

# FRANCHISES AND OTHER SERVICES

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## 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 the "Company," and its successors and assigns the nonexclusive right and franchise to acquire, construct, erect, maintain, and operate in the City a gas distribution system, to furnish natural gas 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 natural gas to the City and its inhabitants. Pursuant to Section 364.2(4)(e) of the *Code of Iowa*, the Company is granted the right of eminent domain, the exercise of which is subject to Council approval upon application by the Company. The franchise shall remain in effect for a period of 10 years from the effective date of the ordinance codified in this chapter and for up to three additional five-year periods thereafter unless the City provides written notice of termination to the Company at least 180 days prior to the expiration of any single period.<sup>†</sup> Failure to terminate the franchise at any preceding period does not make invalid the City's option to terminate the franchise in the final 180 days of any subsequent period. The City may extend any franchise period up to 90 days upon written notice given not less than 30 days before the expiration of any term of the franchise to allow for negotiations and approval of any revision or renewal of the franchise agreement.

**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*.

**110.03 EXCAVATIONS.** The Company shall have the right to excavate in any public street for the purpose of laying, re-laying, 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 PROPERTY.** The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City has a reasonable alternative route for the street, alley, or public improvements, which alternative route would not cause the relocation of the Company installations, the City shall select said alternative route. If relocation of the

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<sup>†</sup> **EDITOR'S NOTE:** Ordinance No. 284, adopting a natural gas franchise for the City, was passed and adopted on November 2, 2004.

Company facilities could be avoided by relocating another franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Company's cost of relocation, the City shall select the route that requires the other franchisees or users to relocate. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

**110.05 RESTORATION OF PROPERTY.** 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 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, 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 the 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 EXTENSION OF SYSTEM.** 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 STANDARDS OF OPERATION.** During the term of the franchise, the Company shall furnish natural gas in the quantity and quality consistent with applicable Iowa laws and regulations. The Company facilities authorized by the franchise shall be modern and up to date and shall be of sufficient capacity and reliability to supply all reasonable demands of the City and its inhabitants.

**110.09 POLICE REGULATIONS.** All reasonable and proper police regulations 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 *Code of Iowa*. The City may modify the franchise fee during the term of the franchise. The franchise fee shall not be charged to the City. In the event that the franchise expires or is terminated, the Company shall remit the franchise fee to the City so long as the Company collects the franchise fee.

**110.11 REPORTS TO COUNCIL.** Annually, if requested by the City, the Company shall provide a report to the Council of major construction or maintenance projects completed during the preceding year. The report shall advise the City of anticipated construction or maintenance projects scheduled in the current calendar year.

**110.12 TERMINATION OF FRANCHISE.** The City reserves the right to terminate the franchise granted herein if the Company breaches any of the provisions of the franchise; provided, however, there shall be no termination if the Company shall correct the breach within 60 days of receipt of a certified letter notifying the Company that it has breached the terms and conditions of the franchise. No breach shall be considered to have occurred if the Company has acted in compliance with State or Federal rules, laws, codes or ordinances that are in conflict with this Code of Ordinances.

**110.13 APPROVAL TO USE RIGHT-OF-WAY.** Any person, business or government entity other than the City or the Company, prior to using the Company's rights to use the City's rights-of-way, shall obtain prior written approval from the City.

**110.14 MAPPING INFORMATION.** The Company shall provide to the City, on a project-specific basis, mapping information specific to construction or reconstruction projects in the City. The City shall not provide copies of any mapping information provided to the City to any entity or person without the written consent of the Company.

