

**CHAPTER 110**  
**NATURAL GAS FRANCHISE**

<b>110.01 Franchise Granted</b>	<b>110.02 Regulatory Power of City</b>
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**110.01 FRANCHISE GRANTED.** Mid-American Energy Company, a corporation, its successors or assigns are hereby granted and vested with the right, franchise and privilege for a period of twenty-five (25) years from and after the adoption and approval of the ordinance codified by this chapter†, as provided by law, to acquire, construct, operate and maintain in the City the necessary facilities for the production, distribution, transmission and sale of gas for public and private use and to construct and maintain along, upon, across, and under the streets, highways, avenues, alleys, bridges and public places the necessary fixtures and equipment for such purposes.

**110.02 REGULATORY POWER OF CITY.** The franchise shall not be exclusive and shall not restrict in any manner the right of the Council or any other governing body of the City in the exercise of any regulatory power which it may now have or hereafter be authorized or permitted by the laws of the State.

**CHAPTER 111**  
**ELECTRIC FRANCHISE**

<b>111.01 Franchise Granted</b>	<b>111.02 Regulatory Power of City</b>
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**111.01 FRANCHISE GRANTED.** Mid-American Energy Company, a corporation, its successors or assigns are hereby granted and vested with the right, franchise and privilege for a period of nineteen (19) years from and after the adoption and approval of the ordinance codified by this chapter†, as provided by law, to acquire, construct, operate and maintain in the City the necessary facilities for the production, distribution, transmission and sale of electric energy for public and private use and to construct and maintain along, upon, across, and under the streets, highways, avenues, alleys, bridges and public places the necessary fixtures and equipment for such purposes.

*(Ordinance No. 09-215)*

**111.02 REGULATORY POWER OF CITY.** The franchise shall not be exclusive and shall not restrict in any manner the right of the City Council or any other governing body of the City in the exercise of any regulatory power which it may now have or hereafter be authorized or permitted by the laws of the State.

## CHAPTER 112

# CABLE TELEVISION FRANCHISE AND REGULATIONS

112.01 Terms	112.14 Annual Report
112.02 Term of Franchise	112.15 Enforcement of Franchise
112.03 Effective Date of Franchise	112.16 Termination of Franchise
112.04 Compliance to Cable Franchise Regulatory Ordinance	112.17 Impossibility of Performance
112.05 System Design	112.18 Indemnification
112.06 System Improvements	112.19 Insurance
112.07 Franchise Fee	112.20 Faithful Performance Bond
112.08 Free Service to Public Buildings	112.21 Severability
112.09 Service Area	112.22 Reservation of Rights
112.10 Franchise Nonexclusive	112.23 Adoption
112.11 Other Authorizations	112.24 Conflicting Ordinances Appeal
112.12 Police Power	112.25 Notices
112.13 Transfer of Franchise	

### FRANCHISE AGREEMENT

This Franchise Agreement (this 'Franchise') is between the City of Bondurant, hereinafter referred to as "Franchising Authority" or "City" or "Grantor" and MCC Iowa LLC, hereinafter referred to as "Grantee."

The Franchising Authority, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction and operation of a Cable System on the terms set forth herein.

**112.01 TERMS.** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense shall include the future tense and words in the plural number shall include the singular number, and words in the singular number shall include the plural number:

- A. "Basic Cable" is the lowest priced tier of service that includes the retransmission of local broadcast television signals and any public, educational and governmental access channels.
- B. "Cable Act" collectively means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended
- C. "Cable Operator" shall be defined as the same definition used in the Cable Act.

- D. "Cable Service" shall be defined as the same definition used in the Cable Act.
- E. "Cable System" shall be defined as the same definition used in the Cable Act.
- F. "City" means the City of Bondurant and the geographical area within the corporate boundaries of the City.
- G. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- H. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System.
- I. "Franchising Authority" or "Grantor" means the City Council of the City of Bondurant or the lawful successor, transferee, or assignee thereof.
- J. "Grantee" means MCC Iowa LLC or the lawful successor, transferee, or assignee thereof.
- K. "Gross Revenues" mean any and all revenue received by the Grantee from the operation of the Cable System to provide cable service to Subscribers in the Service Area, provided, however, that such phrase shall not include any fees or franchise fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.
- L. "Headend" shall mean the land, electronic processing equipment, antennas, tower, building, and other appurtenances normally associated with and located at the starting point of a cable system.
- M. "House drop" or "drop" means a cable that connects each building or home to the nearest feeder line of the cable network.
- N. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve subscribers. In all cases, "Normal Business Hours", as a minimum, shall mean those hours when the Bondurant City Hall is open to serve citizens.
- O. "Normal Operating Conditions" shall mean those service conditions, which are within the control of the Grantee. Those conditions, which are not within the control of the Grantee include, but are not limited to, natural disasters, strikes, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions, which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

