

**TITLE 8**  
**FRANCHISES**

Subject	Chapter
Cable TV Franchise . . . . .	1
Natural Gas Franchise . . . . .	2



CHAPTER 1  
**CABLE TV FRANCHISE<sup>1</sup>**

SECTION:

- 8-1- 1: Title
- 8-1- 2: Terms and Definitions
- 8-1- 3: Grant of Authority
- 8-1- 4: Liability and Indemnification
- 8-1- 5: Operation and Maintenance
- 8-1- 6: Condition of Occupancy
- 8-1- 7: Assignment, Transfer of Franchise
- 8-1- 8: Annual Stipend
- 8-1- 9: Subscriber Rates and Charges
- 8-1-10: Public Access Channel
- 8-1-11: Permits
- 8-1-12: Service Extensions
- 8-1-13: Construction and Development
- 8-1-14: Modifications of Other Agencies
- 8-1-15: Anti-Discrimination
- 8-1-16: Limitation of Activities
- 8-1-17: Individual Antennas
- 8-1-18: Publication Costs
- 8-1-19: CATV Ordinances and Legislation

8-1-1: **TITLE:** This Chapter shall be known as the *SIBLEY CABLE TELEVISION ORDINANCE*. (1976 Code §7-3.0201)

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1. There are two cable TV franchises in the City, as follows:

- Douglas Communications North Limited Partnership, transferred from Metro Cable Corporation, as approved 3-7-88, in effect for fifteen years, pursuant to Ordinance 507-87, 4-5-87.
- Sibley Cable TV, effective for twenty years, pursuant to Ordinance 436-78, 9-5-78.

8-1-2: **TERMS AND DEFINITIONS:** For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meanings as given below. When not inconsistent with the context, words used in the present tense include the future, words used in the future tense include the present, words used in the singular number include the plural and words used in the plural number include the singular. The word "shall" is always mandatory and not merely directive. (1976 Code §7-3.0202)

COMPANY or  
GRANTEE: Sibley Cable TV and Douglas Communications North Limited Partnership, the receivers of rights granted by this Chapter. (1976 Code §7-3.0202; amd. Ord. 436-78, 9-5-78; Ord. 507-87, 4-6-87; letter of 1-22-88)

GRANTOR: The City of Sibley, Iowa.

PERSON: Any person, firm, partnership, association, corporation, company, legal entity or organization of any kind as the text of this Chapter may indicate.

SYSTEM or PLANT: An entire complex of wires, cables and associated equipment making up the cable television system. (1976 Code §7-3.0202)

8-1-3: **GRANT OF AUTHORITY:** Be it ordered by the Mayor and City Council of the City, after due consideration in public hearing, being satisfied as to the company's legal, technical, character, financial and other qualifications and adequacy of the company's construction program, does hereby grant to the company, its successors and assigns, a nonexclusive permit, right and privilege for rights of way and use of space over and/or under roads, streets, bridges, avenues, parks, drives and driveways, walks, parking lots, all manner of easements and other public areas of the City as now existing or hereafter revised or extended for construction, operation and maintenance of a community antenna television system consisting of antennas, wires and cables and associated electric/electronic equipment and other necessary supplies and furnishings for the purpose of collection, transport and distribution of electronic impulses and energy and for other legal purposes within the capability of the system, with the period of this permit to be for a term, as established by the City Council from the date cable television service is offered to subscribers in the City with renewal for successive periods also as established by the Council, consistent with rules of the Federal

Communications Commission. (1976 Code §7-3.0203; amd. Ord. 507-87, 4-6-87)

8-1-4:           **LIABILITY AND INDEMNIFICATION:** Grantee, from start of construction, shall maintain workman's compensation, public liability and property damage insurance with a company approved by the Commissioner of Insurance of the State. Limits of liability shall not be less than the following:

                  \$100,000.00 property damage to one person with total of \$200,000.00 any one accident.

                  \$250,000.00 personal injury to one person with total of \$500,000.00 any one accident.