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## CHAPTER 111

# ELECTRIC FRANCHISE

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**111.01 GRANT OF FRANCHISE.** There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called "Company," and to its successors and assigns the nonexclusive right and franchise to acquire, construct, erect, maintain and operate in the City a system for the transmission and distribution of electric energy along, under, over and upon the streets, avenues, alleys and public places to serve customers within and without the City and to furnish and sell electric energy to the City and its inhabitants. The franchise grants no rights for communications signals other than signals necessary for the operation and maintenance of the Company's electric system described herein. Pursuant to Section 364.2(4)(e) of the *Code of Iowa*, the Company is granted the right of eminent domain, the exercise of which is subject to Council approval upon application by the Company. The franchise shall remain in effect for a period of 10 years from the effective date of the ordinance codified in this chapter and for up to three additional five-year periods thereafter unless the City provides written notice of termination to the Company at least 180 days prior to the expiration of any single period.<sup>†</sup> Failure to terminate the franchise at any preceding period does not make invalid the City's option to terminate the franchise in the final 180 days of any subsequent period. The City may extend any franchise period up to 90 days upon written notice given not less than 30 days before the expiration of any term of the franchise to allow for negotiations and approval of any revision of renewal of the franchise agreement.

**111.02 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*.

**111.03 EXCAVATIONS; 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 to excavate and bury conductors for the distribution of electric energy and communications signals to support only the monitoring and usage of energy service usage 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 trees extending into any street, alley or public ground 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

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<sup>†</sup> **EDITOR'S NOTE:** Ordinance No. 283, adopting an electric franchise for the City, was passed and adopted on October 5, 2004.

pruning of trees shall be done to current nationally accepted safety and utility industry standards.

**111.04 RELOCATION OF PROPERTY.** The Company shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City has a reasonable alternative route for the street, alley or public improvements, which alternative route would not cause the relocation of the Company installations, the City shall select said alternative route. If relocation of the Company facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Company's cost of relocation, the City will select the route that requires the other franchisees or users to relocate. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Company to compensate the Company for the costs of relocation.

**111.05 RESTORATION OF PROPERTY.** In making excavations in any streets, avenues, alleys, and public places for the excavation of conduits or the erection of poles and wires or other appliances, the Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring the original condition as nearly as practicable.

**111.06 INDEMNIFICATION.** The 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 in whole or in part, by Company's negligence in construction, reconstruction, excavation, operation or maintenance of the electric facilities authorized by the 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.

**111.07 MAINTENANCE OF FACILITIES.** The Company shall construct, operate and maintain its facilities in accordance with the applicable regulations of the Iowa Utilities Board or its successors.

**111.08 UNDERGROUND CONSTRUCTION.** In newly platted residential subdivisions the Company shall construct its facilities underground, unless prohibited by State, Federal, or City laws or ordinances. All said construction shall be in accordance with the Iowa Utilities Board rules and regulations and IUB approved Company's tariffs.

**111.09 STANDARDS OF OPERATION.** During the term of this franchise, the Company shall furnish electric energy in the quantity and quality consistent with applicable Iowa laws and regulations. The Company facilities authorized by this chapter shall be modern and up to date and shall be of sufficient capacity and reliability to supply all reasonable demands of the City and inhabitants thereof.

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

**111.11 FRANCHISE FEE.** The City reserves and has the right to impose a franchise fee pursuant to the *Code of Iowa*. The City may modify the franchise fee during the term of the



franchise. The franchise fee shall not be charged to the City. In the event that the franchise expires or is terminated, the Company shall remit the franchise fee to the City so long as the Company collects the franchise fee.

**111.12 REPORTS TO COUNCIL.** Annually, if requested by the City, the Company shall provide a report to the Council of major construction or maintenance projects completed during the preceding year. The report shall advise the City of anticipated construction or maintenance projects scheduled in the current calendar year. The Company shall report on the number and duration of any electric outages that were in excess of 15 minutes to customers located within the corporate limits of the City and that resulted from an interruption to the electric distribution system owned and operated by the Company.

**111.13 TERMINATION OF FRANCHISE.** The City reserves the right to terminate the franchise granted herein if the Company breaches any of the provisions of the franchise; provided, however, there shall be no termination if the Company shall correct the breach within 60 days of receipt of a certified letter notifying the Company that it has breached the terms and conditions of the franchise. No breach shall be considered to have occurred if the Company has acted in compliance with State or Federal rules, laws, codes or ordinances that are in conflict with this Code of Ordinances.

