

## **CHAPTER 20**

### **APPENDIXES**

#### **LISTING OF UNCODED ORDINANCES IN EFFECT**

**General Statement:**

All ordinances described in this Chapter remain in effect after adoption of the City Code, since they are of a permanent and continuing nature as authority for a certain specific act which has been performed. These ordinances have one thing in common that generally distinguishes them from other provisions of the City Code - their text have no continuing reference value. For this reason it appears justified to list and refer to them here only to facilitate finding them in the event this becomes necessary. Listings are grouped according to subject matter, but where only one or two ordinances appear on a single subject, they will be described in a paragraph.

## **APPENDIX A**

### **AUTHORIZATIONS, BOND ISSUANCES AND GRANTS**

#### **Section A - Authorizes Construction of Telephone Lines:**

1. Ordinance No. 16, New Series, adopted September 28, 1903, authorizes Kossuth Telephone Company and the Twin City Telephone Company to construct telephone lines and operate and maintain a telephone exchange for a period of twenty (20) years.

#### **Section B - Bond Issuance.**

1. Ordinance No. 39, New Series, adopted September 23, 1913, provides for issuance of bonds in the amount of \$6,000.00 for the purpose of extending the water works.
2. Ordinance No. 68, New Series, adopted November 10, 1919, provides for issuance of bonds in the amount of \$8,000.00 for the purpose of extending the water works.

#### **Section C - Grant to Chicago and Northwestern Railway.**

1. Ordinance No. 92, New Series, adopted May 12, 1930, grants to the Chicago and Northwestern Railway Company, the right to extend, construct and maintain a railroad track from the plant of the Blue Earth Canning Company across Seventh Street and the public alley in Block 88 of the Original Plat of the City.

## **APPENDIX B**

### **CHARTER AMENDMENTS**

1. Ordinance No. 264, New Series, adopted March 5, 1974, amends Section 3.09 of Chapter III of the City Charter.
2. Ordinance No. 267, New Series, adopted December 5, 1974, amends Sections 2.02 and 2.04 of Chapter II, and Sections 7.01, 7.02 and 7.07 of Chapter VII of the City Charter.
3. Ordinance No. 39, Third Series, adopted April 23, 1985, amends Ward Boundaries, Section 1.03, Chapter I of the City Charter.
4. Ordinance No. 97-04, Third Series, adopted May, 19th, 1997, amends Section 7.04(n) of Chapter VII of the City Charter.
5. Ordinance No. 98-04, adopted September 4, 1998, amendments to the City Charter.
6. Ordinance No. 99-16, adopted December 7, 1999 adding Section 12.09 to the City Charter.
7. Ordinance No. 03-13, adopted October 6, 2003 amends Sections 2.02, 2.03, 7.04(n) and 8.10 to the City Charter.
8. Ordinance No. 04-11, adopted August 16, 2004 amends Section 7.04(n) to the City Charter.
9. Ordinance No. 05-23, adopted November 21, 2005 amends Section 12.02 to the City Charter.
10. Ordinance No. 09-01, adopted February 17, 2009 amends Section 3.02 to the City Charter.

## APPENDIX C

### VACATIONS OF STREETS AND ALLEYS

	<b><u>Ordinance No.:</u></b>	<b><u>Date of Adoption:</u></b>	<b><u>Brief Description:</u></b>
	By Resolution	8/19/47	Alley in Block 17 of Garretson's Addition to Blue Earth City.
1.	216	6/6/67	Alley between North Half and South Half of Block 18, Plat of Garretson's Addition to Blue Earth City.
2.	222	9/19/67	Alley in Block 2 in Young's Addition to Blue Earth City.
3.	223	9/19/67	Alley in Block 2 in Young's Addition to Blue Earth City.
4.	241	5/18/71	A portion of First Street.
5.	251	7/18/72	Street lying South of Fourteenth Street.
6.	253	11/28/72	Street lying South of Fourteenth Street.
7.	265	5/7/74	Portion of Alley in Block 7 of Dow and Bowens Addition.
8.	271	5/20/75	Portion of a street known as Oak Knoll Court in Tanglewood Subdivision.
9.	276	9/2/75	Portion of Alley lying South of lots 4, 5, and 6 and North of lots 7, 8, 9 and 10 in Block 1 of Hartwick's Addition.
10.	277	9/2/75	Portion of Rice Street.

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|-----|-----------------|----------|--|
| 11. | 296             | 12/6/77  | A portion of Fourth Street lying between the North line of Block 60 and South line of Block 53, excepting the center 30 feet thereof.                                    |
| 12. | 297             | 12/20/77 | Ace Drive in Royal Acres, subject to existing easements and uses.  |
| 13. | 2 (3rd Series)  | 9/19/78  | A portion of Oak Knoll Court in Tanglewood Second Subdivision of the City of Blue Earth.   |
| 14. | 5 (3rd Series)  | 2/5/80   | A portion of a Street in Fairboard Subdivision of the City of Blue Earth   |
| 15. | 9 (3rd Series)  | 5/19/81  | A portion of Sixth Street lying North of Block 98 and South of Block 71 as designated on the Original Plat of the City of Blue Earth.                                    |
| 16. | 15 (3rd Series) | 7/6/82   | A portion of Walnut Street lying between Lot 3, Block 3 and Lot 1, Block 4 of Garretson's Addition to Blue Earth City.   |
| 17. | 86-12           | 11/3/86  | A portion of Grant Street commencing at the north line of Second Street Northwest, Child's Park Addition thence Northerly to the City Limits of the City of Blue Earth.  |
| 18. | 87-4            | 10/6/87  | A portion of Fourth Street lying between Block 52 and Block 61 of the Original Plat of the City of Blue Earth.   |
| 19. | 89-2            | 6/20/89  | A portion of the East ½ of Hood Street located between the north line of Fifth Street and the South line of Third Street on the Original Plat of the City of Blue Earth. |

			<p>A portion of Fourth Street lying between Block 53 and Block 60 of the Original Plat of the City of Blue Earth, from the East line of Lot 8, Block 53 and the West line of Lot 6, Block 53.</p>
20.	89-5	10/24/89	<p>A part of Alley lying between Lots 1, 2, 3, Block 74 on the North side thereof and Lots 9 and 10 and the East ½ of lot 8 in Block 74 on the South side of the Alley as located on The Original Plat of the City of Blue Earth.</p>
21.	90-5	10/2/90	<p>Alley being 16 feet in width running Easterly and westerly in Block 2 of Garretson's Addition to Blue Earth City.</p>
22.	91-2	8/20/91	<p>A portion of Fourth Street lying between Block 53 and block 60 on The Original Plat of the city of Blue Earth.</p>
23.	92-3	6/2/92	<p>A portion of Alley running North and South located in Block 10 of Dow and Bowen's Addition to the City of Blue Earth.</p>
24.	93-2	7/20/93	<p>A portion of Alley lying between Lots 7 and 14 on the West and Lots 8, 9, 10, 11 and 12 on the East of Block 10, Young's Addition to Blue Earth City.</p>
25.	93-3	8/3/93	<p>West Third Street lying between Blocks 42 and 43 and that certain Alley running 16 feet in width Located in Block 43 of the Original Plat of the City of Blue Earth.</p>

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|-----|------|---------|---|
| 26. | 93-4 | 9/21/93 | A portion of Alley running along the East, West and South sides of Lots 5 and 6 in Block 6 of Sunnyside Addition to the City of Blue Earth.   |
| 27. | 93-5 | 9/21/93 | A certain alley running East and West located in Block 23 of the Original Plat of the City of Blue Earth.   |
| 28. | 93-6 | 9/21/93 | A portion of Alley lying North of Block 1, Child's Park Addition to the City of Blue Earth.   |
| 29. | 93-7 | 10/5/93 | The Frontage Road platted in Lot 1, Block 2 of Fair Board Subdivision to the City of Blue Earth.  |
| 30. | 94-1 | 4/19/94 | A portion of Alley running North and South between Lots 11,12, and 13 on the East and Lot 14 on the West in Block 11 of Young's Addition to the City of Blue Earth.   |
| 31. | 95-4 | 2/7/95  | West second Street lying between Blocks 15 and 42 bounded by Holland Street on the East and a vacated West Street on the West.  |
| 32. | 97-1 | 2/1/97  | That part of Essler Avenue in Fairview Addition to the City of Blue Earth described in exhibit A to Ordinance 97-1. That part of the Utility Easements in Fairview Addition to the City of Blue Earth described in exhibit B to Ordinance 97-1. |
| 33. | 97-3 | 5/6/97  | A portion of Galbraith Street lying East of Block 93 occupied by the triangular roof overhang of the structure owned by the Trinity Lutheran congregation.  |

34.	97-5	6/3/97	The Sanitary and Storm Sewer Easement over a tract of land 16 feet In width lying immediately North of the South 50 feet of Block 42 of the Original Plat of Blue Earth City.
35.	99-03	6/14/99	That part of Eleventh Street lying between the East line of Moore Street and the West line of Galbraith Street.
36.	99-04	7/6/99	All that part of the partial Cul-de-sac located along the east side of St. Luke's.
37.	99-06	9/7/99	A portion of the alley lying between Lots 1 and 8 in Block 1 of Dow and Bowen's Addition.
38.	00-10	7/5/00	Part of Industrial Drive.
39.	00-13	9/5/00	W ½ of N. Ramsey Street ly N. of First Street and S. of Railroad right of way between Block 7 and 8.
40.	01-06	9/4/01	All that part of Moore Street in the City of Blue Earth, Faribault County, Minnesota bound as follows:  On the East by the west line of Lot 5 of Block Nine of the Original Plat of Blue Earth City (now City of Blue Earth), Faribault County, Minnesota according to the plat on file and of record in the office of the County Recorder;  On the South by the westerly extension of the south line of said Lot 5 of Block Nine;  On the North by the southerly right-

of-way line of the Union Pacific Railroad (formerly Iowa, Minnesota and Northwestern Railway Company);

And on the West by a line lying parallel with and 25.00 feet West (measured at right angles) of the west line of said Lot 5 of Block Nine.

Said bounded portion of Moore Street contains 2.092 square feet.

41. 01-09 10/15/01

That all that part of the alley lying North of Lot Eight (8) and South of Lot One (1) in Dow and Bowens Subdivision be vacated subject to an easement described in Section II.

42. 02-02 6/3/02

See attached Exhibit B.

## **EXHIBIT B**

Blue Earth, City of  
F32.01426

Bolton & Menk, Inc.  
April 29, 2002

### **PROPERTY DESCRIPTION**

#### **SIXTH STREET ENCROACHMENT**

All that part of Sixth Street directly adjoining and lying north of Block Eighty-Six in the City of Blue Earth, Faribault County, Minnesota described as follows:

Commencing at the northwest corner of Block Eighty-Six of Blue Earth City, Faribault County, Minnesota according to the original plat on file and of record in the office of the Faribault County Recorder; thence North 90 degrees 00 minutes 00 seconds East along the north line of Block Eighty-Six a distance of 22.90 feet to the point of beginning and west wall of former White House Restaurant building; thence continuing North 90 degrees 00 minutes 00 seconds East along the north line of Block Eighty-Six a distance of 97.50 feet to the east wall of said White House Restaurant building; thence North 0 degrees 00 minutes 00 seconds East a distance of 12.50 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 76.30 feet; thence South 0 degrees 00 minutes 00 seconds West a distance of 4.07 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 16.70 feet; thence South 0 degrees 00 minutes 00 seconds West a distance of 8.20 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 4.50 feet; thence South 0 degrees 00 minutes 00 seconds West (this course and the preceding six all being along the existing wall of said White House Restaurant) a distance of 0.23 feet to the point of beginning.

Together with the right to maintain any existing underground structural elements of said wall located within the unvacated portion of Sixth Street and existing structure overhangs located over Sixth Street, provided said structural elements existed on April 29, 2002 and were attached to and directly adjoining improvements lying within the above-described tract.

43.