Public liability and property damage insurance shall cover the grantor and the grantee either separately or jointly in consideration or defense of claims or suit for alleged injuries or damages arising out of the construction, operation or maintenance of the system. (1976 Code §7-3.0204)

8-1-5:           **OPERATION AND MAINTENANCE:** A local agent shall be provided with adequate maps and means available to provide maintenance on request and with a minimum of delay. (1976 Code §7-3.0205)

8-1-6:           **CONDITION OF OCCUPANCY:**

- A.   The company may contract with other permit holders for use of poles and other facilities and equipment to whatever extent such agreements may be of advantage to the company in providing service offered under this permit to its subscribers. Should such poles and equipment or contracts not be available, then company may own and maintain its own poles and equipment at locations approved by the grantor's engineer, except in locations where both power and telephone lines are under ground, the company may be required to place its lines under ground.
- B.   Company system, cables, wires and equipment shall be of latest design, incorporating latest engineering techniques and technology available when installed. System shall not be located as to offer an

inconvenience to the public or limit free use of streets, alleys and public areas or limit free access to private property.

- C. During construction or system modifications or maintenance, surface disturbance of streets or public ways shall be restored to a condition comparable to that existing before such disturbance<sup>1</sup>.
- D. Trees and tree branches overhanging or lying on company lines may be trimmed in a workmanlike manner to forestall service interruptions to subscribers<sup>2</sup>.
- E. Grantee, on request of any person holding a valid building moving permit issued by the City, shall temporarily raise or lower its lines to allow such moving. The expense of such modification to company lines and cables shall be paid in advance by the holder of the permit. Not less than five (5) days' advance notice may be required by the company for such temporary modifications and restoration. (1976 Code §7-3.0206)

8-1-7: **ASSIGNMENT, TRANSFER OF FRANCHISE:** Rights granted under this Chapter may be freely assigned with approval by the grantor. Grantor shall not arbitrarily withhold approval of transfer, except it may require the proposed assignee to show financial and technical responsibility and file an instrument of acceptance of the terms and conditions of this Chapter with the City Clerk. (1976 Code §7-3.0207)

8-1-8: **ANNUAL STIPEND:** Within sixty (60) days after close of the grantee's first year of operation or close of its fiscal year, grantee agrees to pay to the City, in lieu of annual permit fee or other charge including pole rentals, an annual stipend not to exceed three percent (3%) of the gross receipts for the first year or fraction thereof and three percent (3%) of the gross receipts for each year of operation thereafter. Gross receipts, as defined for the purpose of this payment, shall be limited to monthly or annual charges collected for service rendered within the City and shall not include sales taxes or other direct taxes or income from connections, reconnections or other sources

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1. See Section 7-1-4 of this Code for excavations.  
2. See Section 7-2-3 of this Code for street trees.

including, but not limited to, rents, advertising, special services such as special programming or movie channels. Service rendered shall mean delivery of electrical/electronic impulses and energy to subscribers. Grantee shall keep records of gross receipts available on request for a period of one year after the close of each company fiscal year for inspection or audit by a duly authorized agent of the grantor during reasonable business hours. (1976 Code §7-3.0208)

**8-1-9: SUBSCRIBER RATES AND CHARGES:** Initial rates and charges to subscribers shall be in line with standards of the industry and shall not exceed those filed with City Clerk as of April 6, 1987. Subsequently, and change in rates or charges may be subject to review and approval by the governing body of the City by resolution. (1976 Code §7-3.0209; amd. Ord. 507-87, 4-6-87)

**8-1-10: PUBLIC ACCESS CHANNEL:** The company shall reserve one channel of its system for joint use by the grantor, school or other public bodies as a public service, educational or informational channel on a first come, first served basis. The grantor, school or other public bodies shall furnish any special equipment and personnel necessary to feed public service, informational or educational programs into the company's system. The company shall not be responsible for the content of said public service, informational or educational programs and reserves the right to use this channel at any time or during any period for which no program or use of such channel is scheduled by the grantor, school or other public bodies. (1976 Code §7-3.0210)

**8-1-11: PERMITS:** Grantee shall, on the effective date hereof, pursue with diligence, permits to construct and operate the system as may be required by the Federal Communications Commission or other regulatory agencies. Grantee shall keep licenses and permits current and operate the system in accordance with rules and regulations of said agencies and applicable City ordinances. (1976 Code §7-3.0211)

**8-1-12: SERVICE EXTENSIONS:** The grantee may locate a portion of the system or extend service outside the City without

conflict or restriction by any part of this Chapter. Any receipts derived from services rendered outside said City shall not be included in said gross receipts as defined in Section 8-1-8 of this Chapter. (1976 Code §7-3.0212)

8-1-13: **CONSTRUCTION AND DEVELOPMENT:** Upon approval and certification by the Federal Communications Commission and other agencies having regulatory authority, company shall proceed with engineering and construction of the system. (1976 Code §7-3.0213)