**111.14 APPROVAL TO USE RIGHT-OF-WAY.** Any person, business or government entity other than the City or the Company, prior placing attachments on, subleasing or otherwise using the underground or the aerial utility system owned or operated by the Company within the City, or prior to using the Company's rights to use the City's rights-of-way, shall obtain prior written approval from the City.

**111.15 MAPPING INFORMATION.** The Company shall provide to the City, on a project-specific basis, mapping information specific to construction or reconstruction projects in the City. The City shall not provide copies of any mapping information provided to the City to any entity or person without the written consent of the Company.

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## CHAPTER 112

# CABLE TELEVISION FRANCHISE

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

1. "Basic cable service" 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 Cable Act of 1934, as amended.
3. "Cable services" has the definition contained in the Cable Act, 47 U.S.C. Section 522, for the term "cable service." The definition of "other programming service" is contained in the Cable Act, 47 U.S.C. Section 522.
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 revenues derived from the operation of the cable system received by Grantee from subscribers for cable services in the service area; provided, however, gross revenues shall 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 112.13.

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.

**112.02 GRANT OF FRANCHISE.** 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. Nothing in this grant shall be construed to prohibit the delivery of data and voice services over the cable system, so long as such delivery is allowed by Federal law without a franchise. In the event that the City is not prohibited by Federal law and State law from requiring a franchise for such delivery, no such delivery shall be made without a franchise.<sup>†</sup>

**112.03 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 which 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 the franchise, the franchise shall control.

**112.04 OTHER AUTHORIZATIONS.** The City shall not permit any person to provide video services similar to those provided by the Grantee in the service area without first having secured a nonexclusive video franchise from the City. The City agrees that any grant of additional franchises by the City to provide video services similar to those provided by the Grantee pursuant to the franchise agreement to any other entity shall cover the entire service area, subject to reasonable build-out and extension requirements, 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. A new franchisee may be allowed a reasonable period of time, not to exceed two construction seasons, to build the system throughout the territory.

**112.05 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

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<sup>†</sup> **EDITOR'S NOTE:** Ordinance No. 300, adopting a cable television franchise for the City, was passed and adopted on April 3, 2007.

who own property that adjoins any of such public ways. The Grantee shall, at its cost and expense, locate and relocate its installations in, on, over or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement of, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City has a reasonable alternative route for the street, alley or public improvements which alternative route would not cause the relocation of the Grantee installations, the City shall select said alternative route. If relocation of the Grantee facilities could be avoided by relocating other franchisee's or facility user's equipment and facilities, and said other franchisee's or user's cost of relocation is less than the Grantee's, the City shall select the route which requires the other franchisees or users to relocate. If project funds from a source other than the City are available to pay for the relocation of utility facilities, the City shall use its best efforts to secure said funds and provide them to the Grantee to compensate the Grantee for the costs of relocation. The cable system 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 be hereafter located by authority of the City.

**112.06 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.

**112.07 RELOCATION FOR THE CITY.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) 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.

**112.08 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.

**112.09 TRIMMING OF TREES AND SHRUBBERY.** The Grantee shall have the authority to trim trees or other natural growth on the City's property or right-of-way in order to access and maintain the cable system. The pruning of trees shall be done to current nationally accepted safety and utility industry standards.

**112.10 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*.

**112.11 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 subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

**112.12 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 the subdivision process, Grantee shall be given the opportunity to share in access to open trenches on a cost-sharing basis.

**112.13 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/non-standard 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.

**112.14 SUBSCRIBER CHARGES FOR EXTENSIONS OF THE SYSTEM.** No subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 112.13 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/non-standard installation charges to extend the cable system from the tap to the residence.