03-01

2/3/03

All that part of Tenth Street and Galbraith Street in Young's Addition to Blue Earth City (now City of Blue Earth), Faribault County, Minnesota described as follows:

Beginning at the northwest corner of Block Fifteen of Young's Addition to Blue Earth City (now City of Blue Earth), Faribault County, Minnesota according to the Plat on file and of record in the Office of the County Recorder; Thence North 0 degrees 15 minutes 32 seconds East (assumed bearing) along the northerly extension of the west line of Block Fifteen a distance of 6.00 feet to a line lying parallel with and 6.00 feet north (measured at right angles) of the north line of Block Fifteen; thence South 89 Degrees 45 minutes 28 seconds East parallel with the north line of Block Fifteen a distance of 333.39 feet to a line lying parallel with and 31.00 feet east (measured at right angles) of the east line of Block Fifteen; thence South 0 degrees 13 minutes 32 seconds West parallel with the east line of Block Fifteen a distance of 101.00 feet; thence North 89 degrees 45 minutes 28 seconds West parallel with the north line of Block Fifteen a distance of 31.00 feet to the east line of Block Fifteen; thence North 0 degrees 13 minutes 32 seconds East along the east line of block Fifteen a distance of 95.00 feet to the northeast corner of Block Fifteen; thence North 89 degrees 45 minutes 28 seconds West along the north line of Block Fifteen a distance of 302.40 feet to the point of beginning.

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| 44. | 04-07 | 6/21/04  | That all of the east alleyway abutting Lots 7 and 14 on the East and abutting Lots 8, 9, 10, 11, 12 and 13 on the West, in Block 7 or Young's Addition to the City of Blue Earth, be vacated.  |
| 45. | 04-06 | 8/16/04  | That all that part of North Circle Drive adjoining Block 1 and Block 2 in Buccaneer Addition be vacated subject to an easement described in Section II.  |
| 46. | 04-16 | 9/20/04  | That all that part of Hood Street between 2 <sup>nd</sup> and 3 <sup>rd</sup> Streets be vacated subject to an easement described in Section II.   |
| 47. | 04-19 | 11/04/04 | That the alley adjoining Lots 1, 2, 3, 8, 9, and 10 located in Block 87 of the Original Plat of the City of Blue Earth be vacated subject to an Easement described in Section II.  |
| 48. | 05-01 | 9/19/05  | That the alley adjoining Lots 1, 2, 3, 8, 9, and 10 located in Block 88 of the Original Plat of the City of Blue Earth subject to an easement described in Section II.   |
| 49. | 07-07 | 8/6/07   | That all that part of the alleyway lying south of Lots 4, 5 and that part of 3 lying westerly of the railroad right-of-way in Block 52 of the Original Plat of the City of Blue Earth be vacated subject to an easement described in Section II. |
| 50. | 09-05 | 9/8/09   | That all that part of North Moore Street located North of First Street described as follows be vacated subject to an easement described in   |

Section II.

All that part of Moore Street in the City of Blue Earth, Faribault County, Minnesota bounded as follows:

On the West by the West line of Lot One (1) of Block Ten (10) of the Original Plat of Blue Earth City (now City of Blue Earth), Faribault County, Minnesota according to the plat on file and of record in the Office of the County Recorder.

On the South by the Easterly extension of the South line of said Lot One (1) of Block Ten (10);

On the North by the Southerly right-of-way line of the Union Pacific Railroad (formerly Iowa, Minnesota and Northwestern Railway Company);

And on the East by the West line of Lot Five (5) of Block Nine (9) of the Original Plat of Blue Earth City (now City of Blue Earth), Faribault County, Minnesota according to the plat on file and of record in the Office of the County Recorder.

**APPENDIX D**  
**ANNEXATIONS**

	<b><u>Ordinance No.:</u></b>	<b><u>Date of Adoption:</u></b>	<b><u>Brief Description:</u></b>
1.	164	11/1/49	A tract known as Auditor's Lots 33 and 34, 20-102-27; And a tract located in the SE1/4 of NW1/4 of 20-102-27.
2.	195	11/2/61	A tract commencing 80 rods South of the NE1/4 of Section 20-102-27.
3.	209	12/1/64	A tract of land abutting the NW1/4 of NE1/4 of 18-102-27.
4.	220	7/6/67	A part of SW1/4 of 7-102-27, and a part of NE1/4 of 18-102-27.
5.	226	2/27/68	A tract in NE1/4 of NE1/4 of 19-102-27 lying North of center of the Blue Earth River.
6.	228	6/18/68	A tract of land in E1/2 of NE1/4 of 19-102-27.
7.	255	12/5/72	A tract in the S1/2 of NE1/4, 20-102-27, and the East 33 feet of SE1/4 of NW1/4 of 20-102-27 except the North 48 rods.
8.	273	7/1/75	Part of S1/2 of NW1/4 of 20-102-27, and part of E1/2 of NE1/4 of 19-102-27.
9.	281	2/3/76	Tract of land in the SE1/4 of SW1/4 of 5-102-27, SW1/4 of SE1/4 of 5-102-27, NW1/4 of NE1/4 of 8-102-27, SW1/4 of NE1/4 of 8-102-27, SE1/4 of NE1/4 of 8-102-27 and

			NE1/4 of SE1/4 of 8-102-27.
10.	286	8/3/76	Tract of land in SE1/4 of 8-102-27.
11.	95-8	9/5/95	A tract of land in NE1/4 of 8-102-27.
12.	01-01	1/2/01	A 45.00 foot wide tract of land described as the West 45.00 feet of SW1/4 of 9-102-27 being the existing roadway right-of-way of Co. Rd. No. 103.
			A tract of land in SW1/4 of SW1/4 of 9-102-27.
			A tract of land in NW1/4 of NW1/4 of 16-102-27 and that part of E1/2 of SE1/4 of 12-102-28 lying South of railroad right-of-way of the Chicago and Northwestern Railway Co.
13.	07-03	2/20/07	That portion of Block 14 lying East of the center of the East fork of the Blue Earth River, Block 10, Block 15 and Lot 2 of Block 11 of School Subdivision of the NW1/4 of 16-102-27.

## APPENDIX E

### CONVEYANCES OF REAL PROPERTY MADE BY CITY

#### Third Series of Ordinances

	<b><u>Ordinance No.:</u></b>	<b><u>Date of Adoption:</u></b>	<b><u>Brief Description:</u></b>
1.	4	7/17/79	A tract of land in the S1/2 of SW1/4 of 8-102-27.
2.	11	9/21/81	North 60 feet of Lots 9 and 10, Block 90, City of Blue Earth.
3.	11	9/21/81	West ½ of lot 2 and the East ½ of Lot 3, Block 51, City of Blue Earth.
4.	11	9/21/81	West ½ of a tract commencing at a point 460 ft. South of the SE corner of block 16, Garretson's Addition.
5.	19	11/23/82	Lot 7, Block 32, City of Blue Earth.
6.	19	11/23/82	Lots 4 and 5, Block 57, City of Blue Earth.
7.	19	11/23/82	Lot 2, Block 9, Garretson's Addition to the City of Blue Earth.
9.	19	11/23/82	Lot 8, Block 31 and ½ of alley adjoining to the North, City of Blue Earth.
10.	19	11/23/82	Lots 9 and 10, Block 31 and ½ of alley adjoining to the North, City of Blue Earth.
11.	19	11/23/82	Lot 7, Block 31 and ½ of alley adjoining to the North, City of Blue Earth.

12.	23	3/29/83	Lot 1, Block 34, City of Blue Earth.
13.	24	5/17/83	Assisi Residence - SW1/4 of SW1/4 of 8-102-27.
14.	26	11/1/83	Lot 8, Block 6, Child's Park Addition, City of Blue Earth.
15.	26	11/1/83	North 97 ft, of Lot 6 and West 40 ft. Of lot 7, the North 30 ft. and the West 8 ft. of Lot 8, Block 38, City of Blue Earth.
16.	27	12/6/83	Lot 9, Block 45, City of Blue Earth.
17.	34	1984	NE1/4 of NE1/4 of 8-102-27.
18.	34	1984	Lot 5, Block 3, Child's Park Addition, City of Blue Earth.
19.	40	5/7/85	Lots 1 and 2, Block 92, City of Blue Earth.
20.	87-1	1/1987	NW1/4 of 17-116-32, Renville County, Minnesota.
21.	91-1	1/15/91	Lots 1,2,3 and 4, Block 1, Hillside Addition, City of Blue Earth.
22.	91-3	8/20/91	Public Works Warehouse - Block 80, City of Blue Earth.
23.	93-1	5/27/93	North 325 ft. and East 100 ft. of Lot 1, Block 2, Fairboard Subdivision, City of Blue Earth, Parcel No. 21-305-0110.
24.	94-2	4/28/94	Lot 1, Block 2, Fairboard Subdivision, city of Blue Earth.
25.	94-3	5/3/94	Title Ambiguities - John H. Stauffer. Caused by extension of Ramsey

			Street, McArthur's Addition to City of Blue Earth.
26.	95-1	1/3/95	Vacated Alley between Lots 12 and 13 on the East and lot 14 of the West, and the West ½ of vacated alley between lot 11 on the East and Lot 14 on the West, Block 11, Young's Addition to the City of Blue Earth.
27.	96-2	5/7/96	Tract of Land in the SW 1/4 of 7-102-27.
28.	96-3	6/25/96	Lots 1,2,3,4,5 and 6, Block 3 of Sunnyside Addition to the City of Blue Earth.
29.	96-3	6/25/97	Tract of Land in NE1/4 of 20-102-27.
30.	96-4	6/25/96	Lot 7, Block 1, Young's Addition to City of Blue Earth. Parcel No. 21-693-0070.
31.	97-06	7/15/97	Sale of Portion of Municipal Parking Lot located at 6 <sup>th</sup> and Moore to Double Play.
32.	98-06	11/17/98	Outlot C, Valley Highlands Third Subdivision, City of Blue Earth
33.	99-01	1/19/99	Lot 1 in Block 2 of Buccaneer Addition, City of Blue Earth  The North 20.00 feet of Lot 5 in Block 3 of Buccaneer Addition to the City of Blue Earth.
34.	99-05	7/6/99	Lots 1, 2, and 3 in Block 15 in Young's Addition to the City of Blue Earth and all that part of the Northeast Quarter of the Southwest

Quarter of 17-102-27 lying South and adjoining said lots.

Block 2 of McArthur's Addition to the City of Blue Earth and all that part of the Southeast Quarter of the Southwest Quarter of 17-102-27 lying North of and adjoining said Block.

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| 35. | 99-14 | 10/19/99 | A tract of land in Lot 1 of Block 2 of Fair Board Subdivision, City of Blue Earth.  |
| 36. | 00-01 | 1/18/00  | Part of Outlot A, Valley Highlands Fourth Subdivision.  |
| 37. | 00-08 | 5/16/00  | Lot 7 exc. N 58.3 ft and Lot 8 and vacated Ace Drive lying N of Oak Knoll Court, Royal Acres Subdivision.   |
| 38. | 00-18 | 11/21/00 | Tract of land in the SW1/4 of 7-102-27 (between Telex and Tafco)  |
| 39. | 01-03 | 5/07/01  | Lot Two (2) in Block Sixteen (16) in Young's Addition to Blue Earth City (now City of Blue Earth), Faribault County, Minnesota, according to the Plat of said Addition on file and of record in the office of the Register of Deeds of said County, EXCEPTING THEREFROM the East twenty-five (25) feet thereof. |
| 40. | 01-05 | 7/16/01  | Lot Seven (7) in Block Thirty-one (31), and one-half of vacated alley adjoining said premises on the North in the City of Blue Earth, Faribault County, Minnesota, according to the Plat of said Blue Earth City on file and of record in the office of the County Recorder of said County.                     |

41.

02-01

2/04/02

See attached Exhibit A.