8-1-14: **MODIFICATIONS OF OTHER AGENCIES:** Any modifications of requirements of the Federal Communications Commission or other regulatory agencies having jurisdiction shall be incorporated into this Chapter within one year of adoption of the modifications or at the time of permit renewal, whichever comes first. (1976 Code §7-3.0214)

8-1-15: **ANTI-DISCRIMINATION:** Grantee shall not make or grant special privileges or discriminate against any person, subscriber or legal entity or subject anyone to a prejudice or disadvantage. (1976 Code §7-3.0215)

8-1-16: **LIMITATION OF ACTIVITIES:** Company shall not engage in sale or servicing of residential television receivers or parts and supplies or recommend any manufacturer, products or service personnel over any other. (1976 Code §7-3.0216)

8-1-17: **INDIVIDUAL ANTENNAS:** Nothing in this Chapter shall limit or deny service as presently provided by direct reception or limit the right of individuals to erect and maintain their own antennas. (1976 Code §7-3.0217)

8-1-18: **PUBLICATION COSTS:** The grantee shall pay the cost of publication of this Chapter as such publication may be required by law. (1976 Code §7-3.0218)



## ORDINANCE NO. 625-10

AN ORDINANCE GRANTING A FRANCHISE TO HOSPERS TELEPHONE CO., TO OWN, ERECT, OPERATE AND MAINTAIN A BROADBAND SYSTEM IN THE CITY OF SIBLEY, IOWA. SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE: PROVIDING FOR REGULATION AND USE OF THE BROADBAND SYSTEM AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE FRANCHISE PROVISIONS:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SIBLEY, IOWA:

SECTION I. This Ordinance shall be known as the "SIBLEY BROADBAND SYSTEM FRANCHISE ORDINANCE".

SECTION II. TERMS AND DEFINITIONS: For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number. The word "shall" is mandatory and not merely directory.

1. "City" is the City of Sibley, State of Iowa.
2. "Council" is the City Council of Sibley.
3. "Broadband System", hereinafter referred to as "BROADBAND System" or "Cable System", means a system of coaxial cables and certain electronic and other components which deliver to subscribing members of the public various communications service.
4. "Cable Television Reception Service" means the simultaneous delivery by the Grantee to the television receivers (and or any other suitable type of audio-video communications receivers) of the signals of over the air television broadcast stations licensed by the Federal Communications Commission and authorized to be carried over said system; and such additional closed circuit channels at the option of Grantee for which no special charges are made.
5. "FCC" means Federal Communications Commission.

6. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind and any other legally recognized entity.
7. "Grantee" is Hospers Telephone Company, or anyone who succeeds Hospers Telephone Company, in accordance with the provisions of this Ordinance.
8. "Franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, operate, and maintain a Broadband system in the City.
9. "Subscriber" shall mean any person or entity receiving for any purpose the Broadband System service of a Grantee.
10. "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, or drive now or hereafter existing as such within the City.

#### SECTION III. GRANT OF AUTHORITY:

1. There is hereby granted by the City to the Grantee, subject to the provisions herein, the nonexclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over, and under the streets, alleys, public ways, easements, highways, sidewalks, bridges, rights of way, and land and all extensions thereof, and additions thereto in the City; poles, wires, cables, underground conduits, manholes, and other television conductors, appurtenances, apparatus and fixtures necessary for the maintenance and operation in the City of a Broadband system for the interception, sale and distribution of television and radio signals.
2. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive and shall not restrict in any manner the City Council or any other governing body of the City, in the exercise of any regulatory power which it now has or which may hereafter be authorized by the laws of the State of Iowa. The City reserves the right to grant a similar use of said streets, alleys, public ways and places to any person at any time during the period of this Franchise.

SECTION IV. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. The Grantee shall, at all times during the life of this Franchise be subject to all lawful exercise of the policy power by the City and to such reasonable regulation as the City shall hereafter provide.

SECTION V. TERRITORIAL AREA INVOLVED. This Franchise related to the entire present City limits of the City of Sibley, as well as to any area henceforth added thereto during the term of this Franchise, together with the immediate environs of the City. Once original construction is complete within the entire City, Grantee will build into additional areas as economic feasibility dictates.

SECTION VI. LIABILITY AND INDEMNIFICATION.

