

CHAPTER 110

NATURAL GAS FRANCHISE

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110.01 GRANT OF FRANCHISE. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called “Company,” and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City of Le Mars, Iowa, hereinafter called the “City,” a gas distribution system, to furnish natural gas along, under and upon the streets, avenues, alleys and public places to serve customers within and without the City and to furnish and sell natural gas to the City and its inhabitants. For the term of this franchise the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. This franchise shall be effective for a twenty-five (25) year period from and after the effective date of the ordinance codified in this chapter,[†] provided however, that there may be a re-evaluation prior to the end of year 15, with the opportunity for both parties to request amendments. If neither party requests such re-evaluation by means of a written notice to the other party at least 90 days prior to the expiration of year 15, this franchise will continue without change for the remaining 10 years.

110.02 STATE CODE RESTRICTIONS AND LIMITATIONS. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa, or as subsequently amended or changed.

110.03 USE OF PUBLIC WAYS. Company shall have the right to excavate in any public street for the purpose of laying, relaying, repairing or extending gas pipes, mains, conduits, and other facilities provided that the same shall be so placed as not to interfere with the construction of any water pipes, drain or sewer or the flow of water therefrom, which have been or may hereafter be located by authority of the City.

110.04 RELOCATION OF INSTALLATIONS. The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City has a reasonable alternative route for the street, alley or public improvements or an alternative construction method, which would not cause the relocation of the Company installations, the City shall select said alternative route or construction method. If relocation of the Company facilities could be avoided by relocating other franchisee’s or facility user’s equipment and facilities or by using a different method to

[†] **EDITOR’S NOTE:** Ordinance No. 880, adopting a natural gas franchise for the City, was passed and adopted on July 21, 2009.

perform the street and/or curbing construction, and said other cost of construction or relocation is less than the Company's, the City shall select the route or method that is less expensive. The Company will notify the City if project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall attempt to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

110.05 EXCAVATIONS. In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring the original condition as nearly as practicable.

110.06 INDEMNIFICATION. Company shall indemnify and save harmless City from any and all claims, suits, losses, damages, costs or expenses on account of injury or damage to any person or property, caused or occasioned, or allegedly caused or occasioned, in whole or in part, by Company's negligence in construction, reconstruction, excavation, operation or maintenance of the gas utilities 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.

110.07 MAINTAIN FACILITIES. The Company shall extend its mains and pipes and operate and maintain the system in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

110.08 QUANTITY AND QUALITY. During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent with applicable Iowa laws and regulations.

110.09 POLICE REGULATIONS. All reasonable and proper police regulation shall be adopted and enforced by the City for the protection of the facilities of the Company.

110.10 FRANCHISE FEE. The City reserves the right to impose a franchise fee pursuant to the Iowa Code. The franchise fee shall only be imposed through the adoption of an ordinance authorizing said franchise fee. The City shall work with the Company to develop a methodology and timeline to implement the franchise fee. The City shall provide the Company with written notice no less than 90 days in advance of the effective date of any franchise fee enacted by the City.

CHAPTER 111A

ELECTRIC FRANCHISE - PLYMOUTH ELECTRIC COOPERATIVE ASSOCIATION

111A.01 Grant of Franchise
111A.02 Construction — Trees
111A.03 Moving Structures or Equipment
111A.04 Public Improvements
111A.05 Damage to System

111A.06 Successors and Assigns
111A.07 Eminent Domain
111A.08 Indemnification
111A.09 Remedies

111A.01 GRANT OF FRANCHISE. A nonexclusive franchise is hereby granted unto Plymouth electric Cooperative Association, its successors and assigns, (herein “Grantee”), for a term of twenty-five (25) years, commencing with the date the ordinance codified by this chapter[†] became effective, to acquire, erect, maintain and operate plants and systems for electric light, heat and power, electric distribution systems and electric transmission systems (herein “Electric Utilities”), within Grantee’s service territory located within the present and future corporate limits of the City, and the Grantee is granted the right, franchise and authority to construct, install and maintain such Electric Utilities over, across and under the streets, alleys and public grounds of the City, and private lands therein, and to furnish, supply, transmit and distribute electricity to the City and its inhabitants and others within and without the corporate limits for all lawful purposes, including public and private use, and upon such terms, conditions, restrictions and regulations as are adopted in this chapter.

111A.02 CONSTRUCTION — TREES. All construction, exclusive of distance from buildings, shall be in accordance with the applicable provisions of the Iowa Electrical Safety Code as adopted by the Iowa State Commerce Commission, the Rural Electrification Act, and other applicable Federal law or regulations. Grantee shall have the right to trim or remove trees when reasonably necessary to efficiently operate its plant and render service.

111A.03 MOVING STRUCTURES OR EQUIPMENT. If any party, acting alone or through an agent, company or employee, shall desire to operate, erect, maintain, move or transport any tools, machinery, equipment, supplies, materials, apparatus, house or other building, or any part thereof, within the corporate limits of the City which will encroach or could reasonably be expected to encroach within ten (10) feet of any above-ground transmission or distribution line that is energized in excess of seven hundred fifty volts between conductors or between any single conductor and a ground, such party shall give a reasonable notice of such proposed work to Grantee and shall refrain from any encroachment until the same may be done in accordance with standards established to prevent electrical contact with conductors and the party shall protect electric utilities from damage during such encroachment. If good practice requires relocation or de-energizing conductors, the work shall be at a time that will not cause unreasonable inconvenience to the Grantee or its customers and shall be at the expense of such party. Grantee may require payment in advance. Grantee will

[†] **EDITOR’S NOTE:** Ordinance No. 694, adopting an electric franchise for the City, was passed and adopted on September 19, 1989.

not be required to relocate above-ground high voltage electric transmission lines if any alternate route exists for the performance of such work.

111A.04 PUBLIC IMPROVEMENTS. If the City shall propose to improve or make a public improvement in any street, alley or public way (herein "Public Improvement") in a manner that may conflict with the existing electric utilities, the contractor awarded the public improvement contract shall ascertain the exact number, location, depth or elevation of electric utilities and at all times protect electric utilities from damage during the performance of the contract. The Grantee shall, upon resolution of the Council, temporarily remove, relocate or guard with insulating barriers electric utilities that are deemed in conflict with the public improvement, at its own expense, at a time that will not cause unreasonable inconvenience to the Grantee or its customers.

111A.05 DAMAGE TO SYSTEM. If any party shall damage any part of the electric utilities or cause any weakening or loss of the structural, mechanical or vertical support thereof, or cause an interruption to the electric service provided by any transmission or distribution line, such party shall give warnings and use safeguards as may be necessary, including the erection of insulating barriers to prevent electrical contact by any person and shall immediately notify Grantee of the location, time of the occurrence and nature of the damage and shall maintain reasonable warnings and safeguards until all damage has been repaired. The Grantee shall also notify the City of such damage immediately when it becomes aware of same.

111A.06 SUCCESSORS AND ASSIGNS. This chapter shall apply to Grantee and its successors and assigns. Grantee shall be subject to all legal right, power and authority now or hereafter possessed by the City to control and direct by ordinance or resolution the franchise herein granted and the manner in which the Grantee shall use and enjoy it.

111A.07 EMINENT DOMAIN. Grantee shall have the power to appropriate and condemn private property for the purpose of providing electrical service 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. The necessity for the taking of any private property by the Grantee by condemnation shall be determined by the Council by resolution.

111A.08 INDEMNIFICATION. Grantee shall fully protect the City from any and all claims of any nature whatsoever which may be made against the City by reason of the construction, maintenance or operation of the distribution system and transmission line.

111A.09 REMEDIES. The City shall have the power and authority to seek and obtain appropriate relief through the judicial system, including but not limited to injunctive relief, to enforce and facilitate the provisions of this chapter.

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CHAPTER 111B

ELECTRIC FRANCHISE – MIDAMERICAN ENERGY COMPANY

111B.01 Grant of Franchise

111B.02 State Code Restrictions and Limitations

111B.03 Poles and Wires; Trimming Trees

111B.04 Relocation of Installations

111B.05 Excavations

111B.06 Indemnification

111B.07 Maintain Facilities

111B.08 Quantity and Quality

111B.09 Police Regulations

111B.10 Franchise Fee

111B.01 GRANT OF FRANCHISE. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called “Company,” and to its successors and assigns the right and franchise to acquire, construct, erect, maintain and operate in the City of Le Mars, Iowa, hereinafter called the “City,” a system for the transmission and distribution of electric energy and communications signals along, under, over and upon the streets, avenues, alleys and public places to serve customers within and without the City, and to furnish and sell electric energy to the City and its inhabitants. For the term of this franchise the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. This franchise shall be effective for a twenty-five (25) year period from and after the effective date of the ordinance codified in this chapter,[†] provided however, that there may be a re-evaluation prior to the end of year 15, with the opportunity for both parties to request amendments. If neither party requests such re-evaluation by means of a written notice to the other party at least 90 days prior to the expiration of year 15, this franchise will continue without change for the remaining 10 years.

111B.02 STATE CODE RESTRICTIONS AND LIMITATIONS. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the Code of Iowa, or as subsequently amended or changed.

