

CHAPTER 110

NATURAL GAS FRANCHISE

110.01 Franchise Granted	110.11 Exemption from Payment of Franchise Fee
110.02 Term of Franchise	110.12 Remittance of Franchise Fee
110.03 Representations of Company	110.13 Forfeiture of Franchise; Cure of Defaults
110.04 Location of Facilities	110.14 Reservation of Home Rule Powers
110.05 Excavations and Other Work	110.15 Maps of Distribution System
110.06 Rates	110.16 Customer Satisfaction Surveys
110.07 Annual Report	110.17 Exercise of Eminent Domain Powers
110.08 Inspection of Company Facilities	110.18 Indemnity
110.09 Compliance With City Ordinances	110.19 Lease or Assignment of Franchise
110.10 Franchise Fee	

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

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

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

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

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

110.04 LOCATION OF FACILITIES. The Company shall not locate any new natural gas mains, pipes, or conduits within the City in the public right-of-way without the prior approval of the City; however, the City shall not unreasonably withhold approval of Company's location of Company facilities within public right-of-way. The City reserves to itself the power to impose reasonable regulations on the Company's use of streets. The City reserves the right, by resolution or otherwise, to designate the location of any new natural gas distribution facilities, which designation shall not conflict with Company's adherence to its design standards and such utility regulation as governs its construction of facilities. The City shall work with the Company to ensure, to the extent practicable, that the Company may locate its facilities in the least-cost manner consistent with its design standards and utility regulation and consistent with the City's desire to promote the public safety and welfare and protect public property. The Company shall, at its cost and expense, locate and relocate its installations in, on, over, or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance, or repair of the street or alley or any public improvement of, in, or about any such street or alley or reasonably promoting the efficient operation of any such improvement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110.18 INDEMNITY. The Company shall indemnify and hold the City, and its officers, agents, and employees, free and harmless from any and all claims, demands, lawsuits, liability, and damages whatsoever, including all costs and expenses incident thereto, for any and all loss, damage, injury, or death caused or occasioned, in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the natural gas facilities authorized by this franchise; provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees or agents.

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

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CHAPTER 111

ELECTRIC FRANCHISE

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111.02 Term of Franchise	111.12 Remittance of Franchise Fee
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111.04 Location of Facilities	111.14 Reservation of Home Rule Powers
111.05 Excavations and Other Work	111.15 Maps of Distribution System
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111.07 Annual Report	111.17 Exercise of Eminent Domain Powers
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111.01 FRANCHISE GRANTED. There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called the “Company,” and its successors and assigns, the nonexclusive right and franchise to acquire, construct, erect, maintain, and operate in the City a system for the transmission and distribution of electric energy along, under, over, and upon the streets, avenues, alleys, and public places to serve customers within and outside the City, and to furnish and sell electric energy to the City and its inhabitants. This franchise grants no rights for communications signals other than signals necessary for the operation and maintenance of the Company’s electric system described herein. Pursuant to Section 364.2(4)(e) of the *Code of Iowa*, the Company is granted the right of eminent domain, the exercise of which is subject to City Council approval upon application by the Company. The rights and privileges hereby granted are subject to the restrictions and limitations of Chapter 364 of the *Code of Iowa*, as subsequently amended or changed.

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

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

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

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

111.04 LOCATION OF FACILITIES. The Company shall not locate any new electrical distribution or service line, including poles or other facilities, within the City in the public right-of-way without the prior approval of the City; however, the City shall not unreasonably withhold approval of Company's location of Company facilities within public right-of-way. The City reserves to itself the power to impose reasonable regulations on the Company's use of streets. The City reserves the right, by resolution or otherwise, to designate the location of any new electric distribution or service line, including poles and other facilities, which designation shall not conflict with Company's adherence to its design standards and such utility regulation as governs its construction of facilities. The City shall work with the Company to ensure, to the extent practicable, that the Company may locate its facilities in the least-cost manner consistent with its design standards and utility regulation and consistent with the City's desire to promote the public safety and welfare and protect public property. The Company shall, at its cost and expense, locate and relocate its installations in, on, over, or under any public street or alley in the City in such manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance, or repair of the street or alley or any public improvement of, in, or about any such street or alley or reasonably promoting the efficient operation of any such improvement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111.18 INDEMNITY. The Company shall indemnify and hold the City and its officers, agents, and employees free and harmless from any and all claims, demands, lawsuits, liability, and damages whatsoever, including all costs and expenses incident thereto, for any and all loss, damage, injury, or death caused or occasioned, in whole or in part, by the Company's negligence in construction, reconstruction, excavation, operation, or maintenance of the electric facilities authorized by this franchise; provided, however, the Company shall not be obligated to defend, indemnify, and save harmless the City for any costs or damages arising from the negligence of the City, its officers, employees, or agents.

