

CHAPTER 110

NATURAL GAS FRANCHISE

110.01 Franchise Granted
110.02 Mains and Pipes; Indemnification
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110.01 FRANCHISE GRANTED. There is hereby granted to Interstate Power and Light Company, hereinafter referred to as the “Company,” its successors and assigns, the right, franchise and privilege for the term of 25 years from and after the passage, adoption, approval and acceptance of the ordinance codified by this chapter,^{1†} to lay down, maintain and operate the necessary pipes, mains and other conductors and appliances in, along and under the streets, avenues, alleys and public places in the City as now or hereafter constituted, for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof; also the right of eminent domain as provided in Section 364.2 of the *Code of Iowa*. The term “gas” as used in this franchise shall be construed to mean natural gas only.

110.02 MAINS AND PIPES; INDEMNIFICATION. The mains and pipes of the Company must be so placed as not to interfere unnecessarily with water pipes, drains, sewers, and fire plugs which have been or may hereafter be placed in any street, alley and public places in said City nor unnecessarily interfere with the proper use of the same, including ordinary drainage, or with water lines, the sewers, underground pipe, and other property of the City, and the Company, its successors and assigns shall hold the City free and harmless from all damages arising from the negligent acts or omissions of the Company in the laying down, operation, and maintenance of said natural gas distribution system.

110.03 EXCAVATIONS. In making any excavations in any street, alley, avenue, or public place, Company, its successors and assigns, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, shall back fill all openings in such manner as to prevent settling or depressions in surface, and shall replace the surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical and if defects are caused shall repair the same. For informational purposes only, the Company will provide periodic updates regarding major company projects occurring within City’s public rights-of-way. Before commencing any significant excavation of any street, alley, avenue or public place, which would impact or obstruct vehicular or pedestrian travel, the Company shall give the City at least 24-hours’ notice. In the case of an emergency requiring immediate action, the 24-hour notice requirement will be waived and the Company will provide notice to the City as soon as reasonably possible.

110.04 CONSTRUCTION AND MAINTENANCE. The Company shall, at its cost, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance, or repair of the street or alley or any public improvement thereof, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City orders or requests the Company to relocate its existing facilities or equipment for any reason other than as specified

^{1†} **EDITOR’S NOTE:** Ordinance No. 402, adopting a natural gas franchise for the City, was passed and adopted on July 5, 2011.

above, or as the result of the initial request of a commercial or private developer, the Company shall receive payment for the cost of such relocation as a precondition to relocating its existing facilities or equipment. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause the Company unreasonable additional expense in exercising its authority under this section. The City shall also provide a reasonable alternative location for the Company's facilities as part of its relocation request. The City shall give the Company reasonable advance written notice to vacate a public right-of-way. Prior to vacating a public right-of-way, the Company shall be provided an opportunity to secure an easement to allow it to operate and maintain its existing facilities.

110.05 SERVICE REQUIREMENTS. Said Company, its successors and assigns, shall throughout the term of the franchise distribute to all consumers gas of good quality and shall furnish uninterrupted service, except as interruptible service may be specifically contracted for with consumers; provided, however, that any prevention of service caused by fire, act of God or unavoidable event or accident shall not be a breach of this condition if the Company resumes service as quickly as is reasonably practical after the happening of the act causing the interruption.

110.06 FRANCHISE FEE.

1. In its monthly billing the Company shall include a franchise fee of zero percent, or such other amount as hereinafter authorized by the City Council, on the gross receipts from the sale of natural gas to the Company's natural gas customers located within the corporate limits of the City.

2. The franchise fee shall be applied to all customers' bills in accordance with Chapters 364.2 and 423B.5 of the *Code of Iowa*. The amount of the franchise fee shall be shown separately on the utility bill to each customer.

3. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following 90 days of receipt of information required of the City to implement the franchise fee. This information shall include but not be limited to a copy of the City's Revenue Purpose Statement and written proof of legal adoption and publication of the Revenue Purpose Statement, City's list of City utility accounts exempt per Iowa law from the franchise fee, signed Nondisclosure Agreement pertaining to the protection of the confidentiality of utility service address information provided by the Company to the City, and the City's verified utility customer service address list. The Company shall not commence assessing the franchise fee until it has received written approval of its amended tax rider tariff from the Iowa Utilities Board.

4. The City recognizes that the costs of franchise fee administration are not charged directly to the City and agrees it shall reimburse the Company for any initial or ongoing costs incurred by the Company in collecting franchise fees that the Company in its sole opinion deems to be in excess of typical costs of franchise fee administration.

5. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the corporate limits of said City, the City Clerk shall provide written notification by certified mail to an officer of Company of such annexation or change in the limits of said City, and the Company shall apply the franchise fee to its customers who are affected by the annexation or change in the corporate limits of the City, commencing on an agreed upon date which is not less than 90 days from receipt of the information required of the City to implement the franchise fee.

6. The Company shall have no obligation to collect franchise fees from customers in any annexed area until and unless the following have all been provided to the Company by certified mail: such final and unappealable orders or approvals, the

City's list of City utility accounts exempt from the franchise fee in the annexed area, and the City's verified utility customer service address list for the annexed area.

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

8. The Company shall remit franchise fee revenues, minus uncollectible amounts, to the City no more frequently than on or before the last business day of the month following each calendar year quarter. Company shall notify City at least 30 days in advance of any changes made in this collection schedule, including any alterations in the calendar quarters or any other changes in the remittance periods.

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

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

11. The Company shall not, under any circumstances be required to return or refund any franchise fees that have been collected from City customers and remitted to the City. In the event the Company is required to provide data or information in defense of the City's imposition of franchise fees or the Company is required to assist the City in identifying customers or calculating any franchise fee refunds for groups of customers or individual customers, the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information.

12. Collection of the franchise fee shall cease at the earlier of the modification or repeal of the franchise fee or the end of the ordinance term.

A. The obligation to collect and remit the fee imposed by this chapter is modified if:

(1) Any other person is authorized to sell natural gas to customers within the corporate limits of the City and the City imposes a franchise fee or its lawful equivalent at zero or a lesser rate than provided in this chapter, in which case the obligation of Company to collect and remit franchise fee shall be modified to zero or the lesser rate; or

(2) The City adds additional territory by annexation or consolidation and is unable or unwilling to impose the franchise fee upon all persons selling natural gas to consumers within the additional territory, in which case the franchise fee imposed on the revenue from sales by Company in the additional territory shall be zero or equal to that of the lowest fee being paid by any other retail seller of natural gas within the City; or

(3) The Iowa General Assembly enacts legislation, or any Iowa court issues a final judicial decision regarding franchise fees, or the Iowa Utilities Board issues a final nonappealable order (collectively, “Final Franchise Fee Action”) that modifies, but does not repeal, the ability of the City to impose a franchise fee or the ability of Company to collect from City customers and remit franchise fees to City. Within 60 days of Final Franchise Fee Action, the City shall notify Company and the parties shall meet to determine whether this chapter can be revised, and, if so, how to revise the franchise fee on a continuing basis to meet revised legal requirements. After Final Franchise Fee Action and until passage by the City of revisions to the franchise fee Ordinance, Company may temporarily discontinue collection and remittance of the franchise fee if in its sole opinion it believes it is required to do so in order to comply with revised legal requirements.