EXHIBIT "A"  
CONSOLIDATED PROPERTY DESCRIPTION

DIME STORE SITE - BLUE EARTH

A tract of land in Lots 9 and 10 in Block 95 in the City of Blue Earth, Faribault County, Minnesota described as follows:

Commencing at the southeast corner of Lot 10 of Block 95 of the Plat of Blue Earth City (now City of Blue Earth), Faribault County, Minnesota; thence North 0 degrees 00 minutes 20 seconds West along the East line of Lot 10 a distance of 67.67 feet to the point of beginning; thence South 90 degrees 00 minutes 00 seconds West parallel with the south line of Lot 10 a distance of 60.54 feet to the west line of Lot 10; thence North 0 degrees 00 minutes 20 seconds West along the west line of Lot 10 a distance of 3.88 feet to the south line of the North Half of Lot 9; thence South 90 degrees 00 minutes 00 seconds West along the south line of the North Half of Lot 9 a distance of 27.23 feet; thence North 0 degrees 00 minutes 20 seconds West parallel with the east line of Lot 9 a distance of 22.37 feet to the south line of the North 49.15 feet of Lot 9; thence South 90 degrees 00 minutes 00 seconds West parallel with the north line of Lot 9 a distance of 19.81 feet to the east line of the West 13.50 feet of Lot 9; thence North 0 degrees 00 minutes 20 seconds West parallel with the west line of Lot 9 a distance of 49.15 feet to the north line of Lot 9; thence North 90 degrees 00 minutes 00 seconds East along the north line of Lots 9 and 10 a distance of 107.58 feet to the northeast corner of Lot 10; thence South 0 degrees 00 minutes 20 seconds East along the east line of Lot 10 a distance of 75.43 feet to the point of beginning.

42. 02-04 9/03/02 Lots One (1), Two (2) and Three (3) in Block Three (3) of Buccaneer Subdivision to the City of Blue Earth and the following described tract:

A tract of land in Outlot A of Buccaneer Subdivision to the City of Blue Earth abutting Lots 1, 2 and 3 of Block 3 thereof described as follows:

Commencing at the Northeast corner of Lot One (1) in said Block Three (3); thence South along the East line of Lot 1, 2 and 3 to the Southeast corner of Lot Three (3); thence East 140 feet on the Easterly extension of the South line of said Lot 3; thence North 310 feet parallel with the East line of said Lots 1, 2 and 3 to a point on the South line of 14<sup>th</sup> Street in the City of Blue Earth and thence West along the South line of said 14<sup>th</sup> Street also described as the Easterly extension of the North line of Lot 1 in said Block 3 to the point of beginning of the tract herein described.

43. 02-07 12/02/02 Lot 7 in Block Twenty-four as designated upon the Original Plat of Blue Earth City (now City of Blue Earth), Faribault County, Minnesota according to the plat on file and of record in the office of the Register of Deeds of said County.

A tract of land in Lot 6 of Block Twenty-four of Blue Earth City (now City of Blue Earth), Faribault County, Minnesota described as follows:

Beginning at the southeast corner of Lot 6 of Block Twenty-four of Blue Earth City (now City of Blue Earth), Faribault County, Minnesota according to the original plat thereof; thence North 0 degrees 00 minutes 00 seconds East (assumed bearing) along the east line of Lot 6 a distance of 142.96 feet to the northeast corner of Lot 6; thence South 89 degrees 56 minutes 46 seconds West along the north line of Lot 6 a distance of 51.23 feet; thence South 24 degrees 22 minutes 11 seconds East a distance of 94.34 feet to a circular curve, concave westerly and having a radius of 138.09 feet; thence southwesterly along said curve through a central angle of 24 degrees 22 minutes 11 seconds an arc length of 58.74 feet to the point of beginning.

Said tract contains 2,961 square feet (0.068 acres).

44.           03-06                           4/21/03

Lot 5 of Block One of BUCCANEER ADDITION in the City of Blue Earth, Faribault County, Minnesota according to the plat on file and of record in the office of the Faribault County Recorder excepting therefrom the following described tract:

Beginning at the southwest corner of Lot 5 of Block One of BUCCANEER ADDITION in the City of Blue Earth, Faribault County, Minnesota according to the plat on file and of record in the office of the Faribault County Recorder; thence North 0 degrees 00 minutes 00

seconds East along the west line of Lot 5 a distance of 90.00 feet; thence North 88 degrees 36 minutes 20 seconds East a distance of 165.00 feet to the east line of Lot 5; thence South 0 degrees 00 minutes 00 seconds West along the east line of Lot 5 a distance of 90.00 feet to the southeast corner of Lot 5; thence South 88 degrees 36 minutes 20 seconds West along the south line of Lot 5 a distance of 165.00 feet to the point of beginning.

Subject to easements of record in said city, county and state.

The "North Tract" contains 32,660 square feet (0.750 acres) including easements of record and excluding the excepted tract.

45.           03-07                           4/21/03

A tract of land in Lot 5 of Block One of BUCCANEER ADDITION in the City of Blue Earth, Faribault County, Minnesota described as follows:

Beginning at the southwest corner of Lot 5 of Block One of BUCCANEER ADDITION in the City of Blue Earth, Faribault County, Minnesota according to the plat on file and of record in the office of the Faribault County Recorder; thence North 0 degrees 00 minutes 00 seconds East along the west line of Lot 5 a distance of 90.00 feet; thence North 88 degrees 36 minutes 20 seconds East a distance of 165.00 feet to the east line of Lot 5; thence South 0 degrees 00 minutes 00 seconds West along the east line of Lot 5 a distance of 90.00 feet to the

southeast corner of Lot 5; thence South 88 degrees 36 minutes 20 seconds West along the south line of Lot 5 a distance of 165.00 feet to the point of beginning.

Subject to easements of record in said city, county and state.

Said tract contains 14,846 square feet (0.341 acres) including easements of record.

46. 03-09 6/2/03

A tract of land in Outlot A of BUCCANEER ADDITION in the City of Blue Earth, Faribault County, Minnesota described as follows:

Beginning at the southeast corner of Lot 4 of Block Three of BUCCANEER ADDITION in the City of Blue Earth, Faribault County, Minnesota according to the plat on file and of record in the office of the Faribault County Recorder; thence North 0 degrees 00 minutes 00 seconds East along the east line of Lot 4 a distance of 90.00 feet to the northeast corner of Lot 4; thence North 88 degrees 36 minutes 20 seconds East along the easterly extension of the north line of Lot 4 a distance of 140.00 feet; thence South 0 degrees 00 minutes 00 seconds West a distance of 90.00 feet to the north line of Lot 5 of Block Three; thence South 88 degrees 36 minutes 20 seconds West along the north line of Lot 5 a distance of 140.00 feet to the point of beginning.

47. 04-15 8/16/04

The North Half (N1/2) of Lots Four (4) and Five (5), Block Sixty-two

			(62) Blue Earth City (now City of Blue Earth), Faribault County, Minnesota, according to the plat thereof on file and of record in the Office of the Register of Deeds of said County.
48.	04-17	8/16/04	Lots One (1), Two (2), Three (3) and Four (4) and the vacated North Circle Drive abutting said Lots in Block One (1), Buccaneer Subdivision to the City of Blue Earth, Faribault County, Minnesota.
49.	04-18	9/20/04	Lots 1, 2, 8 and 9 all in Block 88 as designated upon the recorded plat of the City of Blue Earth, Faribault County, Minnesota, EXCEPT a tract commencing at a point 50 feet East of the Southwest corner of Lot 2 on the South line of Lot 2, thence East 20 feet along the South line of Lot 2, thence North 20 feet parallel with the East line of Lot 1, thence West 20 feet parallel with the South line of Lots 1 and 2, and thence South 20 feet to point of beginning.
50.	04-24	11/15/04	The North 32 feet of Lot Ten (10) in Block Sixty-three (63) as designated upon the Plat of Blue Earth City (now City of Blue Earth) Faribault County, Minnesota, on file and of record in the Office of the Register of Deeds in and for said Faribault County.
51.	04-26	12/7/04	Lot Three (3) in Block Four (4) of TANGLEWOOD SECOND SUBDIVISION in the City of Blue Earth, Faribault County, Minnesota, as designated upon the Plat of said Subdivision on file and of record in

the Office of the Register of Deeds  
in and for said Faribault County,  
Minnesota.

- |     |       |         |  |
|-----|-------|---------|--|
| 52. | 05-13 | 5/2/05  | A 20.00 foot wide permanent utility easement over, under, and along a strip of land in the West Half of the Southwest Quarter (W1/2 SW1/4) of Section Seven (7), Township One Hundred Two (102) North, Range Twenty-seven (27) West of the Fifth Principal Meridian in the City of Blue Earth, Faribault County, Minnesota, lying 20.00 feet (measured at right angles) easterly of and adjacent to the described Line A. All easement sidelines shall be shortened or extended to terminate on the north at the southerly railroad right-of-way line of the Chicago and North Western Transportation Company. |
| 53. | 06-07 | 4/3/06  | A tract of land in Lot 1 of Block Two of Fair Board Subdivision in the City of Blue Earth, Faribault County, Minnesota.  |
| 54. | 06-08 | 6/19/06 | A tract of land in the Southeast Quarter of the Southwest Quarter (SE1/4 of SW1/4) of Section Eight (8), Township 102 North, Range Twenty-seven (27) West in the City of Blue Earth, Faribault County, Minnesota.  |
| 55. | 06-10 | 6/5/06  | Lots Nine (9) and Ten (10) in Block Seventy-five (75) as designated upon the Original Plat of Blue Earth City.   |
| 56. | 06-12 | 8/7/06  | A tract of land in the West Half of the Southwest Quarter (W1/2 SW1/4) of Section Seven (7),   |

Township 102 North, Range Twenty-Seven (27) West of the Fifth Principal Meridian in the City of Blue Earth, Faribault County, Minnesota.

57. 08-03 4/7/08

That part of Outlot B of Valley Highland Third Subdivision in the City of Blue Earth, Faribault County, Minnesota lying North of the following described line:  
Commencing at a point on the West line of Outlot B that is 120 feet South of the Northwest corner of Outlot B and running Easterly to the Southwest corner of Lot Six (6) in Block One of Valley Highlands Second Subdivision of Blue Earth.

58. 10-05 7/14/10

A tract of land in the Southwest Quarter of Section 7, Township 102 North, Range 27 West in the City of Blue Earth, Faribault County, Minnesota. See attached Exhibit A.

## EXHIBIT "A"

### LEGAL DESCRIPTION

#### NELSON BUILDING SITE

A tract of land in the Southwest Quarter of Section 7, Township 102 North, Range 27 West in the City of Blue Earth, Faribault County, Minnesota described as follows:

Commencing at the Southeast corner of the Southwest Quarter of Section 7, Township 102 North, Range 27 West in the City of Blue Earth, Faribault County, Minnesota; thence South 89 degrees 04 minutes 19 seconds West (assumed bearing) along the South line of the Southwest Quarter a distance of 292.75 feet to the east line of Commerce Drive (formerly Industrial Site Roadway); thence North 0 degrees 41 minutes 01 seconds West along the east line of Commerce Drive a distance of 739.91 feet to the north line of Industrial Drive (formerly Industrial Site Roadway); thence South 89 degrees 04 minutes 19 seconds West along the north line of Industrial Drive a distance of 508.85 feet to the point of beginning and southwest corner of a tract of land deeded to Papa D's Pizza, Inc. and recorded and described in the office of the Faribault County Recorder in Document No. 263841; thence continuing South 89 degrees 04 minutes 19 seconds West along the north line of Industrial Drive a distance of 357.75 feet; thence North 0 degrees 41 minutes 01 seconds West a distance of 591.59 feet to the southerly railroad right-of-way line of the Union Pacific Railroad Company (formerly Chicago and Northwestern Transportation Company); thence South 65 degrees 51 minutes 00 seconds East along said southerly railroad right-of-way line a distance of 552.87 feet to the northerly extension of the east line of said Papa D's Pizza, Inc. tract; thence South 0 degrees 41 minutes 01 seconds East along said northerly extension a distance of 54.75 feet to the northeast corner of said Papa D's tract; thence South 89 degrees 04 minutes 19 seconds West along the north line of said Papa D's tract a distance of 144.00 feet to the northwest corner thereof; thence South 0 degrees 41 minutes 01 seconds East along the west line of said Papa D's tract a distance of 302.50 feet to the point of beginning. Subject to easements of record in said City, County and State.

