall wish to increase rates beyond the percentage increase of the Consumer Price Index allowed by this section, the Grantee shall obtain the prior approval of the City Council. Such approval may be given upon a finding by the City Council that a change in rates or charges is necessary to further the public interest or to allow Grantee to realize a fair rate of return on its investment. Before any application for an increase in rates or charges upon this section may be considered and acted upon, it shall be filed with the City Council, which shall then publish notice of the application for two consecutive weeks in a newspaper of general circulation in the City. The notice shall specify a time and place for a public hearing. At such hearing, any interested person shall have the right to give testimony and present evidence on the change in rates or charges proposed. The City Council shall review the testimony and evidence and after such hearing shall determine whether the rates and charges in question shall be increased, decreased, or shall remain the same.

114.24 RATES AND CHARGES FOR NEW SERVICES. In the event that the Grantee may offer services for which rates and charges are not prescribed, the Grantee shall make application to the City to establish appropriate rates and charges for such services.

114.25 SERVICE RULES AND REGULATIONS. The Grantee shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. Such rules and regulations shall be consistent with the terms and conditions of the franchise. The Grantee shall file such rules and regulations, and all amendments thereto, with the City.

114.26 SERVICE AGREEMENTS. The Grantee shall have the right to prescribe a reasonable form of service agreement for use between the Grantee and its subscribers. Such service agreement shall be consistent with the terms and conditions of the franchise. The Grantee shall submit its proposed form of service agreement, and all proposed amendments thereto, to the City for approval.

114.27 OFFICE OF GRANTEE. During the initial term of the franchise, or any extension thereof, the Grantee shall maintain an office within Polk County, Iowa, for the purpose of receiving, investigating, and responding to complaints and grievances with respect to the quality of the service rendered by the Grantee, equipment malfunctions, and other similar matters pertaining to the cable television system of the Grantee.

114.28 PROCEDURE TO HANDLE COMPLAINTS AND GRIEVANCES. The procedure to handle complaints and grievances with respect to the quality of the services rendered by the Grantee, equipment malfunctions and other similar matters pertaining to the cable television system of the Grantee shall be as follows:

1. **Filing of Complaint.** Within thirty (30) days after the occurrence of the facts and circumstances giving rise to a complaint or grievance, and not thereafter, the complainant shall state the complaint or grievance to the Grantee in writing. In the event that a complaint or grievance is received by the City, the City shall forward such complaint or grievance to the Grantee in writing.
2. **Response by Grantee.** Within five (5) days after the receipt of a complaint or grievance by the Grantee, the Grantee shall state to the complainant its intentions with respect to the complaint or grievance in writing.
3. **Arbitration.** In the event that the complaint or grievance is not resolved to the satisfaction of the complainant within fifteen (15) days after the receipt thereof by the Grantee, the complaint or grievance shall be settled by arbitration. Such arbitration shall be before three disinterested arbitrators, one named by the complainant, one named by the Grantee, and one named by the two thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State of Iowa.

On or before the tenth day of each calendar month, the Grantee shall file a report in writing with the City stating the date and substance of each complaint or grievance received by it during the preceding calendar month, the date and nature of the action taken by the Grantee with respect thereto, and, if still pending, the status thereof.

114.29 INJURY TO PROPERTY OF THE GRANTEE. No person shall wrongfully or unlawfully injure the property of the Grantee.

114.30 INTERCEPTING SIGNALS OF THE GRANTEE. No person shall wrongfully or unlawfully intercept the signals of the Grantee.

114.31 FILING OF REPORTS. On or before April 1 of each year, the Grantee shall file with the City copies of FCC Form 325 and FCC Form 326 for the preceding calendar year.

114.32 FILING OF AUDIT. On or before April 1 of each year, the Grantee shall file with the City an audit of its operations within the City during the preceding calendar year.

114.33 FILING OF MAPS AND PLATS. On or before April 1 of each year, the Grantee shall file with the City maps and plats showing the location and nature of all property of the Grantee within the City as of the end of the preceding calendar year.

114.34 FILING OF COMMUNICATIONS WITH REGULATORY AGENCIES. The Grantee shall file with the City copies of all petitions, applications, and communications submitted by the Grantee to any regulatory agency having jurisdiction over the Grantee.

114.35 ACCESS. The Grantee shall and does hereby grant to the City the right to enter upon the property of the Grantee, upon reasonable notice, at any and all reasonable times to inspect the same for purposes pertaining to the rights of the City.

114.36 DISCRIMINATION PROHIBITED. The Grantee shall not grant any undue preference or advantage to any person or subject any person to prejudice or disadvantage with respect to rates, charges, services, service facilities, rules, regulations, or in any other respect.

114.37 OTHER BUSINESS ACTIVITIES PROHIBITED. During the initial term of the franchise, or any extension thereof, the Grantee shall not engage in the business of selling, leasing, renting, or servicing television or radio receivers, or their parts and accessories, and the Grantee shall not require or attempt to direct its subscribers to deal with any particular person or firm with respect to said activities.

114.38 FRANCHISE FEE. On or before April 1 of each year during the term of the franchise, the Grantee shall pay to the City, at the office of the City, in lawful money of the United States, a franchise fee based upon a percentage of the gross subscriber receipts received by the Grantee from the operation of its cable television system within the City during the preceding calendar year. Such fee shall be based on such percentage of said gross receipts as may be approved by the FCC, but in no event shall the same be less than five percent of said gross receipts. In the event that the franchise shall be terminated for any cause whatsoever during the calendar year, the franchise fee for that calendar year shall be payable to the City as aforesaid within thirty (30) days following the date of termination. Any franchise fee not paid when due shall bear interest at the rate of nine percent per annum from the date due. The franchise fee shall not be considered to be in the nature of a tax.