B. The obligation to collect and remit the fee imposed by this chapter is repealed, effective as of the date specified below with no liability therefor, if:

(1) The imposition, collection or remittance of a franchise fee is judicially determined to be unlawful by a court of competent jurisdiction within the State of Iowa. Such determination shall be effective only after all available appeals have either been exhausted or have expired; or

(2) The Iowa General Assembly enacts legislation making imposition, collection or remittance of a franchise fee unlawful, effective as of the date lawfully specified by the General Assembly; or

(3) The Iowa Utilities Board, or any successor, denies the Company the right to impose, collect or remit a franchise fee provided such denial is affirmed by the Supreme Court of Iowa, effective as of the date final agency order from which the appeal is taken.

13. That said franchise fee shall be in lieu of any other payments to the City for the Company’s use of streets, avenues, alleys and public places in the said City and other administrative or regulatory costs with regard to said franchise; and said pipes, mains, and other conductor and appliances in, along and under the streets, avenues, alleys and public places in the said City for the purpose of distributing, supplying and selling gas to said City and the residents thereof and to persons and corporations beyond the limits thereof shall be exempt from any special tax, assessment, license or rental charge during the entire term of this franchise ordinance.

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

110.07 NONEXCLUSIVE. The franchise granted by this chapter shall not be exclusive.

110.08 TERM OF FRANCHISE. The term of the franchise granted by this chapter and the rights granted thereunder shall continue for the period of 25 years from and after its acceptance by the said Company, as herein provided.

110.09 ENTIRE AGREEMENT. This chapter sets forth and constitutes the entire agreement between the Company and the City with respect to the rights contained herein, and may not be superseded, modified or otherwise amended without the approval and acceptance of the Company. Upon acceptance by the Company, this chapter shall supersede, abrogate and

repeal the prior gas system ordinance between the Company and the City as of the date this franchise ordinance is accepted by the Company. Notwithstanding the foregoing, in no event shall the City enact any ordinance or place any limitations, either operationally or through the assessment of fees, that create additional burdens upon the Company, or which delay utility operations.

CHAPTER 111

ELECTRIC FRANCHISE

111.01 Grant of Franchise

111.02 Placement of Appliances

111.03 Excavations

111.04 Construction and Maintenance

111.05 Installation of Meters

111.06 Standard of Service

111.07 Nonexclusive Franchise

111.08 Uninterrupted Service

111.09 Franchise Fees

111.10 Term of Franchise

111.11 Entire Agreement

111.01 GRANT OF FRANCHISE. There is hereby granted to Interstate Power and Light Company, hereinafter referred to as the “Company,” its successors and assigns, the right and franchise to acquire, construct, reconstruct, erect, maintain and operate in the City, works and plants for the manufacture and generation of electricity and a distribution system for electric light, heat and power and the right to erect and maintain the necessary poles, lines, wires, conduits and other appliances for the distribution of electric current along, under and upon the streets, alleys and public places in the said City to supply individuals, corporations, communities, and municipalities both inside and outside of said City with electric light, heat and power for the period of 25 years;^{2†} also the right of eminent domain as provided in Section 364.2 of the *Code of Iowa*.

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

111.03 EXCAVATIONS. In making any excavations in any street, alley, or public place, Company, its successors and assigns, shall protect the site while work is in progress by guards, barriers or signals, shall not unnecessarily obstruct the use of the streets, and shall back fill all openings in such manner as to prevent settling or depressions in surface, pavement or sidewalk of such excavations with same materials, restoring the condition as nearly as practical. For informational purposes only, the Company will provide periodic updates regarding major company projects occurring within City’s public rights-of-way. Before commencing any significant excavation of any street, alley, avenue or public place, which would impact or obstruct vehicular or pedestrian travel, the Company shall give the City at least 24-hours’ notice. In the case of an emergency requiring immediate action, the 24-hour notice requirement will be waived and the Company will provide notice to the City as soon as reasonably possible.

111.04 CONSTRUCTION AND MAINTENANCE. The Company shall, at its cost, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may at any time reasonably require for the purposes of facilitating the construction, reconstruction, maintenance or repair of the street or alley or any public improvement thereof, in or about any such street or alley or reasonably promoting the efficient operation of any such improvement. If the City orders or requests the Company to relocate its existing facilities or equipment for any reason other than as specified above, or as the result of the initial request of a commercial or private developer, the Company shall receive payment for the cost of such relocation as a precondition to relocating its existing

^{2†} **EDITOR’S NOTE:** Ordinance No. 403, adopting an electric franchise for the City, was passed and adopted on July 5, 2011.

facilities or equipment. The City shall consider reasonable alternatives in designing its public works projects so as not arbitrarily to cause the Company unreasonable additional expense in exercising its authority under this section. The City shall also provide a reasonable alternative location for the Company's facilities as part of its relocation request. The City shall give the Company reasonable advance written notice to vacate a public right-of-way. Prior to vacating a public right-of-way, the Company shall be provided an opportunity to secure an easement to allow it to operate and maintain its existing facilities.

111.05 INSTALLATION OF METERS. The Company, its successors and assigns, shall furnish and install all meters at its own expense, and shall provide the service wire to buildings as set forth in the Company's tariff filed with the Iowa Utilities Board.

111.06 STANDARD OF SERVICE. The system authorized by this chapter shall be modern and up-to-date and shall be of sufficient capacity to supply all reasonable demands of the City and its inhabitants thereof and shall be kept in a modern and up-to-date condition.

111.07 NONEXCLUSIVE FRANCHISE. The franchise granted by this chapter shall not be exclusive.

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

111.09 FRANCHISE FEES.

1. In its monthly billing the Company shall include a franchise fee of zero percent, or such other amount as hereinafter authorized by the City Council, consistent with state law, on the gross receipts from the sale of electricity to the Company's electric customers located within the corporate limits of the City.
2. The franchise fee shall be applied to all customers' bills in accordance with Chapters 364.2 and 423B.5 of the *Code of Iowa*. The amount of the franchise fee shall be shown separately on the utility bill to each customer.
3. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following 90 days of receipt of information required of the City to implement the franchise fee. This information shall include but not be limited to a copy of the City's Revenue Purpose Statement and written proof of legal adoption and publication of the Revenue Purpose Statement, City's list of City utility accounts exempt per Iowa law from the franchise fee, signed Nondisclosure Agreement pertaining to the protection of the confidentiality of utility service address information provided by the Company to the City, and the City's verified utility customer service address list. The Company shall not commence assessing the franchise fee until it has received written approval of the amended tax rider tariff from the Iowa Utilities Board.
4. The City recognizes that the costs of franchise fee administration are not charged directly to the City and agrees it shall reimburse the Company for any initial or ongoing costs incurred by the Company in collecting franchise fees that the Company in its sole opinion deems to be in excess of typical costs of franchise fee administration.
5. Upon receipt of a final and unappealable order or approval authorizing annexation, or changes in the corporate limits of said City, the City Clerk shall provide written notification by certified mail to an officer of Company of such annexation or change in the limits of said City, and the Company shall apply the franchise fee to its

customers who are affected by the annexation or change in the corporate limits of the City, commencing on an agreed upon date which is not less than 90 days from receipt of the information required of the City to implement the franchise fee.