1. The Grantee shall pay and by its acceptance of this Franchise the Grantee specifically agrees that it will pay all damages and penalties which the City may legally be required to pay as a result of the granting of this Franchise, which is engendered by the active negligence or other active involvement on behalf of Grantee. The damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements and all other damages arising out of the installation, operation, or maintenance of the BROADBAND system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.
2. The Grantee shall pay and by its acceptance of this Franchise specifically agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in subsection (1) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, court costs, and the like, but Grantee shall have the sole responsibility and authority to elect the attorney who shall handle the disposition of any litigation or dispute or whose fees it becomes responsible under this paragraph.
3. The Grantee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain throughout the terms of this Franchise liability insurance insuring the City and the Grantee with regard to all damages mentioned in subparagraph (1) above in the minimum amounts of:

- a. \$500,000.00 for bodily injury or death to any one person, within the limit, however, of \$1,000,000.00 for bodily injury or death resulting from any one accident.
  - b. \$100,000.00 for property damage resulting from one accident.
  - c. Workmen's Compensation coverage covering all of Grantee's employees.
4. The insurance policy obtained by the Grantee in compliance with this section must be acceptable by the City and a certificate of such insurance coverage shall be provided to the City.

SECTION VII. COLOR TV. The facilities used by the Grantee shall be capable of distributing color TV signals, and when the signals the Grantee distributes are received in color they shall be distributed in color where technically feasible.

SECTION VIII. SIGNAL QUALITY REQUIREMENTS. The Grantee shall:

1. Produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair, and as good as the state of art allows.
2. Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems.
3. Limit failures attributable to Grantee's equipment outages to a minimum by locating and correcting malfunctions promptly, but in no event longer than 72 hours after notice with normal outages to be corrected as soon as feasible as dictated by the availability of necessary replacement equipment where required.
4. Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

SECTION IX. OPERATION AND MAINTENANCE OF SYSTEM.

1. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for

the shortest time possible. Such interruptions insofar as possible shall be preceded by notice and shall occur during period of minimum use of the system.

2. Procedures have been adopted by the Grantee and Grantor for the investigation and resolution of all complaints regarding cable television service.
3. Notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of the initial subscription to the cable systems.

**SECTION X. CARRIAGE OF SIGNALS - PROGRAM ALTERNATION.** Grantee shall receive and distribute television and radio signals which are disseminated to the general public without charge by broadcasting stations licensed by the Federal Communications Commission, and shall comply with any and all regulations of the Federal Communications Commission regarding the carriage of the programming of any existing or future television broadcasting, program alteration, advertising, availability of local origination and such other regulations and provisions as are set down by the Federal Communications Commission.

**SECTION XI. SERVICE TO SCHOOLS AND CITY.** The Grantee shall provide installation which shall include all external wiring required for the building and all internal wiring for the connection of one outlet, except as hereinafter provided, and cable service without charge to all public and private primary and secondary schools and colleges, Sheriff's Office, City Library, Senior Center, Community Hospital, City Golf Course, at their request, Sibley Fire Department, Community Center, and the City Hall with an outlet. Improvements shall be made as technology permits to serve properly the public buildings.

**SECTION XII. PUBLIC ACCESS CHANNEL.**

1. The Company shall reserve one channel of its system for joint use by the Grantor, school or other public bodies as a public service, educational or informational channel. The Grantor, school or other public body shall furnish any special equipment and personnel necessary to feed public service, educational or informational programs into the company's system.
2. Grantee shall make no charges for the use of said channel. Grantee shall make no pre-channel or pre-program charge of any kind to any subscriber for the privilege of receiving the channel designated as a public access channel.

3. Grantee shall not televise, tape, or in any way reproduce or show to the general public any school activity, either as a public service or as a community activity, without the prior approval of the schools involved.

#### SECTION XIII. OTHER BUSINESS ACTIVITIES.

1. Neither the Grantee hereunder nor any shareholder of the Grantee shall engage in the business of selling, repairing, or installing television receivers, radio receivers, or accessories for such receivers within the City of Sibley during the term of this Franchise. It is specifically provided, however, that in the event a public offering is made in the stock of the Grantee or a parent company, this provision shall in no way inhibit minority shareholders from engaging in such business.
2. This Franchise authorizes only the operation of a Broadband system as provided for herein, and does not take the place of any other franchise, license, or permit which might be required by law of the Grantee.

SECTION XIV. INDIVIDUAL ANTENNAS. Nothing in this Ordinance shall limit or deny service as presently provided by direct reception or limit the right of individuals to erect and maintain antennas for their own use.