111B.03 POLES AND WIRES; TRIMMING TREES. The Company shall have the right to erect all necessary poles and to place thereon the necessary wires, fixtures and accessories as well as excavate and bury conductors for the distribution of electric energy and communications signals in and through the City, but all said conduits and poles shall be placed as not to interfere with the construction of any water pipes, drain or sewer, or the flow of water therefrom, which have been or may hereafter be located by authority of the City. The Company is authorized and empowered to 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 of trees shall be done to current nationally accepted safety and utility industry standards.

111B.04 RELOCATION OF INSTALLATIONS. The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in

[†] **EDITOR’S NOTE:** Ordinance No. 881, adopting an electric franchise for the City, was passed and adopted on July 21, 2009.

the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City has a reasonable alternative route for the street, alley or public improvements or an alternative construction method, which would not cause the relocation of the Company installations, the City shall select said alternative route or construction method. If relocation of the Company facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities or by using a different method to perform the street and/or curbing construction, and said other cost of construction or relocation is less than the Company's, the City shall select the route or method that is less expensive. The Company will notify the City if project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall attempt to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

111B.05 EXCAVATIONS. In making excavations in any streets, avenues, alleys and public places for the repair, maintenance or installation of conduits or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring the original condition as nearly as practicable.

111B.06 INDEMNIFICATION. The Company shall indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses on account of injury or damage to any person or property, caused or occasioned, in whole or in part, by Company's negligence in construction, reconstruction, excavation, operation or maintenance of the electric utilities 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.

111B.07 MAINTAIN FACILITIES. The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

111B.08 QUANTITY AND QUALITY. During the term of this franchise, the Company shall furnish electric energy in the quantity and quality consistent with applicable Iowa laws and regulations.

111B.09 POLICE REGULATIONS. All reasonable and proper police regulation shall be adopted and enforced by the City for the protection of the facilities of the Company.

111B.10 FRANCHISE FEE. The City reserves the right to impose a franchise fee pursuant to the Iowa Code. The franchise fee shall only be imposed through the adoption of an ordinance authorizing said franchise fee. The City shall work with the Company to develop a methodology and timeline to implement the franchise fee. The City shall provide the Company with written notice no less than 90 days in advance of the effective date of any franchise fee enacted by the City.

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CHAPTER 112

TELEPHONE FRANCHISE

112.01 Franchise Granted

112.02 Location of Poles

112.03 Repair of Sidewalk or Street Pavement

112.04 Signal Wires

112.05 Franchise Subject to Authority of City

112.06 Suits Against City

112.01 FRANCHISE GRANTED. Central Telephone Company, a Delaware corporation, its lessees, successors and assigns (the “Grantee”), are hereby granted the nonexclusive franchise, right and privilege for a period of twenty-five (25) years to use the streets, alleys, bridges and other public places of the City for the purpose of erecting, maintaining and operating a telephone system, including all necessary appurtenances, and to use jointly or otherwise the property of other companies and permit other companies to use its property under such arrangements as such companies and the Grantee may agree upon.

112.02 LOCATION OF POLES. The location of poles by the Grantee under authority of this chapter shall be subject to the supervision of the Street Commissioner or such other official as the Council may designate. All poles shall be neat and symmetrical and located so as to minimize interference with the safety or convenience of persons traveling the streets, alleys, bridges and other public places.

112.03 REPAIR OF SIDEWALK OR STREET PAVEMENT. The Grantee shall properly repair or replace any sidewalk or street surface which may be displaced or damaged by it in the erection and maintenance of its telephone system. Upon the failure of the Grantee to do so and after twenty (20) days’ notice in writing given by the Mayor to the Grantee, the City may repair or replace such portion of the sidewalk or street surface as may have been disturbed by the Grantee and collect the costs so incurred from the Grantee.

112.04 SIGNAL WIRES. The Grantee shall, on demand, during the life of the franchise, provide crossarm or bracket space on each pole owned by it on which the City may desire to attach signal wires for the free use of the police and fire alarm systems of the City. All such wires shall be placed and maintained so as not to interfere with the convenient use and maintenance of the Grantee’s telephone system and the location of such wires shall be subject to the supervision of the Grantee. All such wires shall be placed and maintained in accordance with the National Electric Safety Code, as from time to time amended.

112.05 FRANCHISE SUBJECT TO AUTHORITY OF CITY. The Grantee agrees for and on behalf of itself, its lessees, successors and assigns that all authority and rights granted in this chapter shall be subject to all rights, powers and authority now or hereafter possessed by the City to regulate, control and direct or otherwise by ordinance or resolution legislate concerning the exercise of the franchise herein granted and concerning the manner in which the Grantee shall use the streets, alleys, bridges and other public places of the City.

112.06 SUITS AGAINST CITY. Grantee shall, at its own expense, defend all suits that may be brought against the City for damages to persons or property caused by negligence on the part of Grantee, or any of its employees, in the doing of any of the work herein authorized, and shall save and keep harmless the City from and all damages, judgments, costs and

expenses of every kind that may arise by reason thereof; provided, however, Grantee need not so defend such suits or be obligated to save the City harmless from such damages, judgments, costs and expenses unless the City shall, upon notice to it of such suit, immediately notify the Grantee. The City agrees to furnish the Grantee with all information in its possession relating to such suit. The City may, by its attorneys, assist in the defense of any such suit, but solely at the direction of the Grantee or its attorneys, and Grantee shall not be required to reimburse the City for any expenses or costs incurred by it in assisting in such defense if it elects to so assist.

EDITOR'S NOTE

Ordinance No. 623 adopting a telephone franchise for the City was passed and adopted on March 6, 1984. Voters approved the franchise at an election held on April 10, 1984. The Grantee accepted the franchise on May 1, 1984.

CHAPTER 113

CABLE TELEVISION FRANCHISE

113.01 Terms	113.13 Required Extensions of the Cable System
113.02 Grant	113.14 Subscriber Charges For Extensions
113.03 Other Ordinances	113.15 Cable Service To Public Buildings
113.04 Other Authorizations	113.16 Franchise Fee
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113.06 Restoration of Public Ways	113.18 Insurance and Indemnification
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113.08 Relocation for a Third Party	113.20 Actions of Parties
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113.10 Safety Requirements	113.22 Reservation of Rights
113.11 Underground Construction	113.23 Notice
113.12 Access to Open Trenches	

113.01 TERMS. For the purpose of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below.

1. “Basic cable” is the lowest priced tier of cable service that includes the retransmission of local broadcast television signals.
2. “Cable Act” means Title VI of the Communications Act of 1934, as amended.
3. “Cable services” means: (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
4. “Cable system” means the Grantee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the service area.
5. “FCC” means Federal Communications Commission, or successor governmental entity thereto.
6. “Grantee” means MCC IOWA LLC or the lawful successor, transferee, or assignee thereof.
7. “Gross revenues” means any revenues from the operation of the cable system to provide cable services in the service area received by Grantee from subscribers, provided, however, that gross revenues do not include franchise fees, the FCC user fee, or any tax, fee, or assessment of general applicability collected by the Grantee from subscribers for pass-through to a government agency.
8. “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
9. “Public way” means the surface of and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including (but not limited to) public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the City in the service area which shall

entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the cable system.

10. "Service area" means the present boundaries of the City, and includes any additions thereto by annexation or other legal means, subject to the exceptions in Section 113.13 of this chapter.

11. "Standard installation" is defined as 125 feet from the nearest tap to the subscriber's terminal.

12. "Subscriber" means a person who lawfully receives cable service of the cable system with the Grantee's express permission.

113.02 GRANT. The City hereby grants to the Grantee a nonexclusive franchise which authorizes the Grantee to construct and operate a cable system in, along, among, upon, across, above, over, under, or in any manner connected with public ways within the service area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public way such facilities and equipment as may be necessary or appurtenant to the cable system for the transmission and distribution of cable services, data services, information and other communications services or for any other lawful purposes.

113.03 OTHER ORDINANCES. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by the franchise. Neither party may unilaterally alter the material rights and obligations set forth in this chapter. In the event of a conflict between any ordinance and this chapter, this chapter shall control.

113.04 OTHER AUTHORIZATIONS. The City shall not permit any person to provide services similar to those provided by the Grantee in the service area without first having secured a nonexclusive franchise from the City. The City agrees that any grant of additional franchises or other authorizations including OVS authorizations by the City to provide services similar to those provided by the Grantee pursuant to this chapter to any other entity shall cover the entire service area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of the franchise, the City, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchises or authorizations previously granted and find that the proposed increased obligations in the renewal, are not more burdensome and/or less favorable than those contained in any such additional franchises or authorizations.

113.05 CONDITIONS OF OCCUPANCY. The cable system installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.

113.06 RESTORATION OF PUBLIC WAYS. If during the course of the Grantee's construction, operation, or maintenance of the cable system there occurs a disturbance of any public way by the Grantee, Grantee shall replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance.

113.07 RELOCATION FOR THE CITY. Upon its receipt of reasonable advance written notice, to be not less than ten business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the public way, any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

113.08 RELOCATION FOR A THIRD PARTY. The Grantee shall, on the request of any person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the public way as necessary any property of the Grantee, provided: (i) the expense of such is paid by said person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (ii) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than 30 business days in the event of a temporary relocation, and no less than 120 days for a permanent relocation.