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

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

8. The Company shall remit franchise fee revenues, minus uncollectible amounts, to the City no more frequently than on or before the last business day of the month following each calendar year quarter. Company shall notify City at least 30 days in advance of any changes made in this collection schedule, including any alterations in the calendar quarters or any other changes in the remittance periods.

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

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

11. The Company shall not, under any circumstances be required to return or refund any franchise fees that have been collected from City customers and remitted to the City. In the event the Company is required to provide data or information in defense of the City's imposition of franchise fees or the Company is required to assist the City in identifying customers or calculating any franchise fee refunds for groups of customers or individual customers, the City shall reimburse the Company for the expenses incurred by the Company to provide such data or information.

12. Collection of the franchise fee shall cease at the earlier of the modification or repeal of the franchise fee or the end of the ordinance term.

A. The obligation to collect and remit the fee imposed by this chapter is modified if:

(1) Any other person is authorized to sell electricity to customers within the corporate limits of the City and the City imposes a franchise fee or its lawful equivalent at zero or a lesser rate than provided in this chapter, in which case the obligation of Company to collect and remit franchise fee shall be modified to zero or the lesser rate; or

(2) The City adds additional territory by annexation or consolidation and is unable or unwilling to impose the franchise fee

upon all persons selling electricity to consumers within the additional territory, in which case the franchise fee imposed on the revenue from sales by Company in the additional territory shall be zero or equal to that of the lowest fee being paid by any other retail seller of electricity within the City; or

(3) The Iowa General Assembly enacts legislation, or any Iowa court issues a final judicial decision regarding franchise fees, or the Iowa Utilities Board issues a final nonappealable order (collectively, "Final Franchise Fee Action") that modifies, but does not repeal, the ability of the City to impose a franchise fee or the ability of Company to collect from City customers and remit franchise fees to City. Within 60 days of Final Franchise Fee Action, the City shall notify Company and the parties shall meet to determine whether this chapter can be revised, and, if so, how to revise the franchise fee on a continuing basis to meet revised legal requirements. After Final Franchise Fee Action and until passage by the City of revisions to the franchise fee ordinance, Company may temporarily discontinue collection and remittance of the franchise fee if, in its sole opinion, it believes it is required to do so in order to comply with revised legal requirements.

B. The obligation to collect and remit the fee imposed by this chapter is repealed, effective as of the date specified below with no liability therefor, if:

(1) Any of the imposition, collection, or remittance of a franchise fee is ruled to be unlawful by the Supreme Court of Iowa, effective as of the date of such ruling or as may be specified by that Court; or

(2) The Iowa General Assembly enacts legislation making imposition, collection or remittance of a franchise fee unlawful, effective as of the date lawfully specified by the General Assembly; or

(3) The Iowa Utilities Board, or any successor agency, denies the Company the right to impose, collect or remit a franchise fee provided such denial is affirmed by the Supreme Court of Iowa, effective as of the date of the final agency order from which the appeal is taken.

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

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

111.10 TERM OF FRANCHISE. The term of the franchise granted by this chapter and the rights granted thereunder shall continue for the period of 25 years from and after its acceptance by the said Company, as herein provided.

111.11 ENTIRE AGREEMENT. This chapter sets forth and constitutes the entire agreement between the Company and the City with respect to the rights contained herein, and

may not be superseded, modified or otherwise amended without the approval and acceptance of the Company. Notwithstanding the foregoing, in no event shall the City enact any ordinance or place any limitations, either operationally or through the assessment of fees other than those approved and accepted by the Company within this chapter, that create additional burdens upon the Company, or which delay utility operations.

CHAPTER 112

TELEPHONE FRANCHISE

112.01 Franchise Granted
112.02 Workmanlike Manner
112.03 Traffic
112.04 Repair of Streets and Sidewalks

112.05 Indemnity
112.06 Ordinances
112.07 Injury to Property

112.01 FRANCHISE GRANTED. The City hereby grants unto the Farmers Mutual Telephone Cooperative, an Iowa corporation (the “Cooperative”), its successors and assigns, a franchise and right, for a period of 25 years from and after the date of the passage and adoption of the ordinance codified in this chapter,^{3†} to erect, construct, operate and maintain within the corporate limits of the City, as the same are now or may hereafter be located, a telephone system consisting of, but not limited to, exchange, toll and trunk lines, conduits, cables, poles and exchanges, together with all fixtures and appurtenances necessary or advisable for the operation and maintenance of said telephone system, for the purpose of supplying telephone service for public and private use within the City and for the transmission of telephone service through and beyond the City, together with the franchise and right to enter upon and to use and occupy the public streets, avenues, alleys, highways, bridges and public places of the City, as the same are now or may hereafter be located or extended, for the purpose of installing, constructing, reconstructing, maintaining and operating thereon, therein, thereunder and thereover said systems for the transmission and distribution of telephone service, together with the franchise and right to make all necessary excavations in the public streets, avenues, highways, bridges and public places of the City and to cut and trim all trees and shrubbery as may be necessary to keep such trees and shrubbery clear from the lines, conduits, cables, poles, exchanges and fixtures of the telephone system, together with the franchise and right to supply, distribute and sell telephone service to the City and the residents thereof, and others within and outside the corporate limits of the City, for any and all purposes, and under such restrictions and regulations as are hereinafter contained, and such other reasonable regulations as may hereinafter be provided by ordinance.

112.02 WORKMANLIKE MANNER. The telephone system, including all parts thereof, shall be erected, constructed, operated and maintained in a proper, workmanlike manner so as to afford all reasonable safeguards to the public.

112.03 TRAFFIC. The telephone system, including all parts thereof, shall not be erected, constructed, operated or maintained so as to interfere with traffic upon the traveled portions of the public streets, avenues, alleys, highways and bridges within the corporate limits of the City.

112.04 REPAIR OF STREETS AND SIDEWALKS. Whenever the Cooperative, its successors and assigns, in erecting, constructing, operating or maintaining the telephone system, shall take up or disturb any pavement or sidewalk, or make any excavation in any street, alley, highway or public place within the City, such excavations shall at once be refilled and the pavement, sidewalk or other improvement restored to its original condition.

112.05 INDEMNITY. The Cooperative, its successors and assigns shall indemnify and hold the City harmless from any and all claims, causes of action, litigation or damages which may arise through or by reason of the erection, construction, operation and maintenance of the telephone system.

^{3†} **EDITOR’S NOTE:** Ordinance No. 299, adopting a telephone franchise for the City, was passed and adopted on September 19, 2001.

112.06 ORDINANCES. The Cooperative, its successors and assigns shall comply with all ordinances of the City not in conflict with the terms and conditions of this chapter.

112.07 INJURY TO PROPERTY. Any person who shall cut, injure or destroy any of the lines, conduits, cables, poles, exchanges, fixtures and any other property of the Cooperative, its successors or assigns, shall, upon conviction, be guilty of a violation of this Code of Ordinances.

CHAPTER 113

CABLE TELEVISION FRANCHISE

113.01 Franchise Granted
113.02 Police Power

113.03 Franchise Extension

113.01 FRANCHISE GRANTED. Farmers Mutual Telephone Company, a corporation, its successors and assigns are hereby granted the right to use and occupy the streets, alleys and other public places of the City for a term of 15 years from the effective date of the ordinance codified in this chapter^{4†} for the purpose of constructing, maintaining and operating a cable TV system within the City.