- P. "Outlet" shall mean the point of connection of the cable or wire to a television.
- Q. "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.
- R. "Private Property" means all property, real, personal or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.
- S. "Property of the Grantee" means all property, real, personal or mixed, owned or used by the Grantee, however arising from or related to or connected with the franchise.
- T. "Public access channel" means channel capacity designated for non-commercial public access use.
- U. "Public Property" means all property, real, personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.
- V. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way lane, public way, drive circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the system. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.
- W. "Service Area" means the present municipal boundaries of the Franchising Authority.
- X. "Service Interruption" means the loss of video or audio on one or more channels.
- Y. "Service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.
- Z. "Shall" and "will" are mandatory; "may" is permissive.
- AA. "Subscriber" means a person or user of the system who lawfully receives communications and other services therefrom.

**112.02 TERM OF FRANCHISE.** MCC Iowa LLC, its successors and assignees are hereby granted a renewal of their non-exclusive right, franchise and authority for a period of seven (7) years to erect, maintain, and operate a Cable System in Bondurant, and to sell and supply individuals, firms and corporations within the corporate limits of the City of Bondurant, Iowa, cable service and other services in, along, among, upon, across, above, over, under, or in any manner connected with public ways within the service areas and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across, or along any public way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system, subject to the conditions and restrictions provided and subject to the Cable Franchise Regulatory Ordinance, passed and adopted on July 16, 2007 and all applicable law of the State of Iowa and United States of America.

**112.03 EFFECTIVE DATE OF FRANCHISE.** This Franchise and all rights there under shall become effective after final passage and publication and subject to Grantee's acceptance thereof. Within sixty (60) days after final passage and adoption of this franchise renewal, the Grantee shall file with the Clerk an acceptance in writing of this franchise renewal and pay all publication costs as required under the laws of the State of Iowa.

**112.04 COMPLIANCE TO CABLE FRANCHISE REGULATORY ORDINANCE.** The Grantee shall comply with all of the conditions and provisions of the Cable Franchise Regulatory Ordinance passed and adopted on July 16, 2007, unless an exemption or modification is so specified in this Franchise Agreement. In the event of a conflict of ambiguity between the Franchise Agreement and the Regulatory Ordinance, the terms of the Franchise Agreement shall control.

The Grantee shall be exempted from compliance with the following sections of the Cable Franchise Regulatory Ordinance:

- 2.5 Application for Franchise
- 4.5 Access Equipment and Facility Fee
- 8.8 Security Fund

No future transferees or assigns of this franchise, other than entities controlled by Mediacom Communications Corporation, including MCC Iowa LLC, shall be so exempt.

**112.05 SYSTEM DESIGN.**

- A. As of the effective date of this franchise, the Grantee will make available a minimum of seventy-seven, (77) channels of programming.

B. The system will be designed so as to be two-way capable, and will be constructed in a manner that will meet or exceed FCC specifications.

C. The Grantee shall provide for the installation and operation of an emergency alert override system pursuant to FCC regulations. The emergency alert shall have an emergency power service and shall be tested on a monthly basis.

D. The Grantee shall provide an “upstream capability” to allow live broadcast on the education and government channel from City Hall or the Public Library no later than one year following written request to provide the channel from the Grantor to the Grantee. If the Grantee makes either City Hall or the Public Library capable of originating access programming, the Grantor may request the alternate site provided that all costs for equipment and facilities to activate the site including modulators and other electronics shall be the responsibility of the Grantor.

E. The Grantee will provide one channel to be used for educational and governmental access if requested by the Grantor as required by Section D above. The Grantee will activate this channel from the Bondurant City Hall and purchase all of the necessary equipment and modulators to activate the return.