113.09 TRIMMING OF TREES AND SHRUBBERY. The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the cable system.

113.10 SAFETY REQUIREMENTS. Construction, operation, and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable Federal, State, and local regulations and the *National Electric Safety Code*.

113.11 UNDERGROUND CONSTRUCTION. In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its cable system underground. Nothing contained in this section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

113.12 ACCESS TO OPEN TRENCHES. The City agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the City agrees to require as a condition of issuing a permit for open trenching to any utility or developer that: (i) the utility or developer give the Grantee at least ten days' advance written notice of the availability of the open trench; and (ii) the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

113.13 REQUIRED EXTENSIONS OF THE CABLE SYSTEM. Grantee agrees to provide cable service to all residences in the service area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for cable service from a potential subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least 10 residences within 1,320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its cable system to such subscribers at no cost to said subscribers for the cable system extension, other than the published standard/nonstandard installation fees charged to all subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the

obligation, to extend the cable system into any portion of the service area where another operator is providing cable service, into any annexed area which is not contiguous to the present service area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary, circumstances, such as a runway or freeway crossing.

113.14 SUBSCRIBER CHARGES FOR EXTENSIONS. No subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 113.13 above, the Grantee shall only be required to extend the cable system to subscribers in that area if the subscribers are willing to share the capital costs of extending the cable system. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1,320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the cable system on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance. Subscribers shall also be responsible for any standard/nonstandard installation charges to extend the cable system from the tap to the residence.

113.15 CABLE SERVICE TO PUBLIC BUILDINGS.

1. The Grantee, upon request, shall provide without charge, a standard installation and one outlet of family basic cable to those administrative buildings owned and occupied by the City (e.g., City Hall, Library, Convention Center, Wellness Center, Weidler Community Service Center, Street Building, Water Building, Waste Water Building, National Guard Armory, Fire Stations, police stations, etc.), and K-12 public and Gehlen schools that are passed by its cable system. The cable service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The cable service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The City shall take reasonable precautions to prevent any inappropriate use of the Grantee's cable system or any loss or damage to Grantee's cable system. The City shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of cable service required by this subsection. The Grantee shall not be required to provide an outlet to such buildings where a nonstandard installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary cable system extension and/or nonstandard installation. If additional outlets of basic cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

2. The Grantee shall activate and assign one channel on the cable system to the full-time non-commercial transmission of public, education and governmental (PEG) programming to be determined and carried out at the sole discretion of the City. The City may request and the Grantee shall provide a second channel for the use of PEG programming but not until the City can demonstrate that the first channel assigned to PEG programming is used on an average of eight (8) hours per day with not less than five (5) hours each week being new programming. Upon reasonable request by the Grantee, the City shall provide a written report describing the use and programming of said PEG access channel or channels.

3. The Grantee shall provide ongoing capital support for public, educational, and governmental access equipment and facilities in the amount of twenty cents (\$.20) per subscriber per month for the entire term of the franchise payable in the same manner as

the franchise fee payment pursuant to this chapter. The Grantee acknowledges that this amount shall not be considered gross revenues subject to the payment of franchise fees pursuant to this chapter. Furthermore, payments of this ongoing support shall not be deemed to be “franchise fees” within the meaning of Section 622 of the Cable Act and such payment shall not be deemed to be “payments-in-kind” or any involuntary payments chargeable against the compensation to be paid to the City by Grantee pursuant to this chapter. Grantee shall be allowed to collect such fee as a pass-through to cable subscribers. The City shall indemnify the Grantee for all programming provided on the access channel and hold the Grantee harmless from any claims by any person that the PEG Capital Support Grant violates applicable law.

4. In addition to two existing locations, Le Mars Public High School and Le Mars City Council Chambers, Grantee agrees to establish three additional locations for a total of five (5) locations within the service area to the cable system, such new locations to be identified and approved by the City, that will be capable of communication to the head end for further distribution throughout the cable system of audio and video signals. Said locations are intended to serve as remote points from which live and taped PEG programming can be transmitted via the cable system and the PEG access channels. The City and Grantee agree to negotiate in good faith to identify further specifics regarding the location and use of the three new locations.

113.16 FRANCHISE FEE.

1. The Grantee shall pay to the City a franchise fee of five percent (5%) of annual gross revenues (as defined in Section 113.01 of this chapter). In accordance with the Cable Act, the 12-month period applicable under the franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due annually and payable within 90 days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

2. **Limitation on Franchise Fee Actions.** The period of limitation for recovery by the City of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the City.

3. **Rates and Charges.** The City may regulate rates for the provision of basic cable and equipment as expressly permitted by Federal law.

4. **Renewal of Franchise.**

A. The City and the Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Grantee’s franchise shall be governed by and comply with the renewal provisions of Federal law.

B. In addition to the procedures set forth in the Cable Act, the City agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then-current franchise term. The City further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this subsection, the Grantee and the City agree that at any time during the term of the then-

current franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of Federal law, the City and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then-current franchise and the City may grant a renewal thereof.

D. The Grantee and the City consider the terms set forth in this subsection to be consistent with the express renewal provisions of the Cable Act.

5. Conditions of Sale. If a renewal or extension of the Grantee's franchise is denied or the franchise is lawfully terminated, and the City either lawfully acquires ownership of the cable system or by its actions lawfully effects a transfer of ownership of the cable system to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act. The Grantee and the City agree that in the case of a final determination of a lawful revocation of the franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its cable system to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its cable system which is reasonably acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to Federal or State law. It is further agreed that the Grantee's continued operation of the cable system during the 12-month period shall not be deemed to be a waiver or an extinguishment of any rights of either the City or the Grantee.

6. Transfer of Franchise. The Grantee's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior written notice to the City. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the franchise or cable system in order to secure indebtedness.

113.17 BOOKS AND RECORDS. The Grantee agrees that the City, upon 30 days' written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this chapter. Such notice shall specifically reference the subsection of this chapter which is under review, so that the Grantee may organize the necessary books and records for easy access by the City. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the City's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, or disclose books and records of any affiliate which is not providing cable service in the service area. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee

shall not be required to provide subscriber information in violation of Section 631 of the Cable Act.

113.18 INSURANCE AND INDEMNIFICATION.

1. Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The City shall be designated as an additional insured. Such insurance shall be non-cancelable except upon 30 days' prior written notice to the City. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

2. Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its cable system in the service area provided that the City shall give the Grantee written notice of its obligation to indemnify the City within ten days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the City for any damages, liability, or claims resulting from the willful misconduct or negligence of the City.

113.19 ENFORCEMENT AND TERMINATION OF FRANCHISE.

1. Notice of Violation. In the event that the City believes that the Grantee has not complied with the terms of the franchise, the City shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the City shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

2. The Grantee's Right to Cure or Respond. The Grantee shall have 30 days from receipt of the notice described in subsection 1: (i) to respond to the City, contesting the assertion of noncompliance; or (ii) to cure such default; or (iii) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

3. Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 1 pursuant to the procedures set forth in subsection 2, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to paragraph 2(iii) above, if it intends to continue its investigation into the default, then the City shall schedule a public hearing. The City shall provide the Grantee at least 10 days' prior written notice of such hearing, which specifies the time, place, and purpose of such hearing, and provide the Grantee the opportunity to be heard.

4. Enforcement. Subject to applicable Federal and State law, in the event the City, after the hearing set forth in subsection 3, determines that the Grantee is in default of any provision of the franchise, the City may:

A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

B. Commence an action at law for monetary damages or seek other equitable relief; or

C. In the case of a substantial default of a material provision of the franchise, seek to revoke the franchise in accordance with subsection 5.

5. Revocation. Should the City seek to revoke the franchise after following the procedures set forth in subsections 1 through 4 above, the City shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have 90 days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Grantee, it may then seek termination of the franchise at a public hearing. The City shall cause to be served upon the Grantee, at least 30 days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the franchise. At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees, or consultants of the City, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing. Following the hearing, the City shall determine whether or not the franchise shall be revoked. If the City determines that the franchise shall be revoked, the City shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the City to an appropriate court which shall have the power to review the decision of the City *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within 60 days of Grantee's receipt of the determination of the City. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under the franchise in lieu of revocation of the franchise.

6. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the franchise, or suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's cable system is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. Furthermore, the parties hereby agree that it is not the City's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the franchise for violations of the franchise where the violation was a good faith error that resulted in no or minimal negative impact on the subscribers within the service area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the City and/or subscribers.

113.20 ACTIONS OF PARTIES. In any action by the City or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

113.21 ENTIRE AGREEMENT. This chapter constitutes the entire agreement between the Grantee and the City and supersedes all other prior understandings and agreements oral or written. Any amendments to this chapter shall be mutually agreed to in writing by the parties.

113.22 RESERVATION OF RIGHTS. Acceptance of the terms and conditions of the franchise will not constitute, or be deemed to constitute, a waiver, either express or implied, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The City acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitutions and laws.

113.23 NOTICE. Unless expressly otherwise agreed between the parties, every notice or response required by this chapter to be served upon the City or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: (i) upon receipt when hand delivered with receipt/acknowledgment; (ii) upon receipt when sent certified, registered mail; (iii) within five business days after having been posted in the regular mail; or (iv) on the next business day if sent by express mail or overnight air courier.