113.02 POLICE POWER. The rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be possessed by or conferred upon the City, particularly as set out in Chapter 114 of this Code of Ordinances, and others, without limitation as subsequently amended or supplemented or changed, and the Company agrees to such regulation.

113.03 FRANCHISE EXTENSION.

1. Renewal of Franchise. By Ordinance No. 270, adopted October 5, 1998, the City of Shellsburg, Iowa (hereafter "City") granted to Shellsburg Cablevision, Inc. (which now does business as USA Communications) (hereafter "Company") a 15-year extension of the cable television originally issued by Ordinance No. Title III, Chapter VI, on April 2, 1984.

A. The City hereby grants to the Company an extension of said franchise for an additional period of 15 years following the current expiration date.

B. By accepting this extension, the Company agrees that it will operate the cable television system in accordance with the laws and regulations of the United States of America and the State of Iowa and the ordinances and regulations of the City.

^{4†} **EDITOR'S NOTE:** Ordinance No. Title III, Chapter VI, adopting a cable television franchise for the City, was passed and adopted on April 2, 1984. Voters approved the franchise at an election held on May 8, 1984. Ordinance No. 270, adopted October 5, 1998, renewed the franchise with Shellsburg Cablevision, Inc., the successor to Farmers Mutual Telephone Company, for an additional 15 years. Ordinance No. 425, adopted October 21, 2014, renewed the franchise with USA Communications, the successor to Shellsburg Cablevision, Inc., for an additional 15 years.

2. **Effective Date of Franchise.** The ordinance codified in this chapter shall be in full force and effect from and after its passage and publication as required by law and after the receipt by the City Clerk of a written statement from Company which must be received within 30 days of the publication of the ordinance codified in this chapter stating that Company unconditionally accepts the franchise extension and covenants to faithfully comply with and abide by all the provisions, terms and conditions of this chapter.

3. **Ownership of Franchise.** The Company shall not assign or transfer any right granted under this chapter to any other person, company or corporation without prior consent of the City Council, which consent shall not be unreasonably withheld, provided that the Company shall have the right to assign this franchise to an affiliated entity.

4. **Franchise Fee.** The Company shall pay to the City a franchise fee equal to three percent of gross revenues received by Company from the operation of the cable system on a quarterly basis. The franchise fee payment shall be due and payable 90 days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report from a representative of Company showing the basis for the computation. The City reserves the right to request an increase in the franchise fee during the term of the franchise; however, said fee shall in no case exceed five percent of gross revenues received by the Company.

A. For purposes of calculating the foregoing fee, “gross revenues” means the monthly cable service revenues received by Company from subscribers of the cable system within the City; provided, however that such phrase shall not include revenues received from any national advertising carried on the cable system, nor shall such phrase include any taxes on cable service which are imposed directly or indirectly on any subscriber thereof by any government unit or agency, and which are collected by the Company on behalf of such governmental unit or agency.

B. In addition, gross revenues will not include franchise fees or revenues from other services provided by Grantee, such as telephone service.

CHAPTER 114

CABLE TELEVISION REGULATIONS

114.01 Definitions	114.13 Rates and Charges
114.02 Authority Under Franchise	114.14 Payments to the City
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114.04 Modification of FCC Rules	114.16 Activities Prohibited
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114.07 Nonexclusive Franchise	114.19 Failure to Enforce Franchise
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114.10 Rules and Regulations	114.22 Termination of Franchise
114.11 Construction and Maintenance Procedures	114.23 Surrender Right
114.12 City's Rights	114.24 Franchise Territory

114.01 DEFINITIONS. The following words and phrases are defined for use in this chapter.

1. "Access channels" means those channels set aside for specific access purposes.
2. "Cable television service" means delivery by the Grantee to television receivers (and/or any other suitable type of audio-video communications receivers) to all subscribers within the confines of the City, of all signals of over-the air television broadcasts allowed by the FCC to be carried by the cable television system as defined by the FCC; all FM radio stations carried on the system; local origination channels; educational channels; public access channels; leased access channels; pay television channels; other services provided for in this chapter and the Grantee's application; and any other services offered by the Grantee over the cable television system.
3. "Federal Communications Commission" or "FCC" means the federal agency by that name as constituted by the Communications Act of 1934, as amended.
4. "Franchise" means the permission, license or authorization given hereunder to construct, operate and maintain a cable television system in the City.
5. "Grantee" means any person holding a franchise for cable television within the City under the provisions of this chapter. Any other person granted a cable television franchise in the City would also be governed by this chapter.
6. "Gross revenues" means any and all compensation, in whatever form, exchange or otherwise, derived from all cable services within the confines of the City, including advertising, leased access channels and installations, connection and reinstatement charges; provided, however, it does not include any taxes or services furnished by the Grantee imposed directly on any subscriber or user by a local, State or federal governmental unit and collected by the Grantee for such entity.
7. "Subscriber" means any person, firm, company, corporation or association receiving either "basic service" or "additional service" from the Grantee under the schedule of charges filed with and approved by the City.
8. "System" means the lines, fixtures, equipment, attachments and appurtenances thereto which are used in the construction, operation and maintenance of the community antenna television system authorized in this chapter.

114.02 AUTHORITY UNDER FRANCHISE. Any franchise granted by the City shall give the Grantee the right and privilege to construct, erect, operate, modify and maintain in, upon, along, above, over and under the streets, which have been or may hereafter be dedicated and open to public use in the City, and publicly held utility easements in the City, towers, antennas, poles, cables, electronic equipment and other network apparatus necessary for the operation of a cable television system in the City, subject to the requirements of this chapter.

114.03 COMPLIANCE WITH LAWS. The Grantee shall, at all times during the life of the franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulations as the City shall hereafter by resolution or ordinance provide. The construction, operation and maintenance of the system by the Grantee shall be in full compliance with such portions of the National Building and Electric Code and the National Electrical Safety Code as may be applicable and as the same may be amended and revised from time to time, and in full compliance with all other applicable rules and regulations now in effect or hereafter adopted by the Federal Communications Commission, the City or any other agency of the State or the United States, which may hereafter acquire jurisdiction of the operations of the Grantee authorized in this chapter. Further, the Grantee agrees that it will not set up as against the City any claim that the provisions of the franchise or any other applicable ordinances are unreasonable or arbitrary.

114.04 MODIFICATION OF FCC RULES. Any modification or amendment of the FCC rules, including Rule 76.31 thereof, applicable to the franchise and the performance of its terms thereunder shall be incorporated in this chapter as and when they become effective. The Grantee shall promptly advise the Council of the advent of such modifications or amendments and provide the City with copies of same.

114.05 APPLICATION FOR PERMIT. Within 60 days after entry into a franchise agreement with the City, the Grantee shall file with the FCC such request or other application to secure from the FCC any and all necessary permits, licenses, waivers, certificate of compliance or the like in order to comply fully with the terms of the franchise. Prior to submission to the FCC of said request or other application, the Grantee shall submit the same to the City. The Grantee shall thereafter diligently pursue said application or request and do all things necessary and proper to secure same and keep the City apprised from time to time of the progress of said application. Copies of all petitions, applications, communications and reports submitted by the Grantee to the FCC, Securities and Exchange Commission or any other federal or State regulatory commission or agency having jurisdiction regarding any matters affecting cable television shall also be submitted simultaneously to the Council.