#### SECTION XV. SAFETY REQUIREMENTS.

1. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
2. The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code as promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire Underwriters and in such manner that they will not interfere with any installations of the City or of a public utility serving the City.
3. All structures and all lines, equipment, and connections in, over, under, and upon the street, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

4. The Grantee shall maintain a force of one or more agents or employees at all times and shall have sufficient employees to provide safe, adequate, and prompt service for its facilities.

SECTION XVI. NEW DEVELOPMENTS. It shall be the policy of the City to liberally amend this Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently, or economically serve its customers. Provided, however, that this Section shall not be construed to require the City to make any such amendment.

SECTION XVII. CONDITIONS OF STREET OCCUPANCY.

1. All transmissions and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys, or other public ways and places.
2. In case of disturbance of any street, sidewalk, alley, public way or paved area, the Grantee shall, at its own costs and expense and in a manner approved by the City, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.
3. If at any time during the period of this franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, under reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
4. 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 or 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 not less than one (1) week advance notice to arrange for such temporary wire changes.

5. Any property of Grantee to be abandoned in place shall be abandoned in such manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

SECTION XVIII. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED. The Grantee shall not, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage.

SECTION XIX. REMOVAL OF FACILITIES UPON REQUEST. Upon termination of service to any subscriber, the grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request and at no cost to the subscriber.

SECTION XX. TRANSFER OF FRANCHISE. The Grantee shall not transfer this Franchise to another person without prior approval of the City Council which approval shall not be unreasonably withheld.

SECTION XXI. FILINGS AND COMMUNICATIONS WITH REGULATORY AGENCIES. Copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting Broadband operations authorized pursuant to this Franchise, shall also be submitted simultaneously to the City Council.

SECTION XXII. CITY RIGHTS IN FRANCHISE.

1. The right is hereby reserved to the City or the City Council to adopt, in addition to the provisions contained therein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.
2. The City shall have the right to inspect the maps, plans and other like materials of the Grantee at any time during normal business hours.
3. The City shall have the right, during the life of this Franchise to install and maintain free of charge upon the poles of the



Grantee any wire and pole fixtures necessary for a police alarm system, on the condition that such wire and pole fixtures do not interfere with the Broadband operations of the Grantee.

4. The City shall have the right to supervise all construction or installation work performed subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise and other pertinent provisions of law.
5. At the expiration of the term for which this Franchise is granted, or upon its termination and cancellation, as provided for herein, the City shall have the right to require the Grantee to remove at its own expense all portions of the Broadband system from all public ways within the City.

#### SECTION XXIII. MAPS, PLATS AND REPORTS.

1. The grantee shall file with the City Clerk true and accurate as-built plans of its plant as constructed, including maps and plats of the same, and shall after initial construction, provide to the City copies of all exhibit "A"'s so as to keep the City adequately advised as to any extension or increase in the original system.
2. The Grantee shall file annually with the City Clerk no later than sixty (60) days after the end of the Grantee's fiscal year a verification by a Certified Public Accountant, as to the gross income of Grantee for the proceeding fiscal year, reflecting in such verification the amount of the Franchise fee resultant therefrom.

#### SECTION XXIV. FRANCHISE FEE.

1. 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, a Grantee shall pay to the Grantor an annual amount equal to five (5) percent of the Grantee's Gross Revenues as defined in this Ordinance.
2. Quarterly Payments. Payment due to the Grantor under the Franchise Agreement shall be made quarterly at the City Clerk's office no 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 be at interest at a rate of one and one-half percent (1½%) per month from the date due. Each payment shall be accompanied with a detailed report 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, shopping service revenue, revenue from other sources such as contracted to 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 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. The Grantee agrees to 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. All amounts paid shall be subject to audit and recomputation by the Grantor.

3. Franchise Fee Increases. The Grantor may request an increase in franchise fees at anytime during the term of the franchise, equal to the maximum percentage 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.
4. 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.

SECTION XXV. POLE FEE. Grantee shall pay annually to the City of Sibley Utilities a fee of \$2.00 per pole for each and every City utility pole used by the Grantee for the purpose of attaching cable TV communications cable. Said payment to be made in January of each year.