EDITOR'S NOTE

Ordinance No. 845 adopting a cable television franchise for the City was passed and adopted on September 21, 2004. The franchise shall expire on February 21, 2020, unless extended by the mutual agreement of the parties.

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CHAPTER 114

BROADBAND TELECOMMUNICATIONS

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114.01 PURPOSE AND SCOPE. The purpose of this chapter is to regulate broadband telecommunications networks in the City, which operate pursuant to City franchise for the provision of cable television and other services and to ensure that such networks use of the public rights-of-way does not interfere with the public health, safety and welfare and to benefit the citizens of the City through the use of broadband telecommunications networks and technology.

114.02 DEFINITIONS. For use in this chapter, the following terms are defined:

1. "Basic cable rates" means the monthly charges for a subscription to the basic service tier and the associated equipment.
2. "Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.
3. "Basic service tier" means a separately available service tier to which subscription is required for access to any other tier of service, including, as a minimum, but not limited to, all must-carry signals, all PEG channels and all domestic television signals other than superstations.
4. "Benchmark" means a per-channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.
5. "Broadband telecommunications network (BTN)" means all of the component, physical, operational and programming elements of any network of cables, optical, electrical or electronic equipment, including cable television, used for

the purpose of transmission of electrical impulses of television, radio or data and other intelligence, either analog or digital, for sale or use by the inhabitants of the City.

6. “Cable Act” means, collectively, the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, as amended.

7. “Cable operator” means any person:

A. Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such a cable system; or

B. Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

8. “Cable service” means: (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection of such video programming or any other programming service.

9. “Cable system” means a private facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community; however, such term does not include: (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system other than for purposes of Section 621(c) of the Cable Act to the extent such facility is used in the transmission of video programming directly to subscribers; or (iv) any facilities of any electric utility used solely for operating its electric utility systems.

10. “Channel” means a portion of the electromagnetic frequency spectrum which is used in a cable service and which is capable of delivering a television signal.

11. “Cost of service showing” means a filing in which the cable operator attempts to show that the benchmark rate or the price cap is not sufficient to allow the cable operator to fully recover the costs of providing the basic service tier and to continue to attract capital.

12. “FCC” means the Federal Communications Commission and any legally appointed or elected successor.

13. “Franchise” or “franchise agreement” means the initial authorization or renewal thereof issued by the City, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes construction and operation of the cable system.

14. “Franchisee” means any person receiving a franchise pursuant to this chapter and under the granting franchise ordinance and such person’s lawful successor, transferee or assignee.

15. “Franchise fee” means any tax, fee or assessment of any kind imposed by the City on a cable operator or cable subscriber, or both, solely because of their status as

such. The term “franchise fee” does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers); (ii) in the case of any franchise in effect on the date of the enactment of this chapter, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of PEG access facilities; (iii) in the case of any franchise granted after such date of enactment, capital costs which are required by the franchise to be incurred by the cable operator for PEG access facilities; (iv) requirements or charges incidental to the awarding or enforcing the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (v) any fee imposed under Title XVII, United States Code.

16. “Grantee” means Cablevision VI, Inc., or the lawful successor, transferee or assignee thereof.

17. “Gross revenues” means any revenue received by the franchisee from the operation of the cable system in the service area.

18. “Initial basic cable rates” means the rates that the cable operator is charging for the basic service tier, including charges for associated equipment, at the time the City notifies the cable operator of the City’s qualification and intent to regulate basic cable rates.

19. “Le Mars Broadband Telecommunications Commission (LBTC)” means the duly authorized and acting commission appointment by the Council pursuant to ordinance established for the purpose of administering regulations pertaining to the existence and operation of broadband telecommunications networks within the City.

20. “Must-carry signal” means the signal of any local broadcast station (except superstations) which is required to be carried on the basic service tier.

21. “New programming” means programming not previously transmitted over the PEG access channel, including live or reproduced programs.

22. “Other programming service” means information that a cable operator makes available to all subscribers generally.

23. “Person” means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

24. “Price cap” means the ceiling set by the FCC on future increases in basic cable rates regulated by the City, based on a formula using the GNP fixed weight price index, reflecting general increases in the cost of doing business and changes in overall inflation.

25. “Public, educational or governmental access channel (PEG)” means (i) channel capacity designated for public, educational or governmental use; and (ii) facilities and equipment for the use of such channel capacity.

26. “Public school” means any school or any education level operated within the City by any public, private or parochial school system, but limited to elementary, junior high school and high school.

27. “Public way” means the surface of, and the space above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway,

way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the service area which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. "Public way" also means any easement now or hereafter held by the City within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and includes other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purpose of installing or transmitting Grantee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the cable system.

28. "Reasonable notice" means written notice addressed to the franchisee at its principal office in the City or such other office as the franchisee has designated to the City as the address to which notice should be transmitted to it, which notice shall be certified and postmarked not less than four (4) days prior to that day on which the party giving such notice shall commence any action which requires the giving of notice. In computing said four (4) days, Saturday, Sunday and holidays recognized by the City are excluded.

29. "Reasonable order" means written orders not excessive or extreme as to costs or time to comply, governed by sound thinking.

30. "Reasonable rate standard" means a per-channel rate that is at, or below, the benchmark or price cap level.

31. "Service area" means the present municipal boundaries of the City and includes any additions thereto by annexation or other legal means.

32. "Service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.

33. "Subscriber" means any person or user of the cable system who lawfully receives communications and other services therefrom with the franchisee's express permission.

34. "Superstation" means any non-local broadcast signal secondarily transmitted by satellite.

35. "Video programming" means programming provided by or generally considered comparable to programming provided by a television broadcast station.

114.03 COMPLIANCE WITH FCC RULES AND REGULATIONS. This chapter shall be amended where necessary to conform to all amendments to Part 76 of the Rules and Regulations of the Federal Communications Commission within twelve (12) months of the order of such amendments.

114.04 VIOLATIONS AGAINST FRANCHISE.

1. It is unlawful for any person without the expressed consent of the franchisee to make any connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise with or any segment of a franchise Broadband

Telecommunications Network for any purpose whatsoever, except as provided for herein.

2. It is unlawful for any person to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of a franchise BTN for any purpose whatsoever.

114.05 FRANCHISE REQUIRED. No person shall construct, install, maintain or operate on or within any street, any equipment or facilities for the distribution of television signals or radio signals or data, either analog or digital over a BTN to any subscriber unless a franchise authorizing the use of the streets has first been obtained pursuant to the provisions of this chapter and thereafter only while said person is legally operating under the terms and provisions of said franchise.

114.06 ELECTION AND COSTS. In order for a nonexclusive franchise to be granted pursuant to this chapter, election must be held and a majority of those voting must vote in favor of the granting of such franchise. The entire cost of the election, together with all printing and publishing costs relating thereto, shall be prepaid by the applicant selected by the Council to be franchisee, regardless of whether or not the applicant is granted a franchise by said election. When the actual costs of the election are known, the final payment may be adjusted accordingly. This section shall only apply when an election is otherwise required to be held by State and/or Federal law.

114.07 RENEWAL. The City shall have no obligation to renew any franchise granted hereunder except as may be required by Federal or State law. The failure to reissue such a franchise, however, shall not prohibit the franchisee from applying for a new franchise in competition with other applicants for a franchise in the event the City decides to consider proposals from new applicants for the franchise.

114.08 FRANCHISE FEE PAYMENT.

1. A franchisee shall pay to the City a franchise fee equal to five percent (5%) of the gross revenues (as both are defined in this chapter) received by the franchisee from the operation of the cable system on a semiannual basis. Such payment shall be in addition to any other payment, charges or fees owed to the City by the franchisee and shall not be construed as payment in lieu of personal or real property taxes levied by State, County or local authorities. For the purpose of this section, the 12-month period applicable fee shall be a calendar year, unless otherwise agreed to in writing by the City and the franchisee. The franchise fee payment shall be due and payable sixty (60) days after the close of the preceding semiannual period. Each payment shall be accompanied by a detailed report from a representative of the franchisee itemizing the basis for the computation.

2. The annual franchise fee payment percentage designated in this section may be amended no more than once every calendar year by the City. Any such amendment shall be consistent with the applicable rules of the FCC and other regulatory agencies. No amendment of the franchise fee payment percentage shall be effective sooner than six (6) months from the date of notice to the franchisee of the amended percentage amount.

3. In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, the franchisee shall pay as additional consideration:

- A. An interest charge computed from such due date, at the annual rate of nine percent (9%); and
 - B. A sum of money equal to two percent (2%) of the amount due in order to defray those additional expenses and costs incurred by the City by reason of the delinquent payment.
4. The period of limitation for recovery of any franchise fee payable hereunder shall be ten (10) years from the date on which payment by the franchisee is due. Unless within ten (10) years from and after such payment due date the City initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred and the City shall be estopped from asserting any claims whatsoever against the franchisee relating to any such alleged deficiencies.
5. No acceptance of any payment by the City shall be construed as a release or an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of the franchisee. In the event of a dispute, the City, if it so requests, shall be furnished a statement of said payment, by a certified public accountant, reflecting the total amounts of annual gross revenues for the period covered by the payment.