**112.06 SYSTEM IMPROVEMENTS.** The Cable System shall be operated in accordance with performance standards which meet or exceed FCC regulations. The Cable System shall include or provide:

A. Pay-per-view or similar on-demand capabilities.

B. Conversion. Subscribers shall not be charged by Grantee for conversion from the existing Cable System to new Cable System. Grantee will notify subscribers and the public in general of any cutover, using at least two of the following: bill stuffers; direct mail; news releases; radio announcements; CSR training; and community bulletin board announcements.

C. Drop Maintenance. Grantee shall maintain and replace Subscriber drop during its normal operation of the Cable System that do not meet the standards of the National Electric Code. The cable system shall be designed to allow each subscriber drop to provide service to three (3) television outlets.

D. Temporary Drops. Temporary drops shall be buried within two months of installation, except during the winter months, which shall be defined as November 15th to April 1st. In the event that the Grantee fails to bury any cable drops, within the two-month period, the Grantee shall provide basic and expanded basic cable service without charge to the affected cable subscriber from the last date that the drop was to have been buried to that actual date that it is buried.

E. Channel Card. The Grantee shall distribute to all subscribers via direct mail or bill stuffers no less than annually, an accurate and up-to-date channel card, listing the cable channels and services available of over the Cable System. A revised channel card shall be distributed via a newspaper of record within thirty (30) days after a change or an addition in channels or services offered affecting two (2) or fewer analog channels. Whenever changes in channels or services have affected three or more analog channels since the last channel card distributed via direct mail or bill stuffers, then a new channel card shall be distributed to every subscriber within thirty (30) days via direct mail or bill stuffers.

#### **112.07 FRANCHISE FEE.**

A. Franchise Fee Payment. In consideration for the use of the streets and public ways of the City for the construction, operation, maintenance, and reconstruction of a Cable System within the City, the Grantee shall pay to the Grantor a franchise fee of five percent (5%) on the Grantee's Gross Revenues as defined in Section 1 of this Agreement.

B. Quarterly Payments. Payment due to the Grantor under the Franchise Agreement shall be made quarterly at the City Clerk's office not later than forty-five(45) days following March 31, June 30, September 30 and December 31 of each year. Any fee not paid when due shall bear interest at a rate of one and one-half percent (1 1/2%) per month from the date due. Each payment shall be accompanied with a detailed report signed by an officer of the Grantee, as shown in Exhibit C, showing the basis for the computation, and shall include but not be limited to, a specific breakdown of the following items: basic tier service charges, expanded basic service charges, installation charges, reconnection fees, premium channel revenues, revenue from other sources such as contracted or subleased cable services, pay per view, miscellaneous revenue, and such other relevant facts, as may be required by the Grantor, necessary to determine the accuracy of the franchise payment as specified in of this Ordinance. The acceptance of any payment shall not be construed as an accord that the amount paid is, in fact, the correct amount; nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for additional sums payable by the Grantee. All amounts paid shall be subject to audit and re-computation by the Grantor. The Grantee shall permit the City, upon request with reasonable notice, to review at Grantee's local office its gross revenue records as may be necessary to monitor compliance with this Ordinance.

C. Franchise Fee Audit. A Grantee will fully cooperate with a franchise fee audit performed by a professional firm that is chosen by the Grantor. The costs associated with the audit will be paid for by the Grantor, except that the Grantee shall pay for the costs if the audit shows an underpayment of franchise fees in excess of five percent (5%) or more for a reporting period.

D. Franchise Fee Increases. The Grantor may request an increase in franchise fees at any time during the term of the franchise, equal to the maximum percent allowed by federal law. However, such request shall be made in writing and the Grantee will not be liable for said

increase until proper notice, as defined by federal law, is given to its subscriber. Prior to making a final decision regarding an increase in franchise fees, the Grantor shall conduct a public hearing and shall grant an opportunity to the Grantee to discuss the proposed increase in franchise fee.

E. **Limitation on Franchise Fee Actions.** The period of limitation for recovery of any franchise fee payable hereunder shall be five years from the date on which payment by a Grantee is due.

**112.08 FREE SERVICE TO PUBLIC BUILDINGS – CABLE TELEVISION.** The Grantee shall upon request, provide without charge, one outlet of basic service and expanded basic cable service to all current and future City-owned Buildings and facilities and Bondurant-Farrar school district buildings located in the Service Area if located within 250 feet of the existing cable plant.