SECTION XXVI. FORFEITURE OF FRANCHISE. In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, and all rights and privileges of the Grantee hereunder in the event that the Grantee:

1. Violates any provision of the Franchise or any rule, order, or determination of the City or City Council made pursuant to this Franchise, except where such violation, other than of Section XX or subsection (2) below, is without fault or through excusable neglect;
2. Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;
3. Attempts to evade any of the provisions of this Franchise or practices any fraud or deceit upon this City; or
4. Fails to complete construction under this Franchise before one year after the certificate of compliance is issued by the Federal Communications System.
5. Such termination and cancellation shall be by ordinance duly adopted after no less than thirty (30) day's notice to the grantee and pursuant to hearing, and shall in no way affect any of the City's rights under this franchise or any provision of law.

SECTION XXVII. CITY'S RIGHT TO INTERVENTION. Nothing in this Franchise shall operate to prevent the intervention by the City in any suit or proceeding to which the Grantee is a party.

SECTION XXVIII. FURTHER AGREEMENT AND WAIVER BY GRANTEE. The Grantee agrees to abide by all provisions of this Franchise and further agrees that it will not at any future time set up as against the City or the City Council the claim that the provisions of this Franchise are unreasonable, arbitrary, or void.

SECTION XXIX. DURATION AND ACCEPTANCE OF PERMIT.

1. This Franchise and the rights, privileges and authority hereby granted shall take effect and be in force from after its publication as provided by law, provided that within thirty (30) days after the effective date of this Ordinance, the Grantee shall file with the City Clerk its unconditional acceptance of this Franchise an indication of application of the Federal

Communications Commission for a certificate of compliance and shall continue in force and effect for a term of twenty (20) years. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Grantee before a Notary Public or other officer authorized by law to administer oaths.

2. Should the Grantee fail to comply with subsection (1) above, it shall acquire no rights, privileges, or authority under this Franchise whatsoever.

SECTION XXX. NUMBER OF CHANNELS. The Grantee's cable distribution system shall be capable of carrying at least fifty-five (55) television channels.

SECTION XXXI. FLOW-THROUGH OF REFUNDS.

1. If during the term of this Franchise the Grantee receives refunds of any payments made for television or radio signals, it shall without delay notify the City Council, suggest a plan for flow through of the refunds to its subscribers, and retain such refunds pending order of the Council. After considering the plan submitted by the Grantee, the Council shall order the flow through of the refunds to the Grantee's subscribers in a fair and equitable manner.
2. By its acceptance of this Franchise, the Grantee specifically grants and agrees that if, during the term hereof, it receives refunds of any payments made for television or radio signals, it shall without delay notify the City Council, suggest a plan for flow through of the refunds to its subscribers, retain the refunds pending order of the Council, and flow through such refunds in accordance with the order of the Council.

SECTION XXXII. COSTS. That the Grantee shall upon demand, pay the costs of holding the election, publishing this Ordinance and any other costs incurred by the City in the granting of the Franchise.

SECTION XXXIII. COMPLIANCE WITH FCC PERMIT STANDARDS. Pursuant to the applicable FCC standards, the following recitations and provision are set forth.

1. Grantee's legal character, financial, technical and other qualifications and the adequacy and feasibility of its construction arrangements have been approved by the City

Council after consideration in a full public proceeding affording due process to all interested persons.

- 2. This Franchise period shall be twenty (20) years in duration.
- 3. All complaints regarding the quality of service, equipment and malfunctions, disputes concerning installation, or subscription rates or violations of this Franchise shall be directed to Grantee's local office in Hospers, Iowa, or called to their toll free telephone number. In the event Grantee fails to satisfy a complaint and the complaint involves a violation of Section 18-2201 to 18-2205 R.R.S. 1943, Reissue 1974, then the complaint shall be forwarded by the person making the same to the City Clerk of Sibley, Iowa. Upon receipt of the complaint the City shall immediately serve notice of such violation upon the Grantee with directions to correct such violation within ninety (90) days or show cause why such violation should not be corrected at a public hearing held in conjunction with the next regularly scheduled meeting of the City Council.

SECTION XXXIV. UNAUTHORIZED CABLE TAPING. It shall be unlawful for any person or persons to obtain any cable television service from any cable television company, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment of said cable television company unless the same is done with the knowledge of and with the permission of the cable television company. Any person or persons found guilty of a violation of any of the provisions of this Section shall be deemed guilty of a misdemeanor.

SECTION XXXV. This Ordinance, following its passage, shall become effective upon its acceptance by the Grantee.