114.09 NATURE OF NONEXCLUSIVE FRANCHISE. Any franchise granted hereunder shall not be exclusive and the City reserves the right to grant a similar franchise to any other person at any time.

114.10 FRANCHISE ORDINANCE. In addition to those matters required to be included by virtue of this chapter, the franchise ordinance shall contain such further conditions or provisions as may be included in the franchisee's proposal negotiated between the City and the franchisee.

114.11 ACCEPTANCE AND EFFECTIVE DATE.

1. No franchise agreement or renewal passed by the Council and, when required by law, approved by a vote of the qualified electors, shall become effective for any purpose unless and until written acceptance thereof shall have been filed with the Clerk, duly executed by the proper officers of the franchisee.
2. The written acceptance shall be filed by the franchisee not later than 12:01 p.m. of the 60th day following passage by the Council or, when required by law, the franchise election granting such franchise, whichever is later. In default of the filing of such written acceptance as herein required, the franchisee shall be deemed to have rejected and repudiated the franchise. Thereafter, the acceptance of the franchisee shall not be received by the Clerk. The franchisee shall have no rights, remedies, or redress unless and until the Council, by resolution, shall determine that such acceptance be received and then upon such terms and conditions as the Council may impose.
3. In addition to the written acceptance and within the same sixty-day period, the franchisee shall:
 - A. File a certificate of insurance as provided herein; and
 - B. File a performance bond as provided herein unless such bond requirement has been waived by the Council; and

- C. Advise the City in writing of the franchisee's address for mail and official notifications from the City; and
- D. Provide information necessary to establish that the franchise election and adjusted costs have been paid, when required; and
- E. Reimburse the City for its franchising expense in an amount as determined by the City. Said amount, however, shall be reasonable and based on direct costs incurred by the City.

114.12 FRANCHISE REVIEWS. On or about the third and sixth anniversaries of the effective date of the franchise grant or renewal, the City may schedule and hold a public meeting or meetings with the franchisee to review the performance by the franchisee under the franchise including future plans of operation and performance. In particular, the City may inquire whether the franchisee is supplying a level and variety of services equivalent to those being generally offered at that time in the industry to comparable market situations. The franchisee shall make available to the City, if requested by the City, such records, documents and information which are relevant to such meeting and inquiry. Any changes in this chapter or the franchise ordinance necessitated by modification to the FCC regulations shall be incorporated into the franchise ordinance or this chapter within the time limit provided for in the rules and regulations of the FCC then in force and effect.

114.13 TRANSFER OF FRANCHISE. The franchisee's right, title or interest in the franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with the franchisee as of the effective date of the agreement, without the prior consent of the City, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the franchisee in the franchise or cable system in order to secure indebtedness.

114.14 CONDITIONS OF SALE. Except to the extent expressly required by Federal or State law, if a renewal or extension of Grantee's franchise is denied or the franchise is lawfully terminated, and the City either lawfully acquires ownership of the cable system or by its actions lawfully effects a transfer of ownership of the cable system to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act. The Grantee and the City agree that in the case of a final determination of a lawful revocation of the franchise, at Grantee's request, which shall be made in its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its cable system to a qualified third party. The City further agrees that during such a period of time it shall authorize the Grantee to continue to operate pursuant to the terms of its prior franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its cable system which is reasonably acceptable to the City, the Grantee and City may avail themselves of any rights they may have pursuant to Federal or State law, it being further agreed that the Grantee's continued operation of its cable system during the six-month period shall not be deemed to be a waiver or an extinguishment of any rights of either the City or the Grantee.

114.15 CONSTRUCTION STANDARDS.

1. Compliance with Safety Codes. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of

1970 and any amendments thereto as well as all State and local codes where applicable.

2. Compliance with Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the City Electrical Code and applicable industry standards.

3. Antennas and Towers. Antenna supporting structures (towers) shall be designed for the proper loading zone.

4. Compliance with Aviation Requirements. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable State or local codes and regulations.

5. Construction Standards and Requirements. All of franchisee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with the safety of any persons or property, or to interfere with improvements the City may deem proper to make, or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on municipal properties.

6. Safety, Nuisance Requirements. The franchisee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

114.16 OPERATIONAL STANDARDS. Every BTN operating within the City shall comply, at all times, with the technical and operational standards set forth by the FCC governing the operations of such systems.

114.17 CUSTOMER SERVICE STANDARDS.

1. Federal Standards. The Grantee will adhere to the customer service obligations as set forth in Title 47, CFR, Part 76, Subpart H, §76.309. Nothing herein shall preclude the City from adopting an ordinance further relating to the enforcement of such customer service obligations.

2. Office and Phone for Service. The franchisee shall maintain an office in the City which shall be open during all usual business hours, have a locally listed telephone and be so operated that complaints and requests for repairs or adjustments may be received at any time. In addition, the franchisee shall maintain a convenient office in the City open during normal business hours, for the receipt of sums due by its subscribers and shall provide for regular billing of accounts.

3. Notification of Service Procedures. The franchisee shall furnish each subscriber at the time service is installed written instructions that clearly set forth procedures for placing a service call, or requesting an adjustment. Said instructions shall also include the name, address and telephone number of the City Administrator or other designated employee and a reminder that the subscriber can call or write the

City Administrator or other designated employee for information regarding terms and conditions of the franchisee's franchise if the franchisee fails to respond to the subscriber's request for installation, service or adjustment within a reasonable period of time.

114.18 TESTING FOR COMPLIANCE. The City may perform technical tests of the cable system during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the franchisee or the cable system in order to determine whether or not the franchisee is in compliance with the terms hereof and applicable State or Federal laws. Except in emergency circumstances, such tests may be undertaken only after giving the franchisee reasonable notice thereof, not to be less than fourteen (14) business days, and providing a representative of the franchisee an opportunity to be present during such tests. In the event that such testing demonstrates that the franchisee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the franchisee. In the event that such testing demonstrates that franchisee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the City. Except in emergency circumstances, the City agrees that such testing shall be undertaken no more than once a year, and that the results thereof shall be made available to the franchisee. Upon reasonable request by the City, the franchisee shall make available copies of any and all technical tests data required to be filed with the FCC by the franchisee.

114.19 RECORDS, REPORTS AND MAPS.

1. Upon reasonable request by the City, the franchisee shall provide:
 - A. A "strand map" setting forth the physical miles of plant constructed, rebuilt or in operation during the fiscal year.
 - B. The franchisee's schedule of charges, number of subscribers, contract or application forms for regular subscriber service, policy regarding the processing of subscriber complaints, relinquishment subscriber disconnect and reconnect procedures and any other times and conditions adopted as the franchisee's policy in connection with its subscribers.
 - C. All policies of insurance or certified copies thereof and a certificates of insurance for all coverage required hereunder.
 - D. The performance bond or certified copy thereof and written evidence of payment of required premium.
2. Upon reasonable request by the City, the franchisee shall file with the City:
 - A. All petitions, applications and communications of all types submitted by franchisee to the FCC, or any other Federal or State regulatory commission or agency having jurisdiction over any matter affecting operation of franchisee's network shall be submitted to the City by delivery to the Clerk who shall advise interested City departments of such filing.
 - B. A summary list of all complaints and network "down time" received or experienced during the year.
 - C. One (1) copy of a report on the network's technical measurements as set forth herein. For any cable system, the FCC CLI report will satisfy this requirement.
3. The franchisee shall, at all times, maintain:

- A. A record of all complaints received and interruptions or degradation of service experienced for the preceding two (2) years.
- B. A full and complete set of plans, records and “as built” maps showing the exact location of all BTN equipment installed or in use in the City, exclusive of subscriber service drops.

114.20 INSPECTION OF PROPERTY AND RECORDS. At all reasonable times, franchisee shall permit examination by a duly authorized representative of the City Administrator or City Engineer of all franchise property, together with any appurtenant property of franchisee situated within or without the City. Franchisee shall also permit any duly authorized representative of the City to examine and transcribe any strand maps and other records kept or maintained by franchisee reasonably related to the City’s enforcement of the franchise.

114.21 RESOLVING DISPUTES. The Council may do all things which are necessary and proper in the exercise of its jurisdiction under this chapter and may make a determination concerning any question of fact which may arise during the existence of any franchise granted hereunder. The LBTC is hereby authorized and empowered to adjust, settle or compromise any controversy or charge arising from the operations of any franchisee either on behalf of the City, the franchisee or any subscriber, in the best interest of the public. Either the franchisee or any member of the public who may be dissatisfied with the decision of the LBTC may appeal the matter to the Council for hearing and determination. The Council may accept, reject or modify the decision of the LBTC, and the Council may adjust, settle or compromise any controversy or cancel any charge arising from the operations of the franchisee or from any provision of this chapter. Any decision adverse to the Grantee’s interest hereunder may be appealed to an appropriate court of competent jurisdiction.

114.22 EMERGENCY ALERT OVERRIDE. The franchisee shall incorporate into its facilities the capability for an emergency override audio alert whereby a designee of the City, in times of emergency, may introduce an audio message on all broadband telecommunications network channels simultaneously. The City shall hold the franchisee, its agents, employees, officers and assigns hereunder harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorney’s fees and costs.