**112.09 SERVICE AREA.** Service to Potential Subscribers. Grantee shall offer cable-television residential service to all areas of the City, which are in the corporate limits of the City of Bondurant on the effective date of this Franchise subject to the following density requirements:

A. Required Extensions of the Cable System. Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least 8 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

B. Subscriber Charges for Extensions of the Cable System. No Subscriber shall be reused service arbitrarily. However, if an area does not meet the density requirements of subsection 9A above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 8. Subscribers who request service hereunder shall bear the remaining cost

to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

**112.10 FRANCHISE NONEXCLUSIVE.** Consistent with the requirements of the Ordinance, this Franchise shall not be construed as any limitation upon the right of the Grantor to grant to other persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other streets, alleys, or other public ways or public places. The Grantor specifically reserves the right to grant at any time during the term of this Franchise or renewal thereof, if any, such additional Franchises for a Cable System as it deems appropriate. The Grantor shall not permit any person to provide services similar to those provided by the Grantee in the Service Area without first having secured a non-exclusive franchise from the Grantor. The Grantor agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Grantor to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of this Franchise, the Grantor, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal, are not more burdensome and/or less favorable than those contained in any such additional franchise(s) or authorizations.

**112.11 OTHER AUTHORIZATIONS.** If at any time during the term of this franchise, federal, state or local law permits any provider of video programming to provide services such as those provided pursuant to this franchise either without obtaining a franchise from the Franchising Authority or on terms or conditions more favorable than those applicable to the Grantee, then this franchise shall at the sole discretion of the Grantee: (1) cease to be in effect; or (2) be deemed to expire at a date prior to the original expiration date selected by the Franchisee (Grantee); or (3) will be automatically reformed to grant to the Grantee the more favorable terms, benefits and conditions available to the other provider.

**112.12 POLICE POWERS.** In accepting this Franchise, Grantee acknowledges that its rights hereunder are subject to the police powers of the Grantor to adopt and enforce general ordinances necessary for the safety and welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted by the Grantor pursuant to such powers to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise.

**112.13 TRANSFER OF FRANCHISE.** The Grantee's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity, controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority. Such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise in order to secure indebtedness. Within sixty (60) days of receiving the request for transfer, the Franchising Authority shall in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee.

**112.14 ANNUAL REPORT.** No later than ninety (90) days after the close of a Grantee's fiscal year, and upon written request, the Grantee shall submit a detailed written informative report to the City, including the following information:

A. A summary of the previous year's activities in development of the Cable System, including, but not limited to, services begun or dropped and newly served geographic areas within the City limits.

B. A summary of complaints, identifying the number and specific nature of complaints and their disposition.

C. A list of key management for the Bondurant franchise along with their addresses and job titles.

D. The annual report of the parent company, if a public corporation. Such report shall be construed to mean the report of the previous year.

E. The total estimated annual value of the potential revenue from cable services provided in the Service Area without charge or provided under a barter arrangement, along with the total estimated number of persons who are provided cable services in the Service Area without charge or under a barter agreement.

**112.15 ENFORCEMENT OF FRANCHISE.**

A. Notice of Violation. In the event that the Grantor believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

B. Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 15A (a) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to

remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

C. **Public Hearing.** In the event that the Grantee fails to respond to the notice described in Section 15A pursuant to the procedures set forth in Section 15B, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to 15B above, the Franchising Authority shall schedule a public hearing to investigate the default. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting no less than five business days in advance and provide the Grantee with an opportunity to be heard.

D. **Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
2. Commence an action at law for monetary damages or seek other equitable relief; or
3. In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the procedures outlined in this section.

The Franchising Authority shall give written notice to the Grantee of its intent to revoke the franchise on the basis of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response satisfactory from the Grantee, it may then seek termination of the Franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

At the designated meeting, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority “de novo” and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action, which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

## **112.16 TERMINATION OF FRANCHISE.**

A. Grounds for Revocation. The Grantor reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:

\* If the Grantee should default in the performance of any of its material obligations under this Ordinance or the franchise and fails to cure the default within sixty (60) days after receipt of written notice of the default from the Grantor, or such longer time as specified by the Grantor.