Said tract contains 4.465 acres including the aforementioned easements.

## **APPENDIX F**

### **FRANCHISES**

#### **Section A - Cable Franchise.**

##### **Section 1. Grant of Authority**

In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, a nonexclusive franchise is hereby granted to Charter Communications of Minnesota, Inc., and assignees to erect, maintain, and operate audio, video, and data transmission and distribution facilities and additions thereto in, under, over, along, across and upon the streets, lanes, places in the City of Blue Earth, and subsequent additions thereto, for the purpose of transmission and distribution of audio, video, and data in accordance with the laws and regulations of the United States of America, the Federal Communications Commission, the State of Minnesota and the City of Blue Earth for a period of fifteen (15) years from and after the date here of.

The City agrees that any grant of additional franchises, licenses, consents, certificates or other authorizations by the City to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way, shall require that service be provided for the same territorial area of the City as required by this Franchise and shall be competitively neutral and not be on terms and conditions (including, without limitation, the service area, PEG capital grants and the franchise fee obligations) more favorable or less burdensome to the Person(s) of any such additional franchise, licenses, certificates or other authorizations, than those which are set forth herein.

If another provider of Cable Services, video services or other television services utilizing any system or technology requiring use of the public rights of way in the Service Area, is lawfully authorized by any governmental entity or otherwise exempt from obtaining a franchise to provide such services City hereby agrees that, upon a request from Company, as a matter of law, Company's Franchise is modified within thirty (30) days of the granting of such authorization or exemption for the purpose of establishing the same terms and conditions as such Person(s) on a competitively neutral basis.

##### **Section 2. Definitions**

For the purposes of the Ordinance, the following terms, phrases, words and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future. Words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

(1) "**Basic Cable Service**" shall mean the video subscriber services provided by Company and

covered by a regular monthly charge paid by the subscriber, excluding optional services for which a separate charge is made and installation charges occur.

(2) **“Cable System,” “Cable Service,” “Cable Operator”** and **“Basic Cable Service”** shall be defined as set forth in the Cable Act.

(3) **"City"** shall mean the City of Blue Earth, Minnesota.

(4) **"Company"** shall mean CCVIII Operating LLC, d/b/a Charter Communications, or the lawful successor, transferee, or assignee thereof, the franchisee, and the Company of rights under this Cable Communications Franchise Ordinance.

(5) **“Council”** shall mean the City Council of the City of Blue Earth, Minnesota.

(6) **"FCC"** shall mean the Federal Communications Commission of the United States, or its lawful successor.

(7) **"Franchise"** shall mean the Cable Communications Franchise ordinance herein.

(8) **“General Public”** shall mean the citizens of the City.

(9) **“Gross Revenues”** any revenues received by the Company or its affiliates from the operation of a Cable System to provide Cable Service in the City. Gross Revenues shall include, but not be limited to, any revenues generated from the following services or obtained by the Company or its affiliates in connection with the provision of Cable Services: advertising, pay-per-view, shopping, regional sports programming, installation/connection fees, equipment rental fees, and late fees. Gross Revenues shall not include revenues received by the Company or its affiliates from the provision of Telecommunications Services or other non-Cable Services in the City, bad debt, credits, refunds and deposits paid to Subscribers, or any taxes, fees or assessments of general applicability collected by a Company which are imposed directly on a Subscriber and which are collected by a Company for such governmental unit, including any PEG fees, franchise fees and the FCC User Fee.

(10) **"Installation"** shall mean the connection of the system from feeder cable to the point of connection.

(11) **"Person"** shall mean any individual, firm, trustee, partnership, municipality, association, corporation, company or organization of any kind.

(12) **“Right of Way”** shall have the meaning given in Minnesota Statutes Chapter 237 or any successor statute and Minnesota Rules Chapter 7819 or any successor Rules.

(13) **"Service Area"** shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means, subject to the exception in Section

22 hereto.

(14) "**Subscriber**" shall mean any person who lawfully receives cable services. In the case of multiple office buildings or multiple dwelling buildings, the "Subscriber" shall be deemed the lessee, tenant or occupant.

### **Section 3. Findings of Council**

During full public proceeding affording reasonable notice and opportunity to be heard, the Company's technical ability, financial condition and legal qualification, were considered and approved by the City pursuant to state law.

### **Section 4. Renewal**

The Company and the City agree that any proceedings undertaken by the Company that relate to the renewal of the City's Franchise shall be governed by, and comply with, the provisions of Section 626 of the Cable Act, or any such successor statute. If the renewal of this Franchise is not completed prior to its expiration and the Company does not provide written notice of its intent not to renew in accordance with the Cable Act, then this Franchise shall be extended for an additional six (6) month term from the date of expiration.

### **Section 5. Subscriber Privacy**

Grantee shall at all times comply with federal privacy standards contained in Section 631 of the Cable Act and applicable state law privacy standards.

### **Section 6. Complaints Customer Service**

The Company shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

The Company shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Company's name, address and local telephone number. Company shall give the City thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

The City shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the FCC.

It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Company are honored. All complaints regarding quality of service, equipment malfunction, billing disputes, or any other matter relative to the cable communications

system shall be investigated by the Company within twenty-four (24) hours of notice, oral or written, to the Company and the Company shall be required to rectify complaints, if reasonably possible.

### **Section 7. Repairs**

The Company shall maintain a toll free or collect telephone number for the reception of complaints and shall maintain a repair service capable of responding to Subscriber complaints or request for repairs within twenty-four (24) hours after receipt of said complaints or requests. Costs for making such repairs, or adjustments to the Company's facilities or equipment, or installation shall be borne by the Company unless otherwise provided in the Subscriber's contract or unless said repairs are necessitated in the negligence or deliberate acts of the Subscriber. In such cases the Subscriber shall bear the costs.

### **Section 8. Channel Capacity**

(1) The Company shall maintain a Cable System with a minimum channel capacity of one hundred (100) video programmed channels, available for immediate or potential use.

### **Section 9. Special Access Channel**

(1) The Company shall provide to each of its Subscribers who receive all, or any part of, the total services offered on the system, reception on at least one specially designated access channel available for use by the General Public on a first-come, first-served, nondiscriminatory basis. Channel time and playback of prerecorded programming on this specially designated access channel must be provided without charge to the General Public, except that personnel, equipment, and production costs may be assessed for live studio presentations. Charges for production costs must be consistent with the goal of affording the public a low-cost means of television access. Upon request, a copy of any assessed production costs or user fee's shall be provided to City.

The specially designated access channel may be used by local educational authorities and local government on a first-come, first-served, nondiscriminatory basis during those hours when the channel is not in use by the General Public.

Company may also use this specially designated access channel for local origination during those hours when the channel is not in use by the General Public, local educational authorities, local government, or commercial or non-commercial users who have leased time.

(2) Whenever the specially designated access channel is in use during eighty percent (80%) of the weekdays (Monday-Friday), for eighty percent (80%) of the time during any consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, the Company shall have six (6) months in which to provide a new specially designated access channel for the same purpose, provided that provision of the additional channel or channels does not require the Cable System to install converters. Nothing in this rule precludes the

installation of converters by the system on a voluntary basis, as a result of any agreement arrived at through negotiation between the parties to this Franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

(3) The City shall establish rules for the administration of the specially designated access channel. The rules shall be consistent with the requirement of the Federal Communications Commission rules and regulations relating to operating rules for access channels.

## **Section 10. Equipment to be Made Available**

The Company shall make readily available for public use, upon need being shown, at least the minimal equipment necessary to perform good quality playback of prerecorded programming, and to make it possible to record programs at remote locations with battery operated portable equipment. Need within the meaning of this Section shall be determined by Subscriber petition. The petition must contain the signatures of at least ten percent (10%) of the Subscribers of the system, but in no case more than three hundred fifty (350) nor fewer than one hundred (100) signatures.

## **Section 11. Service to City-owned Buildings and Public Schools.**

**11.1 Service to Schools and Buildings.** The Company shall maintain, without charge, one outlet to each Public School located in the Service Area served by the Cable System and listed in Exhibit A, and will provide free Basic Cable, for so long as the Cable System remains in operation in the Service Area. Any such school may install, at its expense, such additional outlets for classroom purposes as it desires, provided that such installation shall not interfere with the operation of Company's Cable System, and that the quality and manner of installation of such additional connections shall have been approved by the Company and shall comply with all local, State and federal laws and regulations. In addition, the Company shall furnish to the City, without installation or monthly charges, one outlet to any City owned building as listed in Exhibit A.

**11.2 Limitations on Use.** The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The City shall take reasonable precautions to prevent any use of the Company's Cable System that results in the inappropriate use thereof or any loss or damage to the Cable System. The City shall hold the Company harmless from any and all liability or claims arising out of the provision and use of Cable Service required above. The Company shall not be required to provide an outlet to any such building where a standard drop of more than one hundred fifty (150) feet is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary extension or installation.

## **Section 12. Franchise Fee**

The Company shall pay to the City an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue as herein defined. Such payment shall be in addition to taxes of general

applicability owed to the City by the Company that are not included as franchise fees under federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Company chooses, consistent with federal law.

Payment of the fee due the City shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. The payment period shall commence as of the Effective Date of the Franchise. In the event of a dispute, the City, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges, deductions and computations for the period covered by the payment.

No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the Company may have for additional sums payable as a franchise fee under this Franchise.

All amounts paid are subject to audit and recomputation by the City, and acceptance of any payment must not be construed as an accord that the amount paid is in fact the correct amount. In accordance with Minn. Stat. § 541.05, any action to recover Franchise Fees must be commenced within three (3) years of receipt of the Franchise Fee payment or due date for such payment. The City shall have the authority to audit the Company's accounting and financial records to verify the accuracy of the franchise fees so paid. The Company shall first be given thirty (30) working days notice of the inspection and description, to the best of the City's ability, of the books, records, and documents it wants to inspect. Said inspection shall be subject to the privacy provisions of 47 U.S.C. § 521 et seq., and shall be held at a mutually convenient location during normal business hours. Company may identify and label documents as "confidential trade secret".

### **Section 13. Legal Fees.**

Company shall reimburse City for the costs of the legal review of this franchise agreement. Any legal fees paid by Company under this section shall be credited to Company and deductible off of the nearest future franchise fee due to City under the terms of this franchise.

### **Section 14. Compliance with Federal and State Regulations**

The Company and City shall conform to all state laws, rules and regulations regarding cable communications not later than on (1) year after they become effective, unless otherwise stated, and shall further conform to all federal laws and regulations regarding Cable Service as they become effective.

### **Section 15. Indemnification and Liability Insurance**

(1) Company shall hold the City harmless from any and all claims and actions, litigation or damages arising out of the construction, erection, installation, maintenance or operation of its property operated by authority of this Ordinance within the corporate limits of the City, or the negligence of

its employees in the operation thereof; and the Company agrees to defend in the name of the City any claims made against the City arising out of this Franchise; the Company shall not hold the City harmless for any claims resulting from the negligence of the City, its employees or agents.

(2) Nothing contained in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injury to the Company's facilities while performing any work connected with grading, regarding or changing the line of any street or public place, or with the construction or reconstruction of any sewer or water system.

(3) The Company shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	[\$1,000,000] per occurrence,
Combined Single Liability (C.S.L.)	[\$2,000,000] General Aggregate
Auto Liability including coverage owned hired autos Umbrella Liability	[\$1,000,000] per occurrence C.S.L. on all owned, non
Umbrella Liability	[\$1,000,000] per occurrence C.S.L.

The City shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

The Company shall furnish the City with current certificates of insurance evidencing such coverage. The Company agrees that it will at all times carry public liability insurance, insuring both the City and the Company with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the Franchise.

The City shall give the Company written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the City shall tender the defense thereof to the Company and the Company shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. If the City determined in good faith that its interests cannot be represented by the Company, the Company shall be excused from any obligation to represent the City. Notwithstanding the foregoing, the Company shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City or for the City's use of the Cable System, including any PEG channels.