114.23 INTERCONNECTION. Upon reasonable request by the City, the franchisee shall so construct, operate and modify the network as to have the capability to interconnect the same into all BTNs adjacent to or entering the City, provided it is financially and technically feasible to do so. The City shall hold the franchisee harmless from any cost or liability of said interconnection in the event the franchisee is unable to charge subscribers reasonable rates to receive service provided from the interconnected network.

114.24 REQUIRED EXTENSIONS OF SERVICE.

1. Franchisee shall extend the cable system and cable service, as defined herein, to all parts of the City which have been platted and laid out into blocks divided by streets. In the instance of newly platted subdivisions and newly annexed additions to the corporate boundaries of the City, after the effective date of any franchise agreement, franchisee shall extend its cable system and provide service to such new subdivisions whenever franchisee shall receive a request for service from at least five (5) subscribers within 1,320 cable-bearing strand feet (1/4 cable mile) of its trunk or

distribution cable. The franchisee shall make reasonable efforts to coordinate the extension of its facilities with the installation of public utilities and services in such new subdivisions and annexed areas in the same manner and at the same times as required with respect to other public utilities and services as provided by Chapter 165 (Subdivision Regulations) and elsewhere in this Code of Ordinances

2. The franchisee may extend cable service to subscribers where density is less than as set forth in subsection 1; however, the franchisee shall not require a capital contribution greater than the actual cost plus labor of the franchisee in extending said service. The franchisee may require that payment of such a capital contribution be paid in advance.

114.25 BROADBAND TELECOMMUNICATIONS COMMISSION.

1. Establishment. There is hereby created and established a permanent Commission as an administrative agency of the City a six-member Commission to be entitled "Le Mars Broadband Telecommunications Commission (LBTC)."

2. Powers and Duties. The powers and duties of the LBTC shall be as follows:

A. To create and maintain an appropriate source of information and expertise regarding broadband telecommunications technologies, services, regulations and policy.

B. To monitor the activities of all broadband telecommunications service providers operating within the City or providing service to any point within the City.

C. To serve as the initial source of enforcement of all City codes, rules or regulations affecting the operation of BTNs or services within the community.

D. To annually report to the Council regarding the state of BTNs and services within the City and to generally advise the Council of developments within the field of broadband telecommunications which may be of importance to the citizens of the City and to make such recommendations as the Commission feels are in order.

E. To promote education and awareness within the City among its citizens as to the uses and services available through local BTNs including, but not limited to, matters relating to consumer protection, customer service and access to such networks by citizens and public or private institutions.

F. To receive and respond to citizen input and assist in the resolution of complaints between local BTNs or BTN service providers and their local customers.

G. To carry out a thorough triennial review of any private BTN operating within the City under a cable television franchise to determine whether the operator of the BTN is in compliance with all terms and conditions of the franchise and the degree to which the operator's performance is deemed to be satisfactory by the public. Such review should also include recommendations to the Council and to any such operator setting forth proposed action the LBTC finds will promote utility and use of broadband telecommunications technologies and services within the community.

- H. To develop and promulgate such rules for the implementation and enforcement of the provisions of the sections in this Code of Ordinances pertaining to customer service obligations as, from time to time, the Commission shall deem necessary or useful, but only to the extent that such rules do not exceed the scope of the provisions of such sections and are not in conflict with any other provision of this Code of Ordinances.
- I. Implement and carry out such rate regulation as is permitted by law and as directed by the Council.
- J. To administer and facilitate the development of PEG access facilities and programming within the City.
- K. To take such further action as the LBTC believes is appropriate in administering and fulfilling its duties as set forth herein.
3. Method of Appointment. The members of the LBTC shall be appointed by the Council upon recommendation of the Mayor in accordance with such other general procedure for appointments to administrative agencies as may have been established by ordinance of the City.
4. Composition of Commission and Qualifications of Members.
- A. The Commission shall consist of five (5) voting members plus at least one ex officio member who shall be a current member of the Council. The five voting members of the Commission shall be any adult citizen of the City who does not hold an elected municipal office.
- B. The term of appointment of the five voting members of the Commission shall be five years, beginning on the first of the year in which the appointment is made. In order for the terms to be staggered the first members of the Commission shall, by the drawing of lots, obtain terms of office of 1, 2, 3, 4 or 5 years. The ex officio member of the Commission shall serve at the pleasure of the Council and for such term as the Council shall determine. If a position becomes vacant before expiration of the term of office, the Mayor shall recommend for appointment a person to serve the balance of the unexpired term in accordance with established procedures. No person shall be appointed to serve more than two consecutive full terms. Any member may be removed from the Commission by a two-thirds majority vote of the Council without cause and at any time.
5. Compensation of Members; Meetings and Procedures.
- A. All members shall serve without compensation except that reasonable actual expenses incurred by members in the performance of their duties may be reimbursed in accordance with the procedures established by the LBTC, the Council or this Code of Ordinances.
- B. The LBTC shall meet at such times and in such places as the members deem appropriate provided that at least one meeting is held during each calendar quarter of the year. Minutes of all such meetings shall be recorded and permanently retained. A quorum of three (3) voting members shall be required for members to conduct their business. All such meetings and proceedings of the Commission shall conform with this Code of Ordinances and the *Code of Iowa* with respect to notice to the public, publication of

agendas and access to meetings. The Business Manager and the Chairperson of the LBTC shall jointly determine the regular time and place of each quarterly meeting.

6. Budget and Funding. Each year the LBTC shall prepare and deliver a budget request to the Council setting forth the Commission's requested budget to finance LBTC activities during the next budget year. Said budget shall not exceed forty percent (40%) of the anticipated revenues to be received from the franchisee(s) in payment of franchise fees to the City.

114.26 NEW DEVELOPMENTS. The Council and franchisee may mutually agree to amend this chapter whenever necessary to enable the franchisee to take advantage of any developments in the field of transmission of communications signals which will afford it an opportunity to serve its customers more effectively, efficiently or economically; provided, however, this section shall not be construed to require the City and the franchisee to make any such amendment.

114.27 EMPLOYMENT PRACTICES. In carrying out the construction, maintenance and operation of the BTN, the franchisee shall not discriminate against any employee or applicant for employment because of race, creed, age, color, sex, national origin or handicap. The franchisee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, sex, age, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The franchisee shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The franchisee shall, in all solicitations of advertisement for employees placed by or on behalf of the franchisee, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, national origin, age or handicap. The franchisee shall incorporate the foregoing requirements in all of its contracts for work relative to construction, maintenance and operation of the BTN, other than contracts for standard commercial supplies or raw materials, and shall require all of its contractors for such work to incorporate such requirements in all subcontracts for such work.

114.28 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED. The franchisee shall not, as to rates, charges, service, rules, regulations or in any other respect make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage based upon, but not limited to, that person's race, creed, color, sex or national origin. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscription to the network or other legitimate uses thereof; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classifications shall be entitled. The entire network of the franchisee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies or other entities having a legitimate use for the network; and no one shall be arbitrarily excluded from its use; allocation of use of said facilities shall be made according to the rules or decisions of the franchisee and any regulatory agencies affecting the same.

114.29 COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

Franchisee, at its expense, shall comply with all State and Federal laws, orders and regulations and the lawful exercise of any municipal police powers.

114.30 LIABILITY AND INDEMNIFICATION. Franchisee shall indemnify and hold harmless the City, its officers, boards, commissions, agents and employees against and from all claims, demands, causes of actions, actions, suits, proceedings, damages (including not limited to damages to City property and damages arising out of copyright infringements, and damages arising out of any failure by franchisee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by franchisee's BTN), costs or liability (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, arising out of franchisee's construction, operation and maintenance of the cable system, including but not limited to damages for injury or death or damage to persons or property. Provided, the franchisee shall not be liable for any such damages, fees or expenses where any lawsuit is based on the actions or omissions of the City but not on any act or omission by the franchisee.

114.31 INSURANCE. The franchisee shall maintain and pay all premiums, etc. for a general comprehensive liability insurance policy naming as additional insured the City, its officers, boards, commissions, agents and employees, in a company licensed to do business in Iowa with a Best rating of A- or above, protecting the City and all persons against liability for loss or damage for personal injury, death or property damage, occasioned by the operations of the franchisee under any franchise granted hereunder in the amount of:

1. \$500,000.00 for bodily injury or death to any one person, within the limit, however, of \$1,000,000.00 for bodily injury or death resulting from any one accident.
2. \$250,000.00 for property damage resulting from any one accident.
3. Worker's compensation insurance in such coverage as may be required by the worker's compensation insurance and safety laws of the State and amendments thereto.

The insurance policies referred to in this section shall contain an endorsement stating that the policies are extended to cover the liability assumed by the franchisee under the terms of this chapter and shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled or the amount of coverage thereof reduced until thirty (30) days after receipt by the City by registered mail of written notice of such intent to cancel or reduce the coverage."

114.32 PERFORMANCE BOND. The franchisee shall maintain throughout the period of network construction, a faithful performance bond in favor of the City, with a surety approved by the City in the penal sum total of one hundred thousand dollars (\$100,000.00) conditioned upon the faithful performance by the franchisee of its obligations under this chapter and the franchise. When the network construction is substantially completed as defined herein, the penal sum total of the performance bond shall be reduced to twenty-five thousand dollars (\$25,000.00) through the remainder of the term of the franchise, or any renewal or extension thereof and upon the further condition that in the event the franchisee shall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the franchisee, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond. The City, at its sole discretion, may at any

time subsequent to completion of construction, waive the requirement of the franchisee to maintain said bond. The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled or the intention not to renew be stated until thirty (30) days after receipt by the City by registered mail a written notice of such intent to cancel or not to renew."