114.06 FRANCHISE TERM. The term of any franchise granted under this chapter shall terminate 15 years from the date of grant, subject to renewal for periods of reasonable duration on the same terms and conditions as contained in this chapter, or on such other or additional terms and conditions as may be specified by the Council.

114.07 NONEXCLUSIVE FRANCHISE. Any franchise granted under this chapter shall not be exclusive and shall neither restrict the Council in the exercise of its regulatory power, nor prevent it from granting any other cable television system franchise.

114.08 APPROVAL OF TRANSFER. Any franchise granted hereunder shall be a privilege to be held for the benefit of the public by the Grantee. No transfer of control of the cable system shall take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition, without prior notice to and approval by the Council, which shall not be unreasonably refused. The Council shall be provided specific particulars of the proposed transaction and the Council shall act by resolution having 60 days within which to approve or disapprove a transfer of control. If no action is taken by the City within 60 days, the approval shall be deemed to have been given. The consent or approval of the Council to any assignment, lease, transfer, sublease or mortgage of the Grantee shall not constitute a waiver or release of the rights of the City in and to the streets.

114.09 SALE OF SYSTEM AND CONTINUITY OF SERVICE. It is the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the system, or the City terminates or fails to renew the franchise, the Grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of circumstances. In the event of a change of Grantee, the current Grantee shall cooperate with the City to operate the system for a temporary period in maintaining continuity of service to all subscribers. At the expiration of the term for which the franchise is granted, or upon its termination and cancellation, as provided for therein, the City shall have the right to require the Grantee to remove at its own expense all portions of the cable television system from all streets, sidewalks and public ways of the City and to restore the same to their original condition.

114.10 RULES AND REGULATIONS. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this chapter and to assure uninterrupted service to each and all of its

subscribers. The Grantee shall not create rules and regulations that preclude the subscriber from having an outside antenna system and antenna switch device. The Grantee may publish a list of acceptable switch devices and make such list available to its subscribers. The Grantee is responsible for maintenance of switch devices furnished by it but not if furnished by a source other than the Grantee.

114.11 CONSTRUCTION AND MAINTENANCE PROCEDURES.

1. The Company shall construct its cable system using material of good and durable quality and all work involved in the construction, installation, maintenance and repair of the cable system shall be performed in a safe, thorough and reliable manner. Any municipal property damaged or destroyed shall be promptly repaired or replaced by the Grantee and restored to serviceable condition at Grantee's expense.
2. All structures, lines, and equipment erected by the Grantee within the City shall be located, erected and maintained so as not to endanger the lives of the public, and so as to cause minimal interference with the free use of streets, alleys, bridges, easements and other public ways and places and so as to cause minimal interference with the rights or reasonable convenience of private property owners.
3. In the event that the City annexes further territory as authorized by the law, the Grantee shall extend energized trunk cable to the remaining portions of the City so annexed within a reasonable time acceptable to the Council.
4. The Grantee, wherever reasonably possible, shall bury its cable at least 18 inches deep in public property and at least 12 inches deep in private yards and property. In case of any disturbance of pavement, sidewalk, driveway, ground or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the Council, replace and restore all pavement, sidewalk, driveway, ground, bushes, grass, planting and other similar items or surface of any street or alley disturbed in as good a condition as before said work was commenced. The work conducted by the Grantee shall be timely completed so as to involve the least amount of interruption of use of the area excavated by the City's inhabitants.
5. In the event that at any time during the period of the franchise the City lawfully elects to alter or change the grade of any street, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay or relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
6. The Grantee agrees not to run any cable through culverts, but shall bury said cable underground.
7. The Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main.
8. The Grantee shall keep service interruptions involving the production and distribution systems as short as practical and insofar as possible, schedule such interruptions during periods of minimum use of the system and precede them with notice. Where such interruptions will unduly impede any public way or service, the Grantee shall advise the City of such fact and arrange its schedule to correct such interruptions in accordance with the directions of the City as to date and time such corrections are to be made.
9. The Grantee shall, on the request of any person holding a building moving permit issued by the City temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given no less than 48-hours' advance notice to arrange for such temporary wire changes.

10. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables. All tree trimming is to be done under the direction of the City and at the expense of the Grantee.

11. The Grantee shall provide, upon request and without installation charge or any type of continuing use charge or fee, service to any municipal buildings owned and operated by the City. This shall mean only an energized cable to such building. The cost of any internal wiring shall not be the expense of the Grantee. The Grantee shall provide upon request and without installation charge or any type of continuing use charge, service to any public elementary or secondary school buildings and other nonprofit public educational agencies. This shall mean only an energized cable to such building. The cost of internal wiring shall not be borne by the Grantee.

12. The Grantee shall distribute television signals to subscribers which are disseminated to the general public by licensed conventional over-the-air broadcasting means.

13. The Grantee shall submit to the Clerk maps and plats showing all existing and proposed cable television installations in the City. The Grantee shall submit upon request by the City all relevant business records or reports to the City. Such business records and reports shall be full, complete and accurate. The City shall have the right to inspect the relevant records of the Grantee at the premises of Grantee or at a mutually agreed upon premises during the normal business hours of any working day or any other reasonable time or place provided Grantee is given reasonable notice.

14. The Grantee shall in no way tamper with or remove an existing television antenna without the subscriber's consent.

15. The Grantee shall provide a character generator in its office and will load this with items of local interest. This local channel will operate 24 hours a day and will have several pages of printed announcements. The audio portion will transmit FM music and hourly weather forecasts. The Grantee will work with local organizations and the local school system in the City to keep it loaded with timely announcements; this may include live or taped school events in cooperation with the school.

16. During the term of the franchise and any renewal thereof the Grantee shall maintain a 24-hour, toll-free telephone number and provide the Clerk's office with the name, address and telephone number of a person who will act as the Grantee's agent to receive complaints regarding quality of service, equipment and malfunctions and similar matters. Any complaints from subscribers shall be investigated and acted upon as soon as possible, but at least within four business days of their receipt. The Grantee shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection of the City. The Grantee shall by appropriate means, such as a card or brochure, as subscribers are connected or reconnected to the system, furnish information concerning the procedures for making inquiries and/or complaints, including the name, address and telephone numbers of the employee or employees or agent to whom such inquiries or complaints are to be addressed.

114.12 CITY'S RIGHTS.

1. City Rules. The right is reserved by the City to adopt, in addition to the provisions contained in this chapter, such additional regulations as it shall find necessary in the exercise of its police power; provided, that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights granted in this chapter, and shall not be in conflict with the applicable laws of the State or the United States.

2. Use of System by City. The City shall have the right, during the life of the franchise, of maintaining upon the poles or in the underground conduits of the Grantee within the City limits wire and fixtures necessary for a traffic signal control system and/or a police and fire alarm system. Such wires and fixtures shall be installed and maintained at the sole expense of the City and shall at all times comply with all reasonable rules and regulations of the Grantee so that there may be a minimum danger of contact or conflict between the wires and fixtures of the Grantee and the wires and fixtures used by the City.