**112.15 CABLE SERVICE TO PUBLIC BUILDINGS.** The Grantee, upon request, shall provide without charge, a standard installation and one outlet of basic cable service to those administrative buildings owned and occupied by the City, fire stations, police stations, and K-12 public 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 section. The Grantee shall not be required to provide an outlet to such buildings where a non-standard

installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary cable system extension and/or non-standard installation. If additional outlets of basic cable service are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

**112.16 EMERGENCY ALERT.** Any Emergency Alert System (EAS) provided by Grantee shall be operated in accordance with FCC regulations. Any use of such EAS by the City will be only in accordance with the applicable State and local plans as approved in accordance with such FCC regulations. Except to the extent expressly prohibited by law, the City will hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including but not limited to reasonable attorneys' fees and costs.

**112.17 REIMBURSEMENT OF COSTS.** If funds are available to any person using the public way for the purpose of defraying the cost of any of the foregoing, the City shall reimburse the Grantee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the City shall make application for such funds on behalf of the Grantee.

**112.18 FRANCHISE FEE.** The Grantee shall pay to the City a franchise fee of three percent (3%) of annual gross revenues (as defined in Section 112.01 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 December 31. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. 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.

**112.19 RATES AND CHARGES.** The City may regulate rates for the provision of basic cable service and equipment as expressly permitted by Federal law.

**112.20 RENEWAL OF FRANCHISE.**

1. 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.
2. 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.
3. Notwithstanding anything to the contrary set forth in this section, 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.

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

**112.21 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 six (6) 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 six-month period shall not be deemed to be a waiver, or an extinguishment of, any rights of either the City or the Grantee.

**112.22 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 consent of the City. 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 Grantee in the franchise or cable system in order to secure indebtedness.

**112.23 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 the franchise. Such notice shall specifically reference the subsection of the franchise that 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 that it reasonably deems to be proprietary or confidential in nature, or disclose books and records of any affiliate that 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 who 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.

**112.24 INSURANCE REQUIREMENTS.** The Grantee shall maintain insurance in full force and effect, at its own cost and expense, during the term of the franchise. The City shall be designated as an additional insured and 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.



**112.25 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 (10) 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.

**112.26 ENFORCEMENT AND TERMINATION OF FRANCHISE.**

1. Notice of Violation. In the event that the City believes that the Grantee has not complied with the any material term 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 such 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 such noncompliance; or (ii) to cure such default; or (iii) in the event that, by the nature of such default, it 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 subsection 2 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 material default of any provision of the franchise, the City may:

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

B. In the case of repeated or ongoing substantial noncompliance with a material term or terms 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 repeated or ongoing substantial noncompliance with a material term or terms of the franchise. 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.

**112.27 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.

**112.28 ENTIRE AGREEMENT.** The franchise constitutes the entire agreement between the Grantee and the City and supersedes all other prior understandings and agreements oral or written. Any amendments to the franchise shall be mutually agreed to in writing by the parties.

**112.29 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 that 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. If at any time during the term of the franchise, Federal, State or local law permits any provider of video programming to provide services such as those provided pursuant to the franchise without obtaining a franchise from the City on terms or conditions more favorable than those applicable to the Grantee, then the franchise shall, at the sole discretion of the Grantee: (i)

cease to be in effect; or (ii) be deemed to expire at a date prior to the original expiration date selected by the Grantee. If at any time during the term of this franchise, Federal, State or local law permits any provider of video programming to provide services such as those provided pursuant to the franchise on terms or conditions more favorable than those applicable to the Grantee then the franchise shall be automatically reformed to grant to the Grantee the more favorable terms, benefits, and conditions available to the other provider.

**112.30 NOTICE.** Unless expressly otherwise agreed between the parties, every notice or response required by the franchise 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) the next business day if sent by express mail or overnight air courier. The City and Grantee may designate such addresses from time to time by giving notice to the other in the manner provided for in this section.

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