114.33 RECEIVERSHIP AND FORECLOSURE. Any franchise granted hereunder shall, in the case of foreclosure or receivership and at the option of the Council or its designee, cease and terminate within one hundred twenty (120) days unless:

1. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the franchise; and
2. Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the Court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise herein granted.

In the case of a foreclosure or other judicial sale of the plant, property and equipment of the franchisee, or any part hereof, including or excluding the franchise, the Council or its designee may serve notice of termination upon the franchisee and the successful bidder at such sale, in which event the franchise and all rights and privileges of the franchise hereunder shall cease and terminate thirty (30) days after service of such notice unless the Council shall have approved the transfer of the franchise, as and in the manner of this chapter provided, and the successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of the franchise and this chapter.

114.34 PERMITS AND AUTHORIZATIONS. The franchisee shall diligently apply for all necessary permits and authorizations required in the conduct of its business and shall diligently pursue the acquisition thereof, including necessary pole attachment agreements, and necessary authorizations from the Federal Aviation Agency to construct such receiving antenna towers as may be required, and any necessary authorizations or waivers from the FCC. The franchisee shall not apply for any waivers, exceptions, or declaratory rulings from the FCC or any other Federal or State regulatory agency without reasonable notification to the City Administrator or such officer's designee.

114.35 TRANSACTION AFFECTING OWNERSHIP OR CONTROL. Express approval of the Council shall be required where ownership or control of or interest in the franchise is acquired by a person or group of persons acting in concert, none of whom already own the right of control, as "control" is defined by Federal statute or FCC regulation. In the absence of such definition, "control" shall be deemed to mean fifty percent (50%) of the right of control or interest in the franchise.

114.36 RIGHTS RESERVED TO THE CITY.

1. Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the franchisee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the

rights or privileges granted and nothing herein contained shall be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the City's right of eminent domain.

2. There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any law, and the franchisee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the City, passed pursuant to the legitimate exercise of its police power.

3. Neither the granting of any franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

4. If the FCC or any other Federal or State body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of any franchise granted under this chapter, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the City the jurisdiction of the City shall cease and no longer exist.

5. Subject to Federal law, at the expiration of the term for which a franchise is granted or upon the termination and cancellation as provided therein, the City reserves the right to require the franchisee to remove at its own expense any and all portions of the BTN from the public ways within the City.

6. Nothing herein shall be deemed or construed to be intended to expand or enlarge the scope of authority of the City to exercise its governmental rights and powers.

114.37 GROUNDS FOR REVOCATION. The City reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this chapter and the franchise ordinance:

1. If the franchisee should default in the performance of any of its material obligations under this chapter or under the franchise ordinance or under such documents, contracts and other terms and provisions entered into by and between the City and the franchisee.

2. If the franchisee should fail to provide or maintain in full force and effect the liability and indemnification coverages or the performance bond as required herein.

3. If any court of competent jurisdiction, the FCC or any State regulatory body by rules, decision or other action determines that any material provision of the franchise documents, including this chapter, is invalid or unenforceable prior to the commencement of construction of the network by the franchisee.

4. If the franchisee should frequently violate any orders or rulings of any regulatory body substantially relating to the operation of the BTN in the service area having jurisdiction over the franchisee relative to such franchise.

5. If the franchisee fails to receive necessary FCC certification.

114.38 PROCEDURE PRIOR TO REVOCATION.

1. The City may make written demand that the franchisee do or comply with any term or condition under this chapter or the franchise ordinance. If the failure, refusal or neglect of the franchisee continues for a period of thirty (30) days following such

written demand, the City shall cause to be served upon such franchisee, at least ten (10) days prior to the date of such Council meeting, a written notice of such officer's intent to request such termination, and the time and place of the meeting, notice of which shall be published by the Clerk at least ten (10) days before such meeting in a newspaper of general circulation in the City.

2. The Council shall consider the request of BTC and shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the franchisee was with just cause.

3. If such failure, refusal or neglect by the franchisee was with just cause, the Council shall direct the franchisee to comply within such time and manner and upon such terms and conditions as are reasonable.

4. If the Council determines such failure, refusal or neglect by the franchisee was without just cause, then the Council may, by resolution, declare that the franchise of such franchisee shall be terminated and bond forfeited unless there is compliance by the franchisee within such period as the Council may fix.

5. The franchisee may appeal any decision by the Council hereunder, to a court of competent jurisdiction.

114.39 RESTORATION OF PROPERTY. In removing its plant, structures and equipment, the franchisee shall refill, at its own expense, any excavation that has been made by it and shall leave all public ways and places in as good condition as that prevailing prior to the franchisee's removal of its equipment and appliances without affecting the electrical or telephone cable wires or attachments. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. The liability indemnity and insurance as provided herein and the performance bond provided herein shall continue in full force and effect during the period of removal and until full compliance by the franchisee with the terms and conditions of this section. In the event of a failure by the franchisee to complete any work required by this section or any other section of this chapter, or any other work required by City law or ordinance within the time as established and to the satisfaction of the City, the City may cause such work to be done and the franchisee shall reimburse the City and costs thereof within thirty (30) days after receipt of an itemized list of such costs or the City may recover such costs through the performance bond provided by the franchisee. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

114.40 EXTENDED OPERATION. Upon either the expiration or revocation of a franchise, the City may require the franchisee to continue to operate the network for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. The franchisee shall, as trustee for its successor in interest, continue to operate the BTN under the terms and conditions of this chapter and of the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. During such interim period, the franchisee shall not sell any of the system assets or make any physical, material, administrative or operational changes that would tend to (i) degrade the quality of service to the subscribers, (ii) decrease income, or (iii) materially increase expenses, without the express permission, in writing of the City or its assignee. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

114.41 LESSER SANCTIONS. Nothing shall prohibit the City in enforcing its rules and regulations to impose lesser sanctions or censures for violations of provisions of this chapter or the franchise ordinance rather than revocation.

114.42 LIQUIDATED DAMAGES. By acceptance of the franchise, franchisee agrees that failure to comply with the provisions therein and this chapter will result in damage to the City, and that it will be impracticable to determine the actual amount of such damage; and franchisee therefore agrees that, in addition to any other damages suffered by the City, franchisee will pay to the City the following liquidated damages:

1. For failure to timely file required plans or information, per day — \$25.00.
2. For failure to comply with reasonable orders of the City, per day — \$25.00.
3. For willful or negligent failure to complete construction or commence operations in accordance with this chapter, per day — \$25.00.
4. For willful or negligent failure to provide service in substantial compliance with the provisions of this chapter, not to exceed \$100.00 per day as determined by the City.
5. In the event franchisee disagrees with the imposition by the City of any of the above listed liquidated damages, such damages will continue to accrue but will not be required to be paid until franchisee has received reasonable notice and an opportunity to be heard before the Council and the Council has determined that payment of such damages is appropriate.
6. The franchisee may appeal any adverse decision of the Council hereunder to a court of competent jurisdiction.

114.43 CITY'S RIGHTS NOT AFFECTED BY TERMINATION. The termination and forfeiture of any franchise shall in no way affect any of the rights of the City under the franchise or any provision of law.

114.44 FURTHER AGREEMENT AND WAIVER. The franchisee shall not be excused from complying with any of the terms and conditions of this chapter or the franchise by any failure of the City, upon any one or more occasions, to insist upon the franchisee's performance or to seek franchisee's compliance with any one or more of such terms and conditions.

114.45 TIME IS OF THE ESSENCE. Whenever this chapter or the franchise sets forth any time for any act to be performed by or on behalf of the franchisee, such time shall be deemed of the essence and the franchisee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the City to invoke the remedies available under the terms and conditions of this chapter and the franchise.

114.46 IMPOSSIBILITY OF PERFORMANCE. The franchisee shall not be held in default or noncompliance with the provisions of the franchise, or suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

114.47 ACTIONS OF PARTIES. In any action by the City or the franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious

and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

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CHAPTER 116

CEMETERIES

116.01 Purpose	116.07 Perpetual Care
116.02 Control By Council	116.08 Cemetery Lots without Perpetual Care
116.03 Enforcement	116.09 Annual Care
116.04 Trespassing and Damaging Improvements	116.10 Improvements; Maintenance
116.05 Records	116.11 Restrictions on Activities of Visitors
116.06 Sale of Interment Rights	116.12 Rules and Regulations

116.01 PURPOSE. The purpose of this chapter is to provide rules and regulations for the care and management of the cemetery grounds owned or operated by the City. As used herein, the term “cemetery” refers to Resthaven Memory Gardens and Memorial Cemetery.