3. Emergency or Disaster. In the case of any emergency or disaster, the Grantee shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster period.

4. Liability. The City shall not be liable for any damage occurring to the property of the Grantee caused by employees of the City in the performance of their duties, except for damage caused to the Grantee's facilities by the negligence of the City's employees. The City shall not be liable for the interruption of service by actions of City employees in the performance of their duties, nor shall the City be liable for the failure of the Grantee to be able to perform normal services due to acts of God or other factors beyond the control of the City.

114.13 RATES AND CHARGES. In consideration for services rendered to subscribers, the Grantee shall have the right to charge and collect reasonable and just compensation which shall reflect, among other things, the Grantee's need to attract new capital and provide a reasonable return on invested capital.

114.14 PAYMENTS TO THE CITY. The Grantee shall, during each year of operation under the franchise, pay to the City three percent of all of the Grantee's system's gross revenues. At the close of the Grantee's fiscal year, an annual report should be provided to the Council detailing all revenues received by the Grantee and indicating the source of said revenues. All payments as required by the Grantee to the City should be made quarterly and shall be due 45 days after the closure of the period. To determine time of payments, the City's fiscal year is July 1 through June 30 of each year.

114.15 LIABILITY AND INDEMNIFICATION. The Grantee shall indemnify the City for and hold it harmless from all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to this chapter. The City shall notify the Company's representative within 15 days after the presentation of any claim or demand to the City, either by suit, or otherwise, made against the City on account of any negligence or conduct as aforesaid on the part of the Company. The Company agrees as follows:

1. The Grantee shall carry Worker's Compensation insurance with statutory limits and Employers' Liability insurance with limits of not less than \$100,000.00 which shall cover all operations to be performed by the Company as a result of the franchise.

2. The amounts of insurance to be carried for liability due to property damage shall be \$500,000.00 as to any one person and \$1,000,000.00 as to any one occurrence. The City shall reserve the right during the term of the franchise to increase or decrease the amount of insurance coverage required, provided that notice in writing is made to the Grantee of all increases or decreases in said insurance coverage requirements. The Grantee shall, within 60 days after receipt of that written notice, obtain such insurance coverage as specified in said notice. The City shall be named as an insured or additional insured of these liability policies.

3. Grantee's Worker's Compensation, Comprehensive General Liability and Comprehensive Automobile Liability insurance shall be written by an insurance

company with a capital and/or surplus of not less than \$3,000,000.00 and Grantee agrees to furnish the City with certified copies or certificates of insurance of said policies, which shall provide that insurance shall not be canceled unless 10-days' prior written notice shall first be given to the City.

4. The insurance coverage shall provide a ten-day notice to the Clerk in the event of a material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective. Copies of all policies required hereunder will be furnished to and filed with the Clerk. Further, the insurance provided herein shall not be canceled unless 10-days' prior written notice shall first be given to the City.

5. The Grantee shall promptly, after the granting of the franchise, furnish the City a surety bond in the sum of \$5,000.00 with a surety company qualified to do business in the State. Said performance bond shall be subject to the approval of the City. Such bond shall be conditioned to insure payment of any franchise fee to the City and to insure faithful performance under the terms of the franchise. If after two years of the effective date of the franchise, the Grantee is not declared by the City to be in default under the terms of this chapter, the City waives the foregoing bond requirements, reserving, however, the right to reimpose the requirement upon finding, after a public hearing affording due process, that the Grantee is in default.

114.16 ACTIVITIES PROHIBITED.

1. The Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by the Grantee, nor shall the system interfere with, obstruct or hinder, in any manner, the operation of the various utilities serving the residents of the City.

2. The Grantee may not, as to rates, charges, service facilities, rules or regulations grant preference or advantage to any person, without prior approval of the Council. Nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

114.17 UNLAWFUL ACTS.

1. It is unlawful for any person to make any unauthorized connection, whether physical, electrical, acoustical, inductive or otherwise, with any part of the Grantee's cable system without payment to the Grantee or its lessee.

2. It is unlawful for any person without consent of the owner to willfully tamper with, remove or injure any cable, wires or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over the Grantee's cable system.

3. The Grantee shall maintain equipment and audit systems to monitor for and detect such unlawful acts. It is the Grantee's responsibility to gather evidence of violations of the provisions of this section.

114.18 GRANTEE TO HAVE NO RECOURSE. Except as expressly provided in this chapter, the Grantee shall have no recourse whatsoever against the City for any loss, cost or expense of damage arising out of any of the provisions or requirements of the franchise or because of the enforcement thereof by the City, or for the failure of the City to have the authority to grant all or any part of the franchise. The Grantee expressly acknowledges that upon accepting the franchise it did so relying upon its own investigation and understanding of the power and authority of the City to grant the franchise. The Grantee by acceptance of the franchise acknowledges that it has not been induced to enter into the franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the

City or by any other third person concerning any term or condition of the franchise not expressed in this chapter. The Grantee further acknowledges by the acceptance of the franchise that it has carefully read the terms and conditions and agrees that, in the event of any ambiguity therein or in the event of any other dispute over the meaning thereof, the same shall be construed strictly against the Grantee and in favor of the City.

114.19 FAILURE TO ENFORCE FRANCHISE. The Grantee shall not be excused from complying with any of the terms or conditions of this chapter by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

114.20 PROGRAM CONTENT RESTRICTIONS. In addition to providing basic cable television service consisting of broadcast, locally originated, access and automated signals, the Grantee may offer subscribers optional services on a per-program or per-channel basis. The Grantee shall not however, program or in any way display X-rated motion pictures as defined by the Motion Picture Academy either as part of its basic cable or pay cable services.

114.21 RECORD KEEPING. The Grantee shall keep full, true, accurate and current books of account, which books and records and all other pertinent books, records, maps, plans, financial statements and other like materials, shall be made available for inspection and copying by the City upon reasonable notice and during normal business hours.

114.22 TERMINATION OF FRANCHISE.

1. In addition to any other remedies provided the City herein, the City reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:

A. If the Grantee should default in the performance of any of its obligations under this chapter or the franchise and fails to cure the default within 30 days after receipt of written notice of the default from the City.

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

C. If a receiver, trustee or liquidator of the Grantee is appointed for all or part of its assets under the Bankruptcy Act or any other Creditors' Rights Law, State or federal.

D. If the Grantee should violate any orders or rulings of any regulatory body having jurisdiction over the Grantee unless the Grantee is lawfully contesting the legality or applicability of such order or ruling.

E. If the Grantee fails to receive the necessary FCC or State certification unless such cause is directly attributable to an action or condition imposed by the City.

2. Upon the occurrence of any of the events enumerated in this section, the Council may, after hearing, upon 30 days' written notice to the Grantee citing the reasons alleged to constitute cause for removal, set a reasonable time in which the Grantee must remedy the cause. If, during the 30-day period, the cause shall be cured to the satisfaction of the City, the City may declare the notice to be null and void. If the Grantee fails to remedy the cause within the time specified, the Council may revoke the franchise. In any event, before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the Council.

3. Upon revocation, expiration or abandonment of the franchise to operate the cable television system, the Grantee shall, as directed by the City, remove from the public streets where its properties are located all its facilities.