\* If a petition is filed by or against the Grantee under the Bankruptcy Act or any other insolvency or creditors' rights law, state or federal, and the Grantee shall fail to have it dismissed.

\* If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of the Grantee's assets.

\* If the Grantee makes an assignment for the benefit of creditors.

\* If the Grantee violates any order or ruling of any State or Federal regulatory body having jurisdiction over the Grantee, unless the Grantee or any party similarly affected is lawfully contesting the legality or applicability of such order or ruling and has received a stay from a Court of appropriate jurisdiction.

\* If the Grantee evades any of the provisions of this Ordinance or the Franchise Agreement.

\* If the Grantee practices any intentional fraud or deceit upon the Grantor or cable subscribers.

\* If the Grantee materially misrepresents facts in the application for a franchise.

\* If the Grantee ceases to provide services over the cable system for seven (7) consecutive days for any reason within the control of the Grantee.

B. Restoration of Property. In removing its plant, structures and equipment, the Grantee shall refill at its own expense any excavation 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. The Grantor shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance indemnity provided in Section 18 and the performance bond in Section 19 shall continue in full force and effect during the period of removal.

C. Reimbursement of Costs Pursuant to Subsections A and B of this Section. In the event of a failure by the Grantee to complete any work as required above or any work required by law or ordinance within the time established and to the reasonable satisfaction of the Grantor, after due notice and opportunity to cure, the City may cause such work to be done and the Grantee shall reimburse the Grantor the costs thereof within thirty (30) days after receipt of an itemized list of such costs or the Grantor may recover such costs as provided from the Performance Bond.

**112.17 IMPOSSIBILITY OF PERFORMANCE.** Grantee shall not be held in default or noncompliance with the provisions of the franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by the following circumstances if reasonably beyond its control:

- A. Necessary utility rearrangements, pole change-outs or obtainment of easement rights
- B. Governmental or regulatory restrictions
- C. Lockouts
- D. War
- E. National emergencies
- F. Fire
- G. Acts of God
- H. Strikes

**112.18 INDEMNIFICATION.** The Grantee shall defend, indemnify, protect, and hold harmless the Grantor from and against any and all liability, losses, and damage to property or bodily injury or death to any person, including payments made under workmen's compensation laws, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance, or operation of Grantee's Cable System and caused by any act or failure to act on the part of the Grantee, its agents, officers, servants, or employees. The Grantor shall give the Grantee written notice of its obligation to indemnify within 30 days following service of a petition or other similar pleading. If the Grantor determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Grantor.

**112.19 INSURANCE.** The Grantee shall provide a certificate of insurance designating the Grantor as an "additional insured." The Grantee shall maintain and provide to the Grantor proof of public liability insurance for not less than the following amounts:

- \$2,000,000 – Any 1 Occurrence, Bodily Injury or Property Damage
- \$2,000,000 – Products/ Completed Operations Annual Aggregate Liability
- \$2,000,000 – General Aggregate

**112.20 FAITHFUL PERFORMANCE BOND.** Upon acceptance of the Franchise, Grantee shall submit and maintain throughout the term of the Franchise, a faithful performance bond in the amount of ten thousand dollars (\$10,000.00). The bond shall insure compliance with all applicable laws, regulations, ordinances and provisions of the Franchise and the Cable Franchise Regulatory Ordinance, shall provide for recoverable loss or damages, compensation, indemnification, reasonable attorney fees, cost of removal or abandonment of Grantee's property. The Grantor may draw funds from the performance bond upon the notice and opportunity to cure provisions of the Enforcement and Termination Section of this Agreement.

**112.21 SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise Agreement shall be held invalid or unenforceable or unconstitutional, the remaining provisions shall remain in full force and effect.

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

**112.23 ADOPTION.** This franchise renewal agreement was awarded by the City Council on July 16, 2007 and was published as required on July 25, 2007. Therefore, this franchise renewal agreement shall expire on July 25, 2014.

**112.24 CONFLICTING ORDINANCES REPEALED.** All ordinances or part of ordinances in conflict herewith, including, but not limited to, ordinances, are hereby repealed to the extent of any such conflict.

**112.25 NOTICES.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Grantor or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid.