## **Section 16. Transfer of Ownership**

Neither this Franchise nor the Cable System for which it is granted shall be transferred except with the approval of City, which approval shall not be unreasonably withheld. Such sale or transfer or

creation of a new controlling interest shall be completed pursuant to state law.

### **Section 17. Termination of Franchise**

(1) The City shall have the right to terminate and cancel this Franchise and all its rights and privileges if Company:

- (a) substantially violates any material provision of the Franchise ordinance,
- (b) attempts to evade the provision of this ordinance, or
- (c) practices fraud or deceit upon the City.

The City shall provide the Company with written notice of the cause for termination and its intention to terminate and shall allow the Company a minimum of thirty (30) days after service of the notice to correct the violation.

(2) The Company shall be afforded an opportunity to be heard at public hearing of the Council prior to the termination of the Franchise. In the event the Council determines to terminate the Franchise, the Company hereby reserves all rights it may have to appeal such action. During the period any appeal is being taken, the Franchise shall remain in full force and effect.

### **Section 18. Municipal Purchase Rights**

If the Franchise or cable system is offered for sale, the City shall have the right to purchase the system at its fair market value. In the event the Company has received a bona fide offer for purchase of its System, the City shall have the right to purchase for the price which the proposed assignee or transferee agreed to pay. The City will be deemed to have waived its right to purchase the System in the following circumstances:

- (1) The City does not notify the Company in writing, within 60 days of notice, that it intends to exercise its right of purchase; or
- (2) The City approves the transaction.

### **Section 19. Performance Bond**

At the time the franchise becomes effective and at all times thereafter, until Company has liquidated all its obligations with the City, the Company shall, upon request, furnish a performance bond in an amount of twenty-five thousand dollars (\$25,000.00).

### **Section 20. Construction Standards**

(1) Company shall not open or disturb the surface of any street, sidewalk, driveway or public place without first obtaining a permit from the proper municipal authority. If the Company fails to meet the conditions of the permit, the City shall have the right to put the street or public place back into the condition which existed immediately prior to use by the Company at the expense of the Company.

(2) All wires, conduits, cable and other property and facilities of the Company shall be located, constructed, installed and maintained in compliance with applicable codes. The Company shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic and travel upon the streets and public places of the franchise area or endanger the life or property of any persons.

(3) The erection of any poles by the Company, other than poles erected by other franchised utility companies, shall be first approved in writing by the City. All plans for construction shall be submitted to the City showing the location of all poles, lines, and facilities. These plans shall be kept up-to-date and a complete set thereof shall be retained in the office of the City Clerk.

(4) In the performance of the above subsections, but without relieving itself of any other obligations of this ordinance, The Company is authorized to buy, lease, or rent from any other company or person any poles, wires, lines, or other appurtenances that presently are existing or that hereafter may be erected or constructed.

(5) In the maintenance and operation of the Cable Communications System in the streets, alleys, and other public places and in the course of any new construction or addition to said facilities, the Company shall proceed so as to cause the least possible inconvenience to the General Public. All excavations shall be properly guarded, protected, replaced, and the surface restored in good condition promptly after completion of such work. Company shall at all times comply with any and all rules and regulations which City has made or may make applying to the public generally with reference to removal or replacement of pavement and to excavations in streets and other public places.

(6) The facilities of the Company shall be installed underground in those areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Company may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, the Company shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the City or any agency thereof for the placement of cable underground or the movement of cable, the Company shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

## **Section 21. Operation Standards**

All construction practices and installation of equipment shall be done in accordance with all

applicable sections of the National Electric Safety Code. The cable communications equipment shall be installed and maintained so as to provide pictures of good quality on subscriber receivers throughout the system including good quality color reception.

## **Section 22. Service Area and Extension of Service**

The cable television system as presently constructed shall be retained and maintained as to extent of the present service area.

Whenever Company shall receive a request for service from at least seven (7) Subscribers within 1,320 cable feet of its trunk cable as determined by the Company or thirty Subscribers within one (1) mile of its trunk cable as determined by the Company, it shall extend its system to such Subscribers at no cost to said Subscribers for system extension, other than the usual installation fees for all Subscribers, provided that such extension meets the aforementioned standards. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements above, the Company shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Company 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. Company shall have twenty-four (24) months from the date of receipt of the required number of service requests to provide services to said Subscribers.

## **Section 23. Relocation of Property at Request of City**

Upon receipt of reasonable notice, not to be less than five (5) business days, Company shall, at its own expense, temporarily disconnect and/or relocate within the Right-of-Way, or remove from the Right-of-Way, any property of Company when lawfully required by City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by City.

## **Section 24. Removal of Property**

Upon expiration of this Franchise or termination of the rights herein granted, Company shall, if City so requests, remove all of its plant, structures, works, pipes, mains, conduits, cables, poles, and wires and refill at its own expense any excavation that shall be made by it; and shall leave such streets, alleys, public ways, and places in as good condition as that prevailing prior to Company's removal of the equipment and appliances, with the exception of those portions of said plants, structures, works, pipes, mains, conduits, cables, poles, and wires as are then being utilized and operated by Company under any other lawful and effective governmental permit or license. If the same are not so removed, City may cause the same to be removed and recover the costs thereof from Company.

## **Section 25. Continuing Administration Responsibility**

The office of the City Clerk shall be responsible for the continuing administration of this Franchise.

## **Section 26. Technical Standards and Test Results**

The technical standards promulgated by the FCC relating to Cable Communications Systems contained in Subpart K of Part 76 of FCC rules are herein incorporated by reference.

## **Section 27. Abandonment of Service**

The Company shall not abandon any portion of its Cable Communications System without giving three months prior written notice to the City.

## **Section 28. Special Testing Cost**

In the event the City identifies signal or System performance difficulties which may constitute violations of applicable FCC standards, and documents five (5) or more written complaints regarding System performance, the Company will be notified and afforded ten (10) days to correct problems or complaints. If the performance difficulty is not resolved within ten (10) days the City may require the Company to demonstrate compliance via testing or other means selected by the Company at Company expense. If the cost of required special testing fails to reveal noncompliance with FCC Standards, then the City shall pay the costs of such special testing.

## **Section 29. Rules by Company**

The Company shall have the right to prescribe reasonable service rules and regulations for the conduct of its business not inconsistent with the provision of this ordinance, and a copy of such service rules and regulations shall be made available to the City Clerk upon request.

## **Section 30. Severability**

If any provisions of this Ordinance, of the application thereof to any person or circumstance, is held invalid, the remainder of this Ordinance and the application of such provisions to the person or circumstances shall not be affected thereby and to this end the provisions of the Ordinance are declared to be severable.

## **Section 31. Effective Date**

This Ordinance Amendment shall take effect and be in full force from and after its passage and publication as required by law.

## **Section 32. Force Majeure.**

The Company shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Company to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Company's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

### **Section 33. Entire Agreement**

This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

### **Section 34. Notices**

All notices, reports or demands required to be given under this Franchise shall be in writing and shall be deemed to be given upon delivery if delivered personally to the person designated below, or on the fifth day following mailing if sent in accordance with the notice requirement of this Section and deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to the City:

City of Blue Earth

Attn: City Administrator

125 West 6<sup>th</sup> St.

PO Box 38

Blue Earth, MN 56013-0038

If to the Company:

Charter Communications

Attn: General Manager

3380 Northern Valley Place NE

Rochester, MN 55906

With a copy to:

Charter Communications

Attn: Vice President of Government Affairs  
12405 Powerscourt Drive  
St. Louis, MO 63131

### **Section 35. Effective Date**

The Franchise granted herein will take effect and be in full force only upon acceptance by the Company on the signature page of this Agreement and upon the passing of the signed Agreement before the City Council. This Franchise shall expire on \_\_\_\_\_, \_\_\_\_\_, unless extended by the mutual agreement of the parties. (*Appendix F, Section A – Cable Franchise amended per Ordinance 06-01 dated 1-9-06.*)

### **Cable Franchise Extension Agreement.**

**Subd. 1. Grant of Authority.** In consideration of the faithful performance and observance of the conditions and reservations specified in the current cable franchise, which was adopted by ordinance and is listed in detail in Appendix F of the Code of Ordinances of the City of Blue Earth, an extension to the nonexclusive franchise is hereby granted to WestMarc Communications of Minnesota, Inc., and assignees, for the purpose of preserving the franchise beyond the expiration date for periods of negotiation with the franchisee on an updated nonexclusive franchise agreement. The duration of the extension shall be limited as set forth in subdivision 2 of this agreement.

**Subd. 2. Duration.** Any extension to the effective dates of the cable franchise currently in effect as of the date of this ordinance shall be limited in duration to a period of time not to exceed one (1) year in length, and the extension shall terminate and the franchise expire upon the occurrence of the adoption of a new nonexclusive franchise with the franchisee or the termination of all negotiations with the franchisee. (*Cable Franchise Extension Agreement added to Appendix F, Section A per Ordinance 05-09 dated 4-4-05.*)

### **Section A-1 - Cable Franchise.**

#### **Section 1. Approving the Transfer of the Cable Franchisee.**

**WHEREAS**, CC VIII Operating, LLC, dba Charter Communications (“Franchisee”) owns, operates and maintains a cable television system (the “System”) in the City of Blue Earth (“Franchise Authority”) pursuant to a franchise agreement (the “Franchise”) between Franchisee and the Franchise Authority and Franchisee is the duly authorized holder of the Franchise granted by the Franchise Authority which contains a provision allowing Franchisee to sell or transfer the Franchise with approval of the City; and

**WHEREAS**, Cannon Valley Cablevision Inc., a Minnesota corporation (“Buyer”), has entered into an Asset Purchase Agreement with Franchisee (the “Agreement”), pursuant to which the System and the Franchise will be transferred (the “Transfer”) to Buyer upon the closing of the transactions contemplated under the Agreement (the “Closing Date”) and has notified the City of its intent to sell

and transfer the Franchise; and

**WHEREAS**, Franchisee and Buyer have requested that the Franchise Authority consent to the Transfer in accordance with the requirements of the Franchise to the extent that such consent is required and have filed an FCC Form 394 with the Franchise Authority, and have provided all information required by applicable law (collectively, the “Transfer Application”); and

**WHEREAS**, the Franchise Authority has reviewed the Transfer Application, examined the legal, technical and financial qualifications of Buyer and finds it to be a suitable transferee; and

**WHEREAS**, Franchisee and Buyer have requested the Franchise Authority to waive any right to acquire the assets of the System which it may have under the Franchise; and

**WHEREAS**, the transaction described above is deemed to be in the best interests of the residents of the City of Blue Earth; and

**WHEREAS**, The City of Blue Earth hereby waives its right to purchase said Franchise as specified in Paragraph 18 therein; and

**WHEREAS**, the City of Blue Earth finds no potential adverse effect to the subscribers of CC VIII Operating, LLC within the City of Blue Earth by the sale or transfer of the Franchise to the proposed Buyer, Cannon Valley Cablevision, Inc.

**NOW THEREFORE, BE IT RESOLVED BY THE FRANCHISE AUTHORITY AS FOLLOWS:**

**SECTION 1.** The Franchise Authority hereby acknowledges the sufficiency of the notice provided by Franchisee and Buyer regarding the transfer of the Franchise and assets of the System to Buyer, and as of the date of this Ordinance hereby expressly waives any right it may have to acquire the System pursuant to the terms of the Franchise.

**SECTION 2.** The Franchise Authority hereby consents to and approves the assignment by Franchisee of its right, title and interest in the Franchise to Buyer and assumption by Buyer of the obligations of Franchisee under the Franchise, subject to applicable law, which accrue from and after the Closing Date of the purchase of the assets of the System by Buyer.