4. In removing its plant, structures and equipment, the Grantee shall refill all excavations that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the Grantee's removal of its equipment and appliances, without affecting the electric or telephone cables, wires or attachments. All costs associated with said removal and restoration shall be borne by the Grantee. The City shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance and indemnity provided in this chapter shall continue in full force and effect during the period of removal and shall be used by the City to guarantee said removal and restoration. The City may draw upon the performance bond to pay the cost of any removal or restoration not completed by the Grantee.

114.23 SURRENDER RIGHT. The Grantee may surrender the franchise at any time upon filing with the Clerk a written notice of its intention to do so at least three months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges of the Grantee shall terminate. All of the future obligations, duties and liabilities of the Grantee in connection with the franchise shall terminate. Nothing in this section is intended to release the Grantee from obligations and duties in effect prior to surrender, such as outstanding liabilities or liability claims, whether covered by insurance or not, or other obligations outstanding as of date of surrender.

114.24 FRANCHISE TERRITORY. It is the obligation of Grantee to serve all residents of the City within the territorial limits of the City. In the event additional acres are annexed to the City, Grantee, within 12 months, shall extend service to new subscribers, at the normal installation charge and monthly rate for customers of that classification where there is an average of 35 homes per linear mile of new cable construction.

CHAPTER 115

CEMETERY

115.01 Establishment	115.08 Sale of Lots; Perpetual Care
115.02 Cemetery Superintendent/Sexton	115.09 Perpetual Care
115.03 Duties of Superintendent/Sexton	115.10 Records
115.04 General Operation	115.11 Liability
115.05 Burials	115.12 Platting
115.06 Markers, Monuments and Decorations	115.13 Penalties
115.07 Cemetery Charges	

115.01 ESTABLISHMENT. The existing cemetery grounds owned by the City, presently known as Oakwood Cemetery and additions thereto, and the Shellsburg Cemetery and any additions thereto, are hereby established as the municipal cemeteries under the provisions of Chapter 523I of the *Code of Iowa* and which shall be operated under the provisions of Chapter 523I of the *Code of Iowa* and this chapter. Pursuant to Section 523I.502 of the *Code of Iowa*, the City Council hereby states its willingness and intention to act as the trustee for the perpetual maintenance of the cemetery property.

(Code of Iowa, Sec. 523I.501 and Sec. 523I.502)

115.02 CEMETERY SUPERINTENDENT/SEXTON. The Superintendent of Municipal Maintenance is the cemetery superintendent and operates the cemetery in accordance with the rules and regulations therefor and under the direction of the Council.

(Code of Iowa, Sec. 372.13[4])

115.03 DUTIES OF SUPERINTENDENT/SEXTON. The duties of the cemetery superintendent are as follows:

(Code of Iowa, Sec. 372.13[4])

1. Supervise Openings. Supervise the opening of all graves and be present at every interment in the cemetery;
2. Maintenance. Be responsible for the maintenance of the cemetery buildings, grounds and equipment and make reports as needed of the cemetery operation to the Council.

115.04 GENERAL OPERATION. The following rules govern general operations of the cemetery:

1. Persons within the cemetery shall at all times maintain a decorum of speech and action, including avoidance of loud talking or other noise within earshot of graveside ceremonies if not part of the group participating in the ceremonies, and workers shall suspend their work when near such ceremonies.
2. No person shall drive any vehicle faster than 15 miles per hour or in a careless manner upon the cemetery roads.
3. No person shall deface or otherwise damage any marker, headstone, monument, cemetery fence, or other cemetery structure.
4. The hours when the cemetery may be closed shall be set as follows: sundown to sunrise.
5. No person, except an authorized City employee or authorized persons, shall cut, remove, or carry away any flowers, trees, shrubs, plants, or vines from any lot. However, the owner of a lot may remove and carry away any flowers, plants or vines that the owner has placed upon said lot. No person, other than the owner of the lot or City employees or authorized persons, in the performance of their duties, shall

remove, carry away or destroy any vases, flower pots, urns or other objects which have been placed upon any lot.

6. No person may consume or possess alcoholic beverages of any kind on the cemetery grounds.

7. No person shall allow any dog or other animal belonging to said person or under his or her control to run at large in the City cemeteries, or any part thereof.

8. No person, other than law enforcement officers and persons engaged in military funerals or like ceremonies whose functions require the carrying of firearms, may carry any firearm in or upon the City cemetery grounds.

115.05 BURIALS. The following rules apply to burials within the City cemeteries. The Council, by resolution, may adopt further regulations not in conflict herewith with regard to burials. Any such regulations shall be kept with this chapter.

1. No burials are allowed after 3:00 p.m. Grave opening fees for weekend or City employee holiday burials will be increased by \$100.00.

2. Undertakers must furnish the proper information and permits to the City so the grave may be opened.

3. Lot owners are forbidden to resell their lots or burial spaces upon their lots for remuneration in excess of current pricing.

4. No filling, sodding, boxing, mounding, or other work upon single graves or lot graves shall be done except by persons contracted or employed by the City.

5. No interment of any body other than a human being shall be permitted or made in the City cemeteries, nor shall there be more than one body per grave. Any exception to this section must be made by the Council. Interment of mother and infant child and cremains will be permitted in one grave.

6. There shall be no burials without an outside vault. Vaults shall be of cement, steel or fiberglass.

7. Arrangements for interments shall be made by the owner of the burial space, by a member or members of the family acting and authorized by law to act for the owner, or by an authorized undertaker, or other authorized agent of the owner.

8. Notice of interment must be given to the Clerk at least 48 hours in advance of burial. A longer time may be required by resolution-adopted rule for winter burials. The sexton must be present at all interments and have full charge of opening, closing and seeding of all graves.

9. The City shall in no manner be liable for any delay in the interment of a body where a protest to the interment has been made or where the rules and regulations of the cemeteries have not been complied with. The City shall be under no duty to recognize any protest of interment unless it be in writing and filed with the Clerk. The City shall not be responsible for errors resulting from orders or instructions given by telephone and the Clerk or Superintendent may require such orders to be in writing before finalizing any action.

10. The City shall not be liable for the interment permit or for the identity of the body sought to be interred.

11. Disinterment shall be governed by the above Subsections 2, 4, 5, 6, 7, 8, and 9.

12. Cemetery employees shall exercise reasonable care in making a removal, but neither they nor the City shall assume any liability for damages to any casket or burial

vault or urn incurred in making the removal. All arrangements for removals shall be handled by a licensed undertaker.

13. Any veteran, as defined in Section 35.1 of the *Code of Iowa*, who is a landowner or who lives within the City shall be allowed to purchase an interment space and to be interred within the cemetery. In addition, any veteran who purchases an interment space within the cemetery shall be allowed to purchase an interment space for interment of the spouse of the veteran if such a space is available, and the surviving spouse of a veteran interred within the cemetery shall be allowed to purchase an interment space and be interred within the cemetery if such a space is available.

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

115.06 MARKERS, MONUMENTS, AND DECORATIONS. The following rules apply to the erection of markers and monuments within the City cemeteries. The Council, by resolution, may adopt other regulations not in conflict herewith in regard to markers.