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CHAPTER 115

REGULATION OF CABLE TELEVISION RATES

115.01 Authority to Administer
115.02 Rate Regulation
115.03 FCC Certification Form

115.04 Cable Programming Service Tier
115.05 Delegation of Power

115.01 AUTHORITY TO ADMINISTER. The City has the legal authority to administer and shall enforce against any non-municipally owned cable television system operator as permitted therein, the provisions of Part 76, Subpart N of the Rules and Regulations of the Federal Communications Commission (FCC), concerning Cable Rate Regulation, 47 C.F.R. 76.900 et. seq., as they currently read and hereafter may be amended, which are herein incorporated by reference.

115.02 RATE REGULATION. Any rate regulation proceedings conducted under Section 115.01 shall provide a reasonable opportunity for consideration of the view of any interested party, including (but not limited to) the City or its designee, the Cable Operator, subscribers and residents of the franchise area. In addition to all other provisions required by the laws of the State of Iowa and the City for such proceedings, and in order to provide for such opportunity for consideration of the views of any interested party, the City shall take the following actions:

1. The City shall publish notice as provided in *Code of Iowa* Section 362.4 and shall mail, by certified mail to the Cable Operator, a notice of the intent to conduct a public proceeding on basic service tier rates and/or charges for equipment to receive such basic service tier, as defined by the FCC.
2. Said notice shall state, among other things, that cable television rates are subject to municipal review and explain the nature of the rate review in question; that any interested party has a right to participate in the proceeding; that public views may be submitted in the proceeding, explaining how they are to be submitted and the deadline for submitting any such views; that a decision concerning their reasonableness of the cable television rates in question will be governed by the FCC Rules and Regulations; and that the decision of the City is subject to review by the FCC.
3. The City shall conduct a public proceeding to determine whether or not the rates or proposed rate increase are reasonable. The City may delegate the responsibility to conduct the proceeding to any duly qualified and eligible individual or entity. If the City or its designee cannot determine the reasonableness of a proposed rate increase within the time period permitted by the FCC Rules and Regulations, it may announce the effective date of the proposed rates for an additional period of time as permitted by the FCC Rules and Regulations, and issue any other necessary or appropriate order and give notice accordingly.
4. In the course of the rate regulation proceeding, the City may require additional information from the Cable Operator that is reasonably necessary to determine the reasonableness of the basic service tier rates and equipment charges. Any such additional information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the

response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry. The City may request proprietary information, provided that the City shall consider a timely request from the Cable Operator that said proprietary information shall not be made available for public information, consistent with the procedures set forth in Section 0.459 of the FCC Rules and Regulations. Furthermore, said proprietary information may be used only for the purpose of determining the reasonableness of the rates and charges or the appropriate rate level based on a cost-of-service showing submitted by the Cable Operator. The City may exercise all powers under the laws of evidence applicable to administrative proceedings under the laws of the State of Iowa to discover any information relevant to the rate regulation proceeding, including, but not limited to, subpoena, interrogatories, production of documents and deposition.

5. Upon termination of the rate regulation proceeding, the City shall adopt and release a written decision as to whether or not the rates or proposed rate increase are reasonable or unreasonable, and, if unreasonable, its remedy, including prospective rate reduction, rate prescription and refunds.

6. The City may not impose any fines, penalties, forfeitures or other sanctions, other than permitted by the FCC Rules and Regulations, for charging an unreasonable rate or proposing an unreasonable rate increase.

7. Consistent with FCC Rules and Regulations, the City's decision may be reviewed only by the FCC.

8. The City shall be authorized, at any time, whether or not in the course of a rate regulation proceeding, to gather information as necessary to exercise its jurisdiction as authorized by the Communications Act of 1934, as amended, and the FCC Rules and Regulations. Any information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry.

115.03 FCC CERTIFICATION FORM. The City shall file with the FCC the required certification form (FCC Form 328) on September 1, 1993, or as soon thereafter as appropriate. Thirty days later, or as soon thereafter as appropriate, the City shall notify the Cable Operator that the City has been certified by the FCC and that it has adopted all necessary regulations so as to begin regulating basic service tier cable television rates and equipment charges.

115.04 CABLE PROGRAMMING SERVICE TIER. With regard to the cable programming service tier, as defined by the Communications Act of 1934, as amended, and the FCC Rules and Regulations, and over which the City is not empowered to exercise rate regulation, the Cable Operator shall give notice to the City of any change in rates for the cable programming service tier or tiers, any change in the charge for equipment required to receive the tier or tiers, and any changes in the nature of the services provided, including the program services included in the tier or tiers, and any changes in the nature of the service provided, including the program services included in the tier or tiers. Said notice shall be provided within five (5) business days after the change becomes effective.

115.05 DELEGATION OF POWER. The City may delegate its powers to enforce this chapter to municipal employees or officers (“cable official”). The cable official will have the authority to:

1. Administer oaths and affirmations;
2. Issue subpoenas;
3. Examine witnesses;
4. Rule upon questions of evidence;
5. Take or cause depositions to be taken;
6. Conduct proceedings in accordance with this law;
7. Exclude from the proceeding any person engaging in contemptuous conduct or otherwise disrupting the proceedings;
8. Hold conferences for the settlement or simplification of the issues by consent of the parties; and
9. Take actions and make decisions or recommended decisions in conformity with this law.

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