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

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CHAPTER 112

FRANCHISE FEES

112.01 Electric Franchise Fee

112.02 Gas Franchise Fee

112.03 Gas Sold by Third-Party Suppliers

112.04 Exemptions

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

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

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

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

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

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

[The next page is 695]

CHAPTER 113

CABLE TELEVISION REGULATIONS

113.01 Compliance with Applicable Laws	113.18 Color Cablecasting
113.02 Installation and Maintenance of Property	113.19 Program Alteration
113.03 Interference	113.20 Subscriber Rates and Charges
113.04 Installation of Cables	113.21 Service Rules and Regulations
113.05 City Use of Existing Poles	113.22 Service Agreements
113.06 Prior Approval of Underground Installations	113.23 Office of Cable Operator
113.07 Restoration of Ground Surface	113.24 Procedure to Handle Complaints and Grievances
113.08 Alteration of Grade	113.25 Injury to Property of the Cable Operator
113.09 Temporary Removal of Cables	113.26 Intercepting Signals of the Cable Operator
113.10 Tree Trimming	113.27 Filing of Reports
113.11 Service Requirements	113.28 Filing of Audit
113.12 Performance Standards	113.29 Filing of Maps and Plats
113.13 Channel Capacity and Performance	113.30 Filing of Communications with Regulatory Agencies
113.14 Subscriber Terminals in City Buildings and Schools	113.31 Access
113.15 Use of Education and Local Government Access Channels	113.32 Discrimination Prohibited
113.16 Emergency Warning System	113.33 Other Business Activities Prohibited
113.17 Telecast of Educational Activities	113.34 Franchise Fee

113.01 COMPLIANCE WITH APPLICABLE LAWS. The cable operator shall comply with all governmental laws, ordinances, rules, or regulations as may now or hereafter be applicable to the construction, operation, maintenance, repair, replacement, renewal, reconstruction, and removal of a cable television system, the sale and supply of audio and video communications services, the use of public property and private property, and the engagement in such further activities as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system.

113.02 INSTALLATION AND MAINTENANCE OF PROPERTY. The property of the cable operator shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed, and removed in accordance with generally accepted engineering principles so as not to endanger or interfere with the lives of persons or to interfere with improvements which the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

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

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

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

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

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

113.08 ALTERATION OF GRADE. In the event that the City shall elect to alter or change the grade of any street, alley, or public way, the cable operator, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

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

113.10 TREE TRIMMING. The cable operator shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the cable of the cable operator. All trimming shall be done under the supervision and direction of the City and at the expense of the cable operator.

113.11 SERVICE REQUIREMENTS. The cable operator shall furnish reasonable, adequate, and efficient cable television service to subscriber terminals. The foregoing requirement may be temporarily suspended due to circumstances beyond the reasonable control of the cable operator.

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

113.13 CHANNEL CAPACITY AND PERFORMANCE. The cable television system of the cable operator shall conform to the channel capacity and performance requirements contained in the then current regulations of the FCC.

113.14 SUBSCRIBER TERMINALS IN CITY BUILDINGS AND SCHOOLS. The cable operator shall, at its sole cost, install and maintain subscriber terminals in such buildings owned or used by the City, and in such buildings owned or used by recognized educational authorities within the City, both public and private, as may be designated by the governing body having jurisdiction thereof. Such subscriber terminals shall be placed in such location or locations within such buildings as may be designated by the governing body having jurisdiction thereof.

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

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

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

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

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

113.20 SUBSCRIBER RATES AND CHARGES. All rates for service shall be reasonable, compensatory, and nondiscriminatory.

113.21 SERVICE RULES AND REGULATIONS. The cable operator shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. The cable operator shall file such rules and regulations, and all amendments thereto, with the City.

113.22 SERVICE AGREEMENTS. The cable operator shall have the right to prescribe a reasonable form of service agreement for use between the cable operator and its subscribers. The cable operator shall submit its proposed form of service agreement, and all proposed amendments thereto, to the City for approval.

113.23 OFFICE OF CABLE OPERATOR. The cable operator shall maintain an office within Polk County, Iowa, for the purpose of receiving, investigating, and responding to complaints and grievances with respect to the quality of the service rendered by the cable operator, equipment malfunctions, and other similar matters pertaining to the cable television system of the cable operator.

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

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

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

113.25 INJURY TO PROPERTY OF THE CABLE OPERATOR. No person shall wrongfully or unlawfully injure the property of the cable operator.

113.26 INTERCEPTING SIGNALS OF THE CABLE OPERATOR. No person shall wrongfully or unlawfully intercept the signals of the cable operator.

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

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

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

113.30 FILING OF COMMUNICATIONS WITH REGULATORY AGENCIES. The cable operator shall file with the City copies of all petitions, applications, and communications

submitted by the cable operator to any regulatory agency having jurisdiction over the cable operator.

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

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

113.33 OTHER BUSINESS ACTIVITIES PROHIBITED. The cable operator shall not engage in the business of selling, leasing, renting, or servicing television or radio receivers, or their parts and accessories, and the cable operator shall not require or attempt to direct its subscribers to deal with any particular person or firm with respect to said activities.

113.34 FRANCHISE FEE. On or before April 1 of each year the cable operator shall pay to the City, at the office of the City, in lawful money of the United States, a franchise fee based upon a percentage of the gross subscriber receipts received by the cable operator from the operation of its cable television system within the City during the preceding calendar year. Such fee shall be based on such percentage of said gross receipts as may be approved by the FCC, but in no event shall the same be less than five percent of said gross receipts. Any franchise fee not paid when due shall bear interest at the rate of nine percent per annum from the date due. The franchise fee shall not be considered to be in the nature of a tax.

[The next page is 741]