**SECTION 3.** The Franchise Authority confirms that (a) the Franchise is validly existing and is currently in full force and effect and the Franchisee is the duly authorized holder of the Franchise; (b) the Franchisee has properly invoked its franchise renewal rights under Section 626 of the Cable Communications Policy Act of 1984, as amended; (c) the Franchise represents the entire understanding of the parties and the Franchisee has no obligations to the Franchise Authority other than those specifically stated in the Franchise; and (d) the Franchisee is materially in compliance with the provisions of the Franchise and applicable law and there exists no fact or circumstance

known to the Franchise Authority which constitutes or which, with the passage of time or the giving of notice or both, would constitute a material default or breach under the Franchise or applicable law or would allow the Franchise Authority to cancel or terminate the Franchisee's rights there under.

**SECTION 4.** The City of Blue Earth finds no adverse effects to the subscribers to the Franchise within the City of Blue Earth due to the sale/transfer of the Franchise and hereby determines that no public hearing is needed prior to approving the sale/transfer of the franchise.

**SECTION 5.** The Franchise Authority hereby consents to and approves the sale, transfer, assignment, mortgage, pledge or other encumbrance, if any, of the Franchise, System or assets relating thereto, or of the interests in the permitted holder thereof, to the Buyer specified herein.

**SECTION 6.** This Ordinance shall be deemed effective for purpose of the Transfer immediately prior to the Closing Date.

**SECTION 7.** The Franchise Authority releases the Franchisee, effective upon the Closing Date, from all obligations and liabilities under the Franchise and applicable law that accrue on and after the Closing Date; provided that Buyer shall be responsible for any obligations and liabilities under the Franchise and applicable law that accrue on and after the Closing Date.

**SECTION 8.** This Ordinance shall have the force of a continuing agreement with the Franchisee and Buyer, and the Franchise Authority shall not amend or otherwise alter this Ordinance without the consent of Franchisee and Buyer. *(Approving the Transfer of the Cable Franchisee added to Appendix F, Section A-1 per Ordinance 08-01 dated 4-7-08.)*

## **Section B - Gas Franchise.**

**SECTION 1. DEFINITIONS.** For purposes of this Ordinance, the following capitalized terms shall have the following meanings:

- 1.1. **City.** The City of Blue Earth, County of Faribault, State of Minnesota.
- 1.2. **City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by the City or agency thereof, including sewer and water service, but excluding facilities for providing heating or other forms of energy.
- 1.3. **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government that preempts all or part of the authority to regulate gas retail rates now vested in the Commission.
- 1.4. **Company.** Reliant Energy Minnegasco, a Division of Reliant Energy Resources Corporation, its successors and assigns, including successors to assignees of those

portions of the Company that constitute any part or parts of the Gas Facilities subject to this franchise.

- 1.5. **Effective Date.** The date on which the ordinance becomes effective under Section 2.2.
- 1.6. **Gas.** Natural gas, manufactured gas, mixture of natural gas and manufactured gas or other forms of gas energy.
- 1.7. **Gas Facilities.** Gas transmission and distribution pipes, mains, lines, ducts, fixtures, and all necessary facilities, equipment and appurtenances owned, operated or otherwise used by the Company for the purpose of providing gas energy for public use.
- 1.8. **Non-Betterment Costs.** Costs incurred by the Company from relocation, removal or rearrangement of Gas Facilities that do not result in an improvement to the Facilities.
- 1.9. **Notice.** A writing served by a party or parties on another party or parties. Notice to Company must be mailed to:

Reliant Energy Minnegasco  
V.P., Regulatory & Supply Service  
800 LaSalle Avenue  
Minneapolis, MN 55402

Notice to City must be mailed to:

City of Blue Earth  
125 West 6<sup>th</sup> Street  
Blue Earth, MN 56013

- 1.10. **Public Way.** Any street, alley or other public right-of-way within the City.
- 1.11. **Public Ground.** Land owned or otherwise controlled by the City for parks, open space or similar public purpose.

## **SECTION 2. FRANCHISE.**

- 2.1. **Grant of Franchise.** The City grants the Company, for a period of twenty (20) years from the Effective Date, the right to import, manufacture, transport, distribute and sell Gas for public and private use within and through the limits of the City. This right includes the provision of Gas that is (i) manufactured by the Company or its affiliates and delivered by the Company, (ii) purchased and delivered by the Company, or (iii) purchased from another source by the retail customer and delivered by the Company. For these purposes, the Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and

across the Public Way and Public Ground subject to the provisions of this ordinance. The Company may do all things reasonably necessary or customary to accomplish these purposes, subject to other applicable ordinances, permit requirements and to further provisions of this ordinance.

- 2.2. **Effective Date.** This franchise is effective from and after its acceptance by the Company. Written acceptance or rejection of the franchise by the Company must be filed with the City Clerk within ninety (90) days after publication of this ordinance.
- 2.3. **Non exclusive Franchise.** This ordinance does not grant an exclusive franchise.
- 2.4. **Attorneys Fees:** Each party is responsible for its own legal fees related to granting this franchise.
- 2.5. **Publication Expense.** The expense of publication of this ordinance must be paid by the Company.
- 2.6. **Default: Dispute Resolution.** If the City or Company asserts that the other party is in default in the performance of any obligation hereunder, the complaining party must notify the other party in writing of the default and the desired remedy. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within thirty (30) days after service of the notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of the mediator. If a mediator is not used or if the parties are unable to resolve the dispute within thirty (30) days after first meeting with the mediator, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity.
- 2.7. **Continuation of Franchise.** If this franchise expires and the City and the Company are unable to agree on the terms of a new franchise, the existing franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of their intention to allow the franchise agreement to expire.

### **SECTION 3. CONDITIONS OF USE.**

- 3.1. **Location of Facilities.** Gas Facilities must be located, constructed, installed and maintained so as not to interfere with the existing City Utility System or the safety and convenience of ordinary travel along and over Public Ways. Gas Facilities may be located on Public Grounds as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance and location of Gas Facilities is subject to other ordinances and regulation of the City, with the requirements of such being no more restrictive than those applicable to other energy suppliers requiring the use of the Public Way.

- 3.2. **Field Location.** Upon request by the City, the Company must provide field locations for any of its Gas Facilities within the period of time required by Minnesota State Statute 216D.
- 3.3. **Permit Required.** The Company may not open or disturb the surface of any Public Way or Public Ground without first having obtained a permit from the City, for which the City may impose a reasonable fee. The permit conditions imposed on the Company may not be more burdensome than those imposed on other utilities for similar facilities or work. The Company may, however, open and disturb the surface of any Public Way or Public Ground without a permit if (i) an emergency exists requiring the immediate repair of Gas Facilities and (ii) the Company gives notice to the City before, if possible, commencement of the emergency repair. Within two business days after commencing the repair, the Company must apply for any required permits and pay the required fees.
- 3.4. **Restoration.** After completing work requiring the opening of a Public Way or Public Ground, the Company must restore the same, including paving and its foundation, to the condition formerly existing and maintain the paved surfaces in good condition for two years thereafter. The work must be completed as promptly as weather permits. If the Company does not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and restore the Public Way or Public Ground, the City may, after demand to the Company to cure and the passage of a reasonable period of time not less than five calendar days following the demand, make the restoration at the expense of the Company. The Company must pay to the City the cost of such work done for or performed by the City, including administrative expense and overhead, plus ten percent of cost and administrative expense. This remedy is in addition to any other remedies available to the City for noncompliance with this section. Given the remedy outlined in this Section 3.4 available to the City for noncompliance by the Company, the City hereby waives any requirement for the Company to post a construction performance bond, certificate of insurance, letter of credit or any other form of security or assurance that may be required, under separate existing or future ordinance of the City.
- 3.5. **Company Protection of Gas Facilities in Public Ways.** The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Facilities by persons, property or elements. The Company and the City will comply with all applicable laws and codes when performing work near the Gas Facilities.
- 3.6. **Notice of Improvements.** The City must give the Company reasonable notice of plans for improvements to Public Ways or Public Ground. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Ways or Public Grounds upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The notice must be given to the Company a

sufficient length of time in advance of the actual commencement of the work to permit the Company to make any necessary additions, alterations, or repairs to its Gas Facilities. If streets are at final width and grade and the City has installed underground sewer and water mains and service connections to the property line abutting the streets prior to a permanent paving or resurfacing of such streets, and the Company's main is located under such street, the City may require the Company to install gas service connections prior to such paving or resurfacing, if it is apparent that gas service will be required during the five years following the paving or resurfacing.

#### **SECTION 4. RELOCATIONS.**

- 4.1. **Relocation of Gas Facilities in Public Ways.** If the City determines by the proper exercise of its police power to vacate a Public Way for a City improvement project, or to grade, regrade or change the alignment of any Public Way, or construct or reconstruct any City Utility System in any Public Way, the City may order the Company to relocate its Gas Facilities at the Company's own expense. The City must give the Company sufficient notice of plans to vacate for a City improvement project, or to grade, regrade, or change the alignment of any Public Way or to construct or reconstruct any City Utility System. If a relocation is ordered within five (5) years of a prior relocation of the same Gas Facilities, which was made at Company expense, the City will reimburse the Company on a time and material basis for Non-Betterment Costs. If any subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, the City may require the Company to make the subsequent relocation at the Company's expense. Nothing in this ordinance requires the Company to relocate, remove, replace or reconnect its Facilities at the Company's expense where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement. The City will not require the removal of abandoned natural gas facilities in any case, unless these facilities are in direct conflict with a Public Way grade change or proposed City Utility System or City improvement. The provisions of this Section 4.1 apply only to Gas Facilities constructed in reliance on this franchise and the Company does not waive its right under an easement or prescriptive right in the Public Way.
  
- 4.2. **Relocation of Gas Facilities in Public Ground.** The City may, by the proper exercise of its police power, require the Company to relocate the Gas Facilities within or remove the Gas Facilities from Public Ground, upon a finding by the City that the Gas Facilities have become or will become a substantial impairment of the public use or enjoyment to which the Public Ground is or will be put. The relocation or removal will be at the Company's expense. The provisions of this Section 4.2 apply only to Gas Facilities constructed in reliance on this franchise and the Company does not waive its right under an easement or prescriptive right in the Public Ground. The City will not require the removal of abandoned nature Gas Facilities in Public Ground in any case, unless these facilities have become or will become a substantial impairment of the public use or enjoyment to which the Public Ground is or will

be put.

- 4.3. **Vacation of Public Ways.** The City must give the Company at least three weeks' Notice of the proposed vacation of a Public Way. Except where required for a City street or other improvement project or as otherwise provided in Section 4.1, the Vacation of a Public Way, after the installation of Gas Facilities, does not deprive the Company of its rights to operate and maintain the Gas Facilities until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to the Company by the City. If the vacation of Public Way does not require the relocation of existing Gas Facilities, the City shall reserve a utility easement to the Company or City created by and within the document establishing the vacation, or the City will preserve a right-of-way in the manner permitted by law.
- 4.4. **Project with Federal Funding.** Relocation, removal or rearrangement of any Gas Facilities made necessary because of the extension into or through the City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46.

## **SECTION 5. DEFENSE AND INDEMNIFICATION.**

- 5.1. **Terms.** The Company will defend, indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property caused by the construction, maintenance, operation, repair, inspection, or issuance of permits relating to Gas Facilities. The City will not be indemnified by the Company for losses or claims in which the City is determined to be more than fifty percent at fault, except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, the Company's plans or work. The City will not be indemnified if the injury or damage results from the performance in a proper manner of acts reasonably deemed hazardous by the Company, and such performance is nevertheless ordered or directed by the City after Notice to the City of the Company's determination. The City will not indemnify the Company nor contribute towards costs, fees, or damages incurred by the Company, arising out of claims by third parties against the Company.
- 5.2. **Litigation.** If such a suit is brought against the City under circumstances where the agreement in this Section 5 to indemnify applies, the Company at its sole cost and expense will defend the City in such suit if Notice thereof is promptly given to the Company within a reasonable period. If the Company is required to indemnify and defend, it will thereafter have control of such litigation, but the Company may not settle such litigation without the consent of the City, which consent will not be unreasonably withheld. This section is not as to third parties a waiver of any defense or immunity otherwise available to the City; and the Company, in defending any action on behalf of the City is entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

## **SECTION 6. SUCCESSORS IN INTEREST.**

- 6.1 This ordinance and the rights and obligations conferred hereby, is binding on and inures to the benefit of the City and its successors and on the Company and its successors and permitted assigns. This ordinance and the franchise it confers may not be assigned by the Company without the written consent of the City, which consent will not be unreasonably withheld. In the event that this franchise is assigned, the company is responsible for reasonable legal fees that may be incurred by the City, in an amount not to exceed \$5,000 to review and comment on a pending assignment. An assignment for purposes of this section is a transfer of this franchise to any entity other than Minnegasco and/or the sale or lease of all or substantially all of the assets of Minnegasco to another entity. The maximum payable legal fees of \$5000 shall increase by three (3) percent each year, compounded annually.