PASSED APPROVED AND ADOPTED this 9th day of August, 2010.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



CHAPTER 2

**NATURAL GAS FRANCHISE**

SECTION:

8-2-1: Franchise Granted

8-2-1: **FRANCHISE GRANTED:**

ORDINANCE NO 637-12

AN ORDINANCE GRANTING TO INTERSTATE POWER AND LIGHT COMPANY ("COMPANY"), ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF SIBLEY, OSCEOLA COUNTY, IOWA AND THE RIGHT TO LAY DOWN, OPERATE AND MAINTAIN THE NECESSARY PIPES, MAINS AND OTHER CONDUCTORS AND APPLIANCES IN, ALONG AND UNDER THE STREETS, AVENUES, ALLEYS AND PUBLIC PLACES OF THE CITY OF SIBLEY, OSCEOLA COUNTY, IOWA, AS NOW OR HEREAFTER CONSTITUTED, FOR A PERIOD OF TWENTY-FIVE (25) YEARS, SUBJECT TO A LIMITED RIGHT OF CANCELLATION AT THE END OF THE FIFTEENTH (15th) YEAR ANNIVERSARY DATE, FOR THE PURPOSE OF DISTRIBUTING, SUPPLYING AND SELLING NATURAL GAS TO THE CITY AND ITS INHABITANTS THEREFOR AND TO PERSONS AND CORPORATIONS BEYOND THE LIMITS THEREOF AND GRANTING TO SAID COMPANY THE RIGHT OF EMINENT DOMAIN

BE IT ORDAINED BY THE City Council of the City of Sibley, Osceola County, Iowa hereinafter referred to as the "City".

Section 1. 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 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. Except as otherwise agreed in writing by the parties, the term of the franchise granted by this Ordinance and the rights granted there under shall continue for the period of twenty-five (25) years from and after its acceptance by the said Company, as herein provided. The City may cancel this franchise on the fifteenth (15th) anniversary of the anniversary date of this franchise by notifying Company in writing of its desire to do so, said notification to be given within thirty (30) days of the fifteenth (15th) anniversary of this franchise. If Company is not notified of the cancellation by the fifteenth (15th) anniversary then this franchise shall continue without cancellation until the twenty-fifth (25th) year. The anniversary date shall be the date this franchise is filed with the City Clerk or otherwise effective by operation of law. City also grants the Company 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.

Section 2. 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 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.

Section 3. 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.

Section 4. 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 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.

Section 5. 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.

Section 6. In its monthly billing the Company shall include a franchise fee of zero percent (0%) 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.

Section 7. The franchise fee shall be applied to all customers' bills in accordance with Iowa Code Chapter 364.2 and 423B.5. The amount of the franchise fee shall be shown separately on the utility bill to each customer.

Section 8. The Company will commence collecting franchise fees on or before the first Company billing cycle of the first calendar month following ninety (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.

Section 9. 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 are in excess of typical costs of franchise fee administration. Company shall provide City with documented support for any such additional costs.

Section 10. 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 ninety (90) days from receipt of the information required of the City to implement the franchise fee.

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.

Section 11. 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.

Section 12. 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 thirty (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.

Section 13. 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 Section 6 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 ninety (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.

Section 14. 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.

Section 15. 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.

Section 16. 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 Ordinance 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 Ordinance, in which case the obligation of Company to collect and remit franchise fee shall be modified to zero or the lesser rate.

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.

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 sixty (60) days of Final Franchise Fee Action, the City shall notify Company and the parties shall meet to determine whether this Ordinance 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 Ordinance is repealed, effective as of the date specified below with no liability therefore, 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.

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.

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.

Section 17. The 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 Ordinance.

Section 18. 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.

Section 19. The franchise granted by this Ordinance shall not be exclusive.

Section 20. The expense of the publication of this Ordinance shall be paid by the Company.

Section 21. The franchise granted by this Ordinance shall be conditioned upon acceptance by the Company in writing. The acceptance shall be filed with the City Clerk within ninety (90) days from passage of this Ordinance.

Section 22. If any section or provision of this Ordinance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other provisions of this Ordinance which can be given effect without the invalid portion or portions and to this end each section and provision of this Ordinance is severable.

Section 23. This Ordinance 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 Ordinance shall supersede, abrogate and repeal the prior gas system Ordinance between the Company and the City as of the date this 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.

PASSED AND APPROVED this 9th day July of 2012.

Jerry Johnson  
Mayor

ATTEST:

Kristen L. Vipond  
City Clerk