1. Monuments and grave markers of every description shall have suitable foundations adequate to prevent tipping or sinking.
2. Foundations shall be of concrete, with a four-inch wash larger than the bottom base or first masonry course above ground of structure to be erected and of a minimum 42 inches depth.
3. Only flat markers will be allowed in the memorial section of the cemeteries, markers are not to exceed 36 inches long and 18 inches wide per space, and these markers are to be ground level.
4. Permission and supervision of setting all markers or monuments must be given by the Superintendent; notice of 72 hours is required.
5. Commercial monuments shall be of bronze or granite of recognized grade, containing no discoloration, flaws or weak spots.
6. Slabs of any kind will not be permitted as coverings for graves. Surface vaults will not be permitted.
7. No fences or enclosures around lots shall be permitted after the final approval and effective date of this chapter.
8. Lot owners shall have the right to place potted plants within a one-foot radius of any monument. The City reserves the right to remove all potted plants, flowers, ornaments or other objects 10 days after Easter, Mother's Day, Father's Day, Memorial Day and Armistice Day. Wreaths and winter decorations are not permitted March 1st through October 15th. Owners of lots shall not change the grade of any lot or interfere in any way with the general plan of landscaping of the cemeteries.
9. Authorized employees or designees of the City may enter upon any lot and remove any potted plant, flowers, shrubs, ornaments or other objects which are deemed detrimental to the cemeteries or adjoining lots for the purpose of maintaining cemetery grounds or making any improvements deemed to be advantageous to the cemetery grounds.
10. Lot owners and others are prohibited from placing on lots or graves any toys, cases, boxes, globes, shells, cans, jugs, bottles, bric-a-brac of every description, ornamental rock, wooden benches, chairs, settees, headboards or wooden articles of any kind. Any such articles found on the cemetery grounds may be removed. Except as provided in Subsection 8, monuments, markers, foundations and other structures existing at the time of the enactment of this chapter may remain even though they may not conform with the requirements of this chapter providing that such structure was lawful at the time of the enactment of this chapter. However, no such nonconforming

structure may be enlarged, extended, reconstructed, substituted or otherwise substantially altered unless the resulting structure is in compliance with the requirements of this chapter.

11. The City is not liable for the upkeep and maintenance of monuments and grave markers.

115.07 CEMETERY CHARGES. The Council may set from time to time, by resolution, charges for burials or other services.

115.08 SALE OF LOTS; PERPETUAL CARE.

1. The sale or transfer of interment rights in the cemetery shall be evidenced by a certificate of interment rights or other instrument evidencing the conveyance of exclusive rights of interment upon payment in full of the purchase price. The agreement for interment rights shall disclose all information required by Chapter 523I of the *Code of Iowa*. Said agreement to be signed by the Mayor and countersigned by the Clerk, and specifying that said agreement vests in the purchaser, the heirs, or the assigns of said purchaser, a right in fee simple to such lots, lot or part thereof for the sole purpose of sepulcher alone, for human bodies only, subject to the rules and regulations and ordinances governing the cemeteries as they exist at the time of interment, and that the City reserves the control of said lots, lot, or part of lot in the cemeteries in order to properly maintain the cemeteries. The payment of all fees and charges shall be made at the office of the Clerk where receipts will be issued for all amounts paid. Said fees and charges shall be based upon the charges as established by the Council.

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

2. Any unoccupied lot will be presumed abandoned when under the conditions set out in State law for reversions, and the City may sell such reverted lot. The proceeds from which shall be deposited in the Perpetual Care Fund to provide for the care of any occupied area of the reverted property or if there be no occupied portion, the proceeds from the sale portion may be invested, and the interest thereon be used wherever deemed useful for the care of the cemeteries.

3. The Council shall, from time to time as conditions require, set by resolution prices for the conveyance of a deed for lots, based on the size and location of each. The price shall include a portion for perpetual care charge as set by said resolution. The proceeds from the sale portion shall be deposited in the General Fund. The prices may be increased and the proportion for perpetual care changed when the Council finds that the needs of the cemeteries require it.

4. The City reserves and shall have the right to correct any errors that may be made in making either interments, disinterment, or removals, or in the description, transfer or conveyance and substituting and conveying in lieu thereof other interment property of equal value and similar location as far as possible, or as may be selected by the City or in the sole discretion of the City, by refunding the amount of money paid on account of said purchase. In the event such error shall involve the interment of the remains of any person in such property, the City reserves the right to remove and transfer such remains to such other property of equal value and location as far as reasonably possible.

115.09 PERPETUAL CARE. The Council, by resolution, shall accept, receive and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of interment space sales or permanent charges made against interment spaces which has been set aside in a perpetual care fund. The assets of the perpetual care fund shall be invested in accordance with State law. The Council, by resolution, shall provide for the payment of interest annually to the appropriate fund to be used in caring for or maintaining the

individual property of the donor in the cemetery, or interment spaces which have been sold with provisions for perpetual care, all in accordance with the terms of the donation or bequest, or the terms of the sale or purchase of an interment space and Chapter 523I of the *Code of Iowa*.

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

115.10 RECORDS.

1. The City shall keep a lot record and each lot record shall consist of an individual page or card for each lot, arranged by blocks according to lot number. Each page or card shall contain a record of the name and complete address, as nearly as possible, of each lot owner, the lot and block number, the purchase receipt number, date of purchase and space for recording transfers. A diagram of the lot shall be drawn on the page, numbering and showing the location of each grave. A space is to be provided to record the name and grave number of each person buried in the lot.

2. Interment register shall be maintained by the City showing a complete record of interments. This shall be in book form or card file form and shall provide space for recording each burial, the date of interment, the deceased's full name, place of death, name of the funeral director, lot and block where buried, size of grave and location of grave in the lot measured in terms of feet from designated boundaries. (Example: "one foot from the north lot line, three feet from the west lot line.")

3. The City shall keep a burial record which shall contain a card for each body buried, arranged alphabetically by last name of deceased, giving name, date of death and/or burial, and lot and block number. This will supplement the interment register and provide a starting point when only the name of the deceased is known.

115.11 LIABILITY. The City shall take reasonable precautions to protect plot owners and the property rights of plot owners within the cemeteries from loss or damage, but it expressly shall not be liable for loss or damage beyond its control, and particularly from damage caused by the elements, an act of God, common enemy, thieves, vandals, strikers, malicious mischief makers, explosions, unavoidable disorder, whether the damage be direct or consequential.

115.12 PLATTING.

1. It is hereby made the duty of the Council to provide for the surveying, platting, grading, fencing, ornamentation and improvement of all the cemetery grounds and the avenues leading thereto, from time to time, as in the opinion of the Council may be necessary and advisable.

2. The Clerk shall cause to be recorded in the office of the County Recorder new or corrected plats showing new thoroughfares and places, if any have been laid out, each year on or before July 1 for the previous year.

3. Before any new block of City-owned cemetery is opened for sale of lots, the Council shall cause it to be platted and recorded in the office of the County Recorder. One or more copies of the plat map shall be deposited with the Clerk. The plat shall be so designed as to provide direct access to each lot from either a road or walkway or foot path.

115.13 PENALTIES. Violation of provisions of this chapter or failure to comply with any of its requirements shall constitute a simple misdemeanor. A violation of this chapter shall also be considered a municipal infraction as provided under Chapter 3 of this Code of Ordinances unless defined as a felony or misdemeanor under State law.