## **SECTION 7. FRANCHISE FEE.**

- 7.1. **Separate Ordinance.** During the term of the franchise hereby granted, and in lieu of any permit, licensing, or other fees, charges, or costs imposed on the Company for providing gas service or performing work necessary to provide gas service in the City during the term of this franchise, the City may impose on the Company a franchise fee. In addition to the franchise fee, the Company shall be required to pay only such other fees, charges, costs or taxes which are generally required to be paid by other businesses or persons in the City. The franchise fee must be imposed by a separate ordinance adopted by the City Council, which ordinance may not be adopted until at least 60 days after Notice enclosing such proposed ordinance has been served upon the Company by certified mail. A fee imposed under this section does not become effective until 60 days after Notice enclosing the adopted ordinance has been served upon the Company by certified mail.
- 7.2. **Condition of Fee.** The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee or tax of the same or greater equivalent amount on the sale and/or delivery of energy with the City by any other energy supplier, provided that, as to such supplier, the City has the authority to require a franchise fee or impose a tax. The Company may petition the City to exempt or reduce the franchise fee applicable to customers who bypass or pose an imminent threat of physically bypassing the Company's distribution system for economic reasons, including the existence of the franchise fee. The City shall not unreasonably withhold such exemption or reduction in franchise fees for such customers.
- 7.3. **Calculation of Fee.** The City may impose the franchise fee: (i) as a combination of percentage of gross revenues received from customers in the Residential Customer Class for its utility operations within the City and as a flat meter fee per customer, for customers in non-residential customer classes, or (ii) as a flat meter fee per customer within the City,

or (iii) as a fee based on units of gas delivered to any class of retail customers within the corporate limits of the City. The method of imposing the franchise fee: the percent of revenue rate, the flat rate and the per unit rate may differ for each customer class. If prior to the expiration of this ordinance, customers in Minnegasco's Residential Customer Class begin to purchase and/or transport gas from companies other than Minnegasco, the City may only impose the flat fee method (ii), or the units of gas method (iii), as a way of collecting fees. If the percentage of gross revenue method (i) has previously been implemented, it must be changed to method (ii) or method (iii).

7.4 **Collection of the Fee.** The franchise fee will be payable not less often than quarterly and based on any of the alternative formulas described in Section 7.3 during complete billing months of the period for which payment is to be made. The franchise fee formula may be changed by ordinance from time to time; however, each change must meet the same notice requirements and may not be made more often than annually. The fee may not exceed any amount that the Company may legally charge to its customers, prior to payment to the City, by imposing a surcharge equivalent to such fee in its rates of gas service. The Company may pay the City the fee based upon the surcharge billed, subject to subsequent reductions for uncollectibles or customer refunds. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company's determination of the franchise fee payments.

7.5 **Franchise fee.**

**Subd. 1. Amount of and Terms.** During the term of the franchise hereby granted, and in lieu of any permit, licensing, or other fees, charges, or costs imposed on the Company for providing gas service or performing work necessary to provide gas service to the City during the term of this franchise, the City hereby requires the Company to pay a franchise fee of \$2.00 per residential customer and \$3.00 per commercial customer for each month of services rendered under the franchise agreement. Such fee is to be paid by the Company to the City in quarterly installments on or before the last day of March, June, September and December of each year following the quarter year of services rendered by the company. *(Section 7.5 subd. 1. amended per Ordinance 04-02 dated 1-20-04.)*

**Subd. 2. Limitations.** The franchise fee imposed hereby shall not exceed any amount which the Company may recover, prior to payment to the City, by imposing a surcharge equivalent to such fee in its regulated rates established by the Minnesota Public Utilities Commission for gas service to customers within the City. The Company may pay the City the fee based on the surcharge billed subject to subsequent reductions to account for uncollectibles or customer refunds.

*(Section 7.5 added to Appendix F, Section B per ordinance 03-11 dated 10-6-03.)*

## **SECTION 8. LIMITATION ON APPLICABILITY.**

8.1. **Limitations on Applicability.** This ordinance constitutes a franchise agreement between the City and the Company. No provision of this franchise inures to the benefit of any third person, including the public at large, so as to constitute any such person as a third-party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

## **SECTION 9. PREVIOUS FRANCHISES SUPERSEDED.**

9.1. **Previous Franchise Superseded.** This franchise supersedes and replaces previous franchises granted to the Company or its predecessors.

## **SECTION 10. AMENDMENTS.**

10.1 **Amendments.** This ordinance may be amended at any time by the City. An amendatory ordinance becomes effective upon the filing of the Company's written consent thereto.

## **SECTION 11. SEVERABILITY.**

11.1. **Severability.** If any portion of this franchise is found unenforceable for any reason, the validity of the remaining provisions will not be affected.

*(Section B - Gas Franchise amended per Ordinance 00-05 passed 3-21-00.)*

## APPENDIX G

### PERMITS, INSPECTIONS AND FEES

**Ordinance No.:**

04-01

**Date of Adoption:**

1-20-04

**Description:**

Building Permit Fees

**Total Valuation**

**Fee**

\$1.00 to \$500.00.00

\$20.00

\$501.00 to \$2,000.00

\$20.00 for the first \$500.00 plus \$1.00 for each additional \$100.00, or fraction thereof, to and including \$2,000.00.

\$2001.00 to \$25,000.00

\$35.00 for the first \$2,000.00 plus \$4.25 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00.

\$25,001.00 to \$50,000.00

\$132.75 for the first \$25,000.00 plus \$3.75 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00.

\$50,001.00 to \$100,000.00

\$226.50 for the first \$50,000.00 plus \$2.50 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00.

\$100,001.00 and up

\$351.50 for the first \$100,000.00 plus \$2.00 for each additional \$1,000.00, or fraction thereof.

Flat Fees

Furnace

\$37.00

Water Heater

\$37.00

Fireplace

\$37.00

Gas Lines

\$37.00

Unit Heater

\$37.00

Corn/Wood Burner

\$37.00

Air Conditioner	\$37.00
Re-Roofing	\$37.00
Siding	\$37.00
Ventilation Systems	\$37.00
Air and Material Handling Systems	\$37.00

**Other Inspections and Fees**

1. Reinspection fees assessed.
 

Certified Building Official	\$50.25 per hour
Building Field Inspector	\$44.75 per hour
Mileage	\$.49 per mile

\* Other actual costs include administrative and overhead costs.
  
2. Inspection for which no fee is specifically indicated.
 

Certified Building Official	\$50.25 per hour
Building Field Inspector	\$44.75 per hour
Mileage	\$.49 per mile

(minimum charge – one-half hour  
Example: locate lot line or fence)

\* Other actual costs include administrative and overhead costs.
  
3. Additional plan review required by changes, additions or revisions to plans.      \$50.25 per hour
 

\* Other actual costs include administrative and overhead costs.
  
4. For use of outside consultants for plan checking and inspections, or both.
 

\* Other actual costs include administrative and overhead costs.
  
5. Demolition permit fee      \$50.00

*(Appendix G added per Ordinance 04-01 dated 01-20-04.) (Appendix G amended per Ordinance 04-27 dated 1-3-05, Ordinance 05-11 dated 4-4-05, Ordinance 05-20 dated 8-1-05, Ordinance 05-26 dated 12-19-05 and Ordinance 08-02 dated 4-7-08.)*

## APPENDIX H

### ZONING AND ZONING PERMIT FEES

**Ordinance No.:**

**Date of Adoption:**

04-03

1-20-04

**Description:**

Zoning and zoning permit fees:

Zoning Amendment	\$64.00 application fee & \$46.00 recording fee
Conditional Use Permit	\$64.00 application fee & \$46.00 recording fee
Variance	\$64.00 application fee & \$46.00 recording fee
Garage Permit	\$64.00 application fee & \$46.00 recording fee
Special Use Permit	\$64.00 application fee \$46.00 recording fee
Sign Permit	\$25.00 application fee
Planned Unit Development	\$64.00 application fee
Floodplain Management Building Permit	applicable fee
Conditional Use Permit	\$64.00 application fee \$46.00 recording fee
Wetlands Determination	\$64.00 application fee plus consulting expenses
Fill Permit	No charge, but permit required

*(Appendix H added per Ordinance 04-03 dated 1-20-04. Appendix H amended per Ordinance 04-28 dated 12-6-04, per Ordinance 05-16 dated 7-5-05 and per Ordinance 06-02 dated 1-9-06.)*

**APPENDIX I**

**SUBDIVISION FEES**

<b><u>Ordinance No.:</u></b>	<b><u>Date of Adoption:</u></b>
04-04	1-20-04
<b><u>Description:</u></b>	
Subdivision Fees	
Preliminary Plat	\$115.50 plus \$2.50 for each lot.
Land Subdivision for Small Subdivisions	
Simple Lot Split	\$60.50 application fee
Minor Subdivisions	\$88.00 application fee

*(Appendix I added per Ordinance 04-04 dated 1-20-04.)*

## APPENDIX J

### RE-ZONING ORDINANCES

	<b><u>Ordinance No.:</u></b>	<b><u>Date of Adoption:</u></b>	<b><u>Brief Description:</u></b>
1.	02-05	10-21-02	Spencer-Owen Funeral Home, Inc. property zoned from R-2 to R-3: Lots 1, 2 and 3 in Blk 3 of Buccaneer Subdivision and tract.
2.	03-08	4-21-03	Gerdt/Fowles property zoned R-1: a tract in E1/2 of SW1/4 of SW1/4 of Section 8 Township 102 Range 27.
3.	03-15	8-11-03	UHD property R-1 to B-2: 2 tracts in Blk. 5 in McArthur's Add.
4.	04-05	2-02-04	Verlyn Ripley property B-1 to R-2: S. Galbraith.
5.	05-02	3-7-05	Tract of land zoned from B-2 to R-1: Lots 1 and 2 in Block 86, Lots 1, 2, 9 and 10 in Block 83, Lots 1, 2, 9 and 10 in Block 58, Lots 1, 2, 9 and 10 in Block 55, Lots 1, 2, 9 and 10 in Block 30, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in Block 27 and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in Block 2 all in the Original Plat.
6.	05-05	3-7-05	St. Lukes Lutheran Home property zoned from R-2 to R-3.