116.02 CONTROL BY COUNCIL. The Cemetery grounds owned or operated by the City are under the control of the Council, and the Council shall have the power to make additional rules and regulations for the cemetery by resolution as it may deem requisite and proper. Pursuant to Section 523I.502 of the *Code of Iowa*, the Council hereby states its willingness and intention to act as the trustee for the perpetual maintenance of the cemetery property.
(*Code of Iowa, Sec. 523I.502*)

116.03 ENFORCEMENT. It is the duty of the City Administrator to enforce the rules and regulations for City cemeteries herein and as otherwise provided by resolution of the Council. Such officer shall have police power to arrest anyone willfully violating any of such rules and regulations or creating any disturbance or breach of the peace.

116.04 TRESPASSING AND DAMAGING IMPROVEMENTS. It is unlawful for any person to deface or injure any grave, vault, tombstone or monument or any building, fence, tree, shrub, flower or other thing belonging to a cemetery, or to dig any grave therein, or interfere with any grave, lot, street or alley therein, without the permission of the Mayor or City Administrator.

116.05 RECORDS. It is the duty of the Clerk to make and keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:
(*Code of Iowa, Sec. 523I.311*)

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

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

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

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

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

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

116.08 CEMETERY LOTS WITHOUT PERPETUAL CARE. Owners of lots or other interested persons may secure perpetual care on lots or parts of lots in the older portions of the cemetery not having perpetual care by the payment to the City of the perpetual care charges at the rates specified in the rules and regulations.

116.09 ANNUAL CARE. An annual care charge as specified in the rules and regulations shall be made by the City on those lots in the older portions of the cemetery which are not at present under perpetual or endowed care. The City reserves the right to refuse to furnish maintenance service, or to permit the erection of any monumental work on those lots not under perpetual or endowed care or when the annual care on such lot has not been paid in advance.

116.10 IMPROVEMENTS; MAINTENANCE.

1. Lot Corners To Be Marked. All lots shall bear one iron corner mark, with the number of such lot marked thereon.
2. Grade. The grade of cemetery lots and other cemetery grounds, roads and walkways shall be established by the Council, and no lot shall be filled above the established grade.
3. Control of Work. All persons employed in the construction of vaults or tombs, erection of monuments, etc., shall be subject to the control and direction of the City Administrator. All materials brought into the cemetery to be used in improving lots shall be transported and deposited within the cemetery in such manner as the City Administrator may direct, and all earthwork and rubbish accumulated in improving such lots shall be removed under the City Administrator's direction, at the expense of

the proprietor of such lot. Any person failing to conform to this regulation will not be permitted afterwards to work in the cemetery.

4. Control of Maintenance. All work in the care of lots shall be done under the supervision of the City Administrator. The roads and walkways will be kept in good condition and the lots kept clean by the City, but any extra care or work such as planting trees, cultivating flowers or other extraordinary work on lots will only be done at the owner's expense and under the direction of the City Administrator.

5. Rights of Owners.

A. Monuments; Plants. The owner of each lot shall have the right, subject to the approval of the City Administrator, and the ordinances, rules and regulations of the Council, to erect any proper headstone, monument or memorial thereon, except in Block 18, 23 and all of Resthaven Memory Gardens, which has been established as a memorial section, where only markers flush with the ground will be permitted. The owner shall not have the right to cultivate trees, shrubs and plants on the same, but no tree growing within any lot shall be cut down, removed or destroyed without the consent of the City Administrator or the Council.

B. Extra Work on Lots. Owners of lots may have extra work or repairs done upon their lots by leaving a written order with the City Administrator, specifying the work they wish done. The owner will be given an estimate of the cost of such work and upon the payment thereof, in advance, the work, insofar as it is consistent with the rules and regulations herein or adopted by resolution of the Council, will be promptly done.

6. Foundations For and Installing Monuments and Improvements. Foundations for all monuments or other superstructures shall have the approval of the City Administrator or other authorized officer. The setting of all monuments, including foundation, shall be the responsibility of the company furnishing same and all work shall be under the supervision of the City Administrator.

7. Supervising Planting; Plants Prohibited. If trees or shrubs are planted upon any lot, such planting shall be done under the supervision of the City Administrator, and such trees, plants and shrubs shall be of such varieties only as will not injure adjacent lots. Silver leaf poplars, locust trees, cottonwoods, lilac and syringa bushes will not be allowed.

8. Removal of Refuse and Building Material. Material for stone or marble work will not be allowed to remain in the cemetery longer than is strictly necessary, and refuse or unused material shall be removed as soon as the work is completed. In case of neglect, such removal will be made by the City Administrator, at the expense of the lot owner or contractor, who shall be severally responsible.

9. Hedges, Structures and Large Urns Prohibited. Hedges, fences, wood trellis and large vases or urns are prohibited.

10. Enclosures Prohibited; Remodeling Lots. Enclosures around burial lots are not permitted to be erected, and the City Administrator is authorized to remove any enclosure heretofore erected, if desired by the owner, and to remodel lots in conformity with this chapter at the expense of the owner.

11. Removal of Unsightly or Detrimental Conditions. If any trees or shrubs situated upon any lot shall, by means of their roots, branches or otherwise, become detrimental to the adjacent lots or avenues, or unsightly or inconvenient to passersby, the Council will order the City Administrator to remove said trees and shrubs, or such parts thereof as are detrimental, unsightly or inconvenient; and if any lot or structure thereon shall become unsightly, by the neglect of the owner thereof, the Council may order the City Administrator to put the same in proper order and repair, and the Council may make a reasonable charge for the removal of such structure, trees or shrubs, and the repairs on any lot, which charge shall be paid by the lot owner when notified, and until such charge shall be paid by such lot owner, such owner shall be barred from further use of said lot.

116.11 RESTRICTIONS ON ACTIVITIES OF VISITORS.

1. Access. Visitors shall be allowed access to the cemetery at all proper times, and must observe all rules now in force or that may be adopted for the regulation of the grounds.
2. Unauthorized Persons Prohibited. All unauthorized persons and all those known to have wantonly violated any of the rules and regulations of the cemetery grounds, will be not be permitted to enter the grounds.
3. Vehicles in Cemeteries. No vehicle shall be driven in excess of five (5) miles per hour, nor shall any vehicle be driven on any grounds of the cemetery other than the roadways.
4. Bicycles and Motorcycles Prohibited. The riding of bicycles or motorcycles within the cemetery grounds is prohibited.
5. Soliciting; Advertising. The soliciting for contracts or orders for monuments, headstones, memorials or other work in the cemetery grounds is prohibited. Signs, notices or advertisement of contractors, stonecutters, undertakers or any other person are prohibited upon or within the cemetery grounds.
6. Shooting Firearms. Shooting of firearms upon cemetery grounds is prohibited, except as military funerals or on Decoration Day, Memorial Day or as otherwise authorized by the Council.
7. Dogs Prohibited. Dogs shall not be brought within the cemetery grounds.
8. Littering. It is unlawful for any person to throw any waste paper, cans or other refuse upon the grounds of the cemetery.

116.12 RULES AND REGULATIONS. Rules and regulations for the cemetery may be adopted, and may be amended from time to time, by resolution of the Council and may cover such things as the use, care, control, management, restrictions and protection of the cemetery as necessary for the proper conduct of the business of the cemetery. The rules shall specify the cemetery's obligations in the event that interment spaces, memorials, or memorializations are damaged or defaced by acts of vandalism. Any veteran, as defined in Section 35.1 of the *Code of Iowa*, or a resident of the State who served in the armed forces of the United States, completed a minimum aggregate of ninety days of active Federal service and was discharged under honorable conditions, who is a landowner or who lives within the City shall be allowed to purchase an interment space and to be interred within the cemetery.

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

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CHAPTER 117

MUNICIPAL AIRPORT

117.01 Purpose
117.02 Definition
117.03 Extent of Power
117.04 Council Control

117.05 Regulations
117.06 Air Traffic Rules
117.07 Airport Manager

117.01 PURPOSE. This chapter is to provide for the establishment, control, supervision and operation of the Le Mars Municipal Airport.

117.02 DEFINITION. As used in this chapter, “airport” includes landing fields, airdrome, aviation field or other similar terms used in connection with aerial traffic.

117.03 EXTENT OF POWER. The provisions of this chapter shall extend to the lands and waters within the City and to the space above the land and waters within the City and to the airport controlled, maintained and operated by the City outside its corporate limits and to the space above the same.

117.04 COUNCIL CONTROL. The Le Mars Municipal Airport is under the control of the Council. The Airport Committee of the Council has general supervision over the airport, subject to the control of the entire Council.

117.05 REGULATIONS. Any rules and regulations so made or laid down by the Council shall in no way be contrary to or in conflict with the rules and regulations for the operation of aircraft adopted by the Federal government or the State.

117.06 AIR TRAFFIC RULES. It is unlawful to operate any aircraft over or within the City or the Le Mars Municipal Airport in violation of the air traffic rules and regulations which have been or may hereafter be established by any office of the Federal or State government whose duty it may be to establish such rules.

117.07 AIRPORT MANAGER.

1. Appointment and Supervision. The Le Mars Municipal Airport shall be managed by an Airport Manager to be appointed by the Mayor with Council approval. The Airport Manager shall work under the supervision of the Airport Committee of the Council.
2. Regulatory Authority. Subject to the terms and conditions of a written contract of employment by and between the City and the Airport Manager, the Airport Manager shall have full charge, responsibility and supervision of the airport and shall have the right to determine what aircraft shall use the airport and shall lay down rules for the use of the airport by aircraft.