The notices or responses to the Grantor shall be addressed as follows:

City Clerk  
City of Bondurant  
P.O. Box 37  
Bondurant, Iowa 50035-0037

The notices or responses to the Grantee shall be addressed as follows:

MCC Iowa LLC  
Attn: Government Relations Manager  
2205 Ingersoll Avenue  
Des Moines, IA 50312-5289

With a copy to:

MCC Iowa LLC  
Legal Department  
100 Crystal Run Road  
Middletown, NY 10941

The Grantor and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

*(Ordinance No. 07-215)*

## CHAPTER 115

### CEMETERY

115.01 Definition	115.06 Perpetual Care Registry
115.02 Trusteeship	115.07 Cemetery Lots Without Perpetual Care
115.03 Establishment of Trust Fund	115.08 Annual Care
115.04 Sale of Interment Rights	115.09 Vandalism in Cemetery
115.05 Records of Interment Rights and Interment	

**115.01 DEFINITION.** The term “cemetery” means the Bondurant Municipal Cemetery, which is a municipal cemetery under the provisions of Iowa Code Chapter 5231 and which shall be operated under the provisions of Chapter 5231 of the Code of Iowa and this chapter.

**115.02 TRUSTEESHIP.** Pursuant to section 5231.502 of the Code of Iowa, the City of Bondurant hereby states its willingness and intention to act as the trustee for the perpetual maintenance of interment spaces in Bondurant Municipal Cemetery.

**115.03 ESTABLISHMENT OF TRUST FUND.** A perpetual trust is hereby established for the Cemetery in accordance with Iowa Code Chapter 5231, the Iowa Cemetery Act. A restricted fund is created, to be known and designate as the "perpetual care cemetery fund," which shall be funded by the deposit of an amount equal to or greater than twenty percent of the gross selling price, or \$50.00, whichever amount is greater, for each sale of an interment space within the cemetery. The fund shall be administered in accordance with the purposes and provisions of Iowa Code Chapter 5231.

The perpetual care cemetery fund shall be maintained separate from all operating funds of the cemetery and the principal of the fund shall not be reduced voluntarily except as specifically permitted by the Iowa Cemetery Act and applicable administrative regulations.

**115.04 SALE OF INTERMENT RIGHTS.** The sale or transfer of interment rights in the cemetery shall be evidenced by a certificate of interment rights agreement or other instrument, signed by the City Administrator, evidencing the conveyance of exclusive rights of interment agreement upon payment in full of the purchase price. The agreement for interment rights shall disclose all information required by the Iowa Cemetery Act, including the amount or percentage of money to be placed in the perpetual care cemetery fund.

The surviving spouse of the lot owner shall have the first right of interment.

The permanent placement of toys, boxes, ornaments, chairs, settees and similar articles may ONLY be located on the foundation of the monument. Such items must be permanently attached to the foundation or placed in a permanent container on the foundation. The City is not responsible for these items and if items are placed in areas other than on the foundation of the monument, the City reserves the right to remove the items.

Opening and closing of the interment space is included in the purchase of the interment rights.

Only one item is permitted per cemetery plot. For example, one monument or one bench or one cement slab with two small monuments is permitted per plot. Monuments shall not exceed the width of the plot.

The City does not repurchase interment rights in cemetery plots from those who have previously purchased the rights.

Purchaser has the right to sell and convey the interment rights, but any transfer of ownership by will or otherwise will be recognized by the Cemetery **only** after it is recorded at City Hall and a new certificate of interment rights is issued to the new owner.

*(Ordinance No. 18-206)*

**115.05 RECORDS OF INTERMENT RIGHTS AND INTERMENT.** It is the duty of the City Administrator to make and complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfers of ownership. The records shall include all of the following:

1. For sales or transfers of interment rights made on or after July 01, 2005, a cemetery shall keep complete records identifying the owners of all interment rights sold by the cemetery and historical information regarding any transfer of ownership. The records shall include all of the following:
  - A. The name and last known address of each owner or previous owner of interment rights.
  - B. The date of each purchase or transfer of interment rights.
  - C. A unique numeric or alphanumeric identifier that identifies the location of each interment space sold by the cemetery.
2. For interments made on or after July 01, 2005, the cemetery shall keep a record of each interment in a cemetery. The records shall include all of the following:
  - A. The date the remains are interred.
  - B. The name, date of birth and date of death of the decedent interred, if those facts can be conveniently obtained.
  - C. The unique numeric or alphanumeric identifier that identifies the location of each interment space where the remains are interred.

**115.06 PERPETUAL CARE REGISTRY.** The cemetery shall maintain a registry of individuals who have purchased interment rights in the cemetery subject to the care fund requirements of the Iowa Cemetery Act, including the amounts deposited in the perpetual care cemetery fund.

**115.07 CEMETERY LOTS WITHOUT PERPETUAL CARE.** Owners of lots or other interested persons may secure perpetual care on lots or parts of lots in the older portions of the Cemetery that are not subject to receiving perpetual care by making payment to the city for perpetual care charges at the rates specified in the rules and regulations of the Cemetery.

**115.08 ANNUAL CARE.** An annual care charge as specified in the rules and regulations for the Cemetery may be adopted by the City, and may be amended from time to time, by resolution by the Council and may cover such things as the use, care, control, management, restrictions, and protection of the cemetery as necessary for the proper conduct of the business of the cemetery. The rules shall specify the cemetery's obligations in the event that interment spaces, memorials, or memorializations are damaged or defaced by acts of vandalism.

**115.09 VANDALISM IN CEMETERY.** Any person who destroys, injures or defaces any grave, vault, tombstone, memorial, monument, building, fence, tree, shrub, flower, or anything located in the Cemetery or belonging to any cemetery under the jurisdiction of the City shall be liable for any and all damage, in addition to being subject to any other penalty imposed under Iowa law or civil action.

*(Ordinance No. 05-216)*

*(Ordinance No. 16-202)*

**115.10 CEMETERY REGULATIONS.** The following regulations shall govern access and conduct to and in the cemetery.

1. Decorations are allowed 10 days before and removed two weeks following Memorial Day, Fourth of July and Labor Day.
2. Posted speed limit is 10 mph.
3. Parking on roadway only.
4. Pet must be on a leash and cleaning up after pets is mandatory.
5. Shepherd hooks should be placed as close to the stone as possible.
6. No trees, shrubs, or flowers shall be planted on any plot. The city reserves the right to remove unauthorized plantings, including the removal of existing plantings on individual plots. The city is under no obligation to replace the planting and is under no obligation to compensate the owner and/or heirs of the plot for the plantings.
7. Hedges or other plot enclosures are not allowed. No hedges, fences or enclosures of any kind will be permitted on or around plots.
8. The use of wire, glass or other shatterable materials is strictly forbidden. Glass containers for flowers or wire used for anchoring or for stabilizing decorative materials are extremely dangerous to cemetery workers using modern mowing and other equipment.
9. Arrangements for interment shall be made with City Hall at least two days prior to the interment.
10. The spreading of cremated remains above ground is strictly prohibited.

11. The carrying or discharging of firearms by any person on the grounds of the cemetery is prohibited, except military funerals.
12. The City accepts no responsibility or liability for any item placed at the site that is removed, missing or stolen.
13. Loitering and/or solicitation on cemetery property is prohibited at all times.
14. Littering in the Cemetery is prohibited.
15. It is prohibited to remove, damage, or destroy any tree, shrub, or plant in a cemetery.
16. Smoking is not permitted in the cemetery.
17. It is prohibited to dig in a cemetery or desecrate a gravesite.
18. Removal of any flower from a gravesite other than those belonging to your family or loved one is strictly prohibited.

**115.11 CEMETERY HOURS.** The Bondurant Cemetery is open from dawn until dusk, with dusk being defined as 30 minutes after the sun goes down.

**115.12 PLOT PRICES.** The purchase price for interment rights in a plot at the Bondurant Perpetual Cemetery (two spaces per plot) is \$900 if purchased by and for a resident of the City of Bondurant, Iowa, Polk County and \$1,800 if purchased by and for a non-resident of the City of Bondurant, Iowa, Polk County. Effective January 1, 2020, the purchase price for interment rights for a plot at the Bondurant Perpetual Cemetery (two spaces per plot) is \$1,400 if purchased by and for a resident of the City of Bondurant, Iowa, Polk County and \$2,800 if purchased by and for a non-resident of the City of Bondurant, Iowa, Polk County.

*(Ordinance No. 18-206)*