- |    |       |         |  |
|----|-------|---------|--|
| 7. | 06-09 | 6-5-06  | <p>Tract of land zoned from AG to B-2: Outlot A of Blue Earth Shopping Center Subdivision in the City of Blue Earth in Section Number Eight (8), Township Number One Hundred Two (102), Range Number Twenty-seven (27), Faribault County, Minnesota.</p> <p>Tract of land zoned from L-I to G-I: That part of the East Half of the Southeast Quarter (E1/2 of SE1/4) of Section Twelve (12), Township One Hundred Two (102) North, Range Twenty-eight (28) West of the Fifth Principal Meridian lying South of the railroad right-of-way of the Chicago and Northwestern Railway Company in Faribault County, State of Minnesota, containing 40 acres, more or less.</p> |
| 8. | 07-12 | 12-3-07 | <p>Tract of land zoned from AG and B-2 to L-I: That part of the NE1/4 of the SW1/4 of Section Five (5), Township One Hundred Two (102), North of Range Twenty-seven (27) lying west of T.H. No. 169, Faribault County, Minnesota, containing 17.743 acres.</p>   |
| 9. | 09-04 | 5-18-09 | <p>UHD property re-zoned as parcels in a B-1 General Business Zoning District: The East one-half of the East one-</p>  |

half (E ½ E ½) of Block  
Three (3);

A tract commencing at the  
Northeast corner of Block Five  
(5) and running thence West  
140 feet; thence South 125  
feet, thence West 10 feet;  
thence South 85 feet; thence  
East 150 feet; thence North  
210 feet to the point of  
beginning;

The North 4.0 feet of the  
following described tract:  
Commencing at the Southeast  
corner of Block Five (5)  
according to the Plat of said  
addition on file in the Office  
of the Register of Deeds of  
said County, and running  
thence East 60 feet; thence  
South 125 feet, thence West  
60 feet and thence North 125  
feet to the point of beginning;

A tract commencing at the  
Northwest corner of Block  
Five (5), thence along the  
North line of said Block Five  
(5) a distance of 100 feet;  
thence South along a line  
parallel with the East line of  
said Block Five (5) a distance  
of 100 feet; thence South  
along a line parallel with the  
East line of said Block Five (5)  
a distance of 125 feet; thence  
West along a line parallel with  
the North line of said Block  
Five (5), 100 feet, more or  
less, to the West line of said  
Block Five (5), thence North

along the West line of said Block Five (5), 125 feet more or less to the point of beginning;

All of Eleventh Street lying between the East line of South Moore Street and the West line of South Galbraith Street, all being located in McArthur's Addition to Blue Earth City (now City of Blue Earth), Faribault County, Minnesota.

That the parcel described below is hereby re-zoned as a parcel in a B-1 General Business Zoning District.

The vacated portions of East Tenth Street and South Galbraith Streets in the City of Blue Earth, Faribault County, Minnesota, described as follows:

Beginning at the Northwest corner of Block Fifteen (15) of Young's Addition to Blue Earth City (now City of Blue Earth), Faribault County, Minnesota, according to the Plat thereof on file and of record in the Office of the County Recorder, thence North 0 degrees 15 minutes 32 seconds East (assumed bearing) along the northerly extension of the West line of said Block Fifteen (15) a distance of 6.00 feet to a line lying parallel with and 6.00 feet North (measured at right

angles) of the North line of said Block Fifteen (15); thence South 89 degrees 45 minutes 28 seconds East parallel with the North line of Block Fifteen (15) a distance of 333.39 feet to a line lying parallel with and 31.00 feet east (measured at right angles) of the East line of Block Fifteen (15); thence South 0 degrees 13 minutes 32 seconds West parallel with the East line of Block Fifteen (15) a distance of 101.00 feet; thence North 89 degrees 45 minutes 28 seconds West parallel with the North line of Block Fifteen (15) a distance of 31.00 feet to the East line of Block Fifteen (15); thence North 0 degrees 13 minutes 32 seconds East along the East line of Block Fifteen (15) a distance of 302.40 feet to the point of beginning.

*(Appendix J added per Ordinance 04-05.)*

**APPENDIX K**  
**BLUE EARTH MUNICIPAL AIRPORT**  
**ZONING ORDINANCE**  
**CREATED BY THE**  
**BLUE EARTH-FARIBAULT COUNTY**  
**JOINT AIRPORT ZONING BOARD**

AN ORDINANCE REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY, IN THE VICINITY OF THE BLUE EARTH MUNICIPAL AIRPORT BY CREATING THE APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES THEREOF; PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH ZONES; DEFINING CERTAIN TERMS USED HEREIN; REFFRRING TO THE BLUE EARTH MUNICIPAL AIRPORT ZONING MAP WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE; PROVIDING FOR ENFORCPMENT; ESTABLISHING A BOARD OF ADJUSTMENT; AND IMPOSING PENALTIES.

IT IS HEREBY ORDAINED BY THE BLUE EARTH-FARIBAULT COUNTY JOINT AIRPORT ZONING BOARD PURSUANT TO THE AUTHORITY CONFERRED BY MINNESOTA STATUTES 360.061 – 360. 074, AS FOLLOWS:

## INTRODUCTION

- SECTION I: Purpose and Authority
- SECTION II: Short Title
- SECTION III: Definitions
- SECTION IV: Airspace Obstruction Zoning
  - A. Airspace Zones
    - 1. Primary
    - 2. Horizontal
    - 3. Conical
    - 4. Approach
    - 5. Transitional
  - B. Height Restrictions
- SECTION V: Land Use Safety Zoning
  - A. Safety Zone Boundaries
    - 1. Safety Zone A
    - 2. Safety Zone B
    - 3. Safety Zone C
  - B. Use Restrictions
    - 1. General
    - 2. Zone A
    - 3. Zone B
    - 4. Zone C
- SECTION VI: Airport Zoning Map
- SECTION VII: Nonconforming Uses
- SECTION VIII: Permits
  - A. Future Uses

B. Existing Uses

C. Nonconforming Uses Abandoned or Destroyed

SECTION IX: Variances

SECTION X: Hazard Marking and Lighting

A. Nonconforming Uses

B. Permits and Variances

SECTION XI: Airport Zoning Administrator

SECTION XII: Airport Zoning Board of Adjustment

A. Establishment

B. Powers

C. Procedures

SECTION XIII: Appeals

SECTION XIV: Judicial Review

SECTION XV: Penalties

SECTION XVI: Conflicts

SECTION XVII: Severability

SECTION XVIII: Effective Date

## SECTION I: PURPOSE AND AUTHORITY

The Blue Earth-Faribault County Joint Airport Zoning Board, created and established by joint action of the City Council of the City of Blue Earth and the Board of County Commissioners of Faribault County pursuant to the provisions and authority of Minnesota Statutes 360.063, hereby finds and declares that:

- A. An airport hazard endangers the lives and property of users of the Blue Earth Municipal Airport, and property or occupants of land in its vicinity, and also if of the obstructive type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Blue Earth Municipal Airport and the public investment therein.
- B. The creation or establishment of an airport hazard is a public nuisance and an injury to the region served by the Blue Earth Municipal Airport.
- C. For the protection of the public health, safety, order, convenience, prosperity and general welfare, and for the promotion of the most appropriate use of land, it is necessary to prevent the creation or establishment of airport hazards.
- D. The prevention of these airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power without compensation
- E. The prevention of the creation or establishment of airport hazards and the elimination, removal, alternation, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds.

## SECTION II: SHORT TITLE

This ordinance shall be known as “Blue Earth Municipal Airport Zoning Ordinance.” Those sections of land affected by this Ordinance are indicated in “Exhibit A” which is attached to this Ordinance.

## SECTION III: DEFINITIONS

As used in this Ordinance, unless the context otherwise requires:

“AIRPORT” means the Blue Earth Municipal Airport located in the East half of Section 32, Township One Hundred Two (102) North, Range Twenty-seven (27) West, Faribault County, Minnesota.

“AIRPORT ELEVATION” means the established elevation of the highest point on the usable landing area which elevation is established to be 1112.00 feet above mean sea level.

“AIRPORT HAZARD” means any structure or tree or use of land which obstructs the airspace required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land which is hazardous to persons or property because of its proximity to the airport.

“DWELLING” means any building or portion thereof designed or used as a residence or sleeping place of one or more persons.

“HEIGHT” for the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

“LANDING AREA” means the area of the airport used for the landing, taking off or taxiing of aircraft.

“NONPRECISION INSTRUMENT RUNWAY” means a runway having an existing or planned straight-in instrument approach procedure utilizing air navigation facilities with only horizontal guidance, and for which no precision approach facilities are planned or indicated on an approved planning document.

“VISUAL RUNWAY” means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an approved planning document.

“NONCONFORMING USE” means any pre-existing structure, tree, natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment hereto.

“PERSON” means an individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

“RUNAWAY” means any existing or planned paved surface or turf covered area of the airport which is specifically designated and used or planned to be used for the landing and/or taking off of aircraft.

“PLANNED” as used in this Ordinance refers only to those proposed future airport developments that are so indicated on a planning document having the approval of the Federal Aviation Administration, the Department of Aeronautics, and The City of Blue Earth, Minnesota.

“SLOPE” means an incline from the horizontal expressed in an arithmetic, ratio of horizontal magnitude to vertical magnitude.

Slope = 3:1 = 3 ft. horizontal to 1 ft. vertical

“STRUCTURE” means an object constructed or installed by man, including, but without limitations, buildings, towers, smokestacks, and overhead transmission lines.

“TREE” means any object of natural growth.

“WATER SURFACES” for the purpose of this Ordinance shall have the same meaning as land for the establishment of protected zones.

#### SECTION IV: AIRSPACE OBSTRUCTION ZONING

A. AIRSPACE ZONES: In order to carry out the purpose of this Ordinance, as set forth above, the following airspace zones are hereby established:

Primary Zone, Horizontal Zone, Conical Zone, Approach Zone, and Transitional Zone and whose locations and dimensions are as follows:

1. PRIMARY ZONE: All that land which lies directly under an imaginary primary surface longitudinally centered on a runway and extending:
  - a. 200 feet beyond each end of Runway 15/33.

b. 100 feet beyond each end of Runway 3/21.

The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

c. 500 feet for Runway 15/33.

d. 250 feet for Runway 3/21.

2. **HORIZONTAL ZONE:** All that land which lies directly under an imaginary horizontal surface 150 feet above the established airport elevation, or a height of 1262.00 feet above mean sea level, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

6,000 feet for Runways 3/21 & 15/33.

3. **CONICAL ZONE:** All that land which lies directly under an imaginary conical surface extending upward and outward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet as measured radially outward from the periphery of the horizontal surface.

4. **APPROACH ZONE:** All that land which lies directly under an imaginary approach surface longitudinally centered on the extended centerline at each end of a runway. The inner edge of the approach surface is at the same width and elevation as, and coincides with, the end of the

primary surface. The approach surface inclines upward and outward at a slope of:

- a. 40:1 for Runway 15/33
- b. 20:1 for Runway 3/21
- c. 3,500 feet for Runway 15/33
- d. 2,250 feet for Runway 3/21,

at a distance of 10,000 feet, then continues at the same rate of divergence to the periphery of the conical surface.

5. **TRANSITIONAL ZONE:** All that land which lies directly under an imaginary surface extending upward and outward at right angles to the runway centerline and centerline extended at a slope of 7 to 1 from the sides of the primary surfaces and from the sides of the approach surfaces until they intersect the horizontal surface or the conical surface.

**B. HEIGHT RESTRICTIONS:** Except as otherwise provided in this Ordinance, and except as necessary and incidental to airport operations, no structure or tree shall be constructed, altered, maintained, or allowed to grow in any airspace zone created in Subsection IV A so as to project above any of the imaginary airspace surfaces described in said Subsection IV A hereof. Where an area is covered by more than one height limitation, the more restrictive limitations shall prevail.

## SECTION V: LAND USE SAFETY ZONING

**A. SAFETY ZONE BOUNDARIES:** In order to carry out the purpose of this

Ordinance, as set forth above and also, in order to restrict those uses which may be hazardous to the operational safety of aircraft operating to and from the Blue Earth Municipal Airport, and furthermore to limit population and building density in the runway approach areas, thereby creating sufficient open space so as to protect life and property in case of an accident, there are hereby created and established the following land use safety zones.

1. SAFETY ZONE A: All land in that portion of the approach zones of a runway, as defined in Subsection IV A hereof, which extends outward from the end of primary surface a distance equal to two-thirds of the planned length of the runway, which distance shall be:
  - a. 2,667 ft. for runway 15/33.
  - b. 1,867 ft. for runway 3/21, etc.
2. SAFETY ZONE B: All land in that portion of the approach zones of a runway, as defined in Subsection IV A hereof, which extends outward from Safety Zone A a distance equal to one-third of the planned length of the runway, which distance shall be:
  - a. 1,333 ft. for runway 15/33.
  - b. 933 ft. for runway 3/21, etc.
3. SAFETY ZONE C: All that land which is enclosed within the perimeter of the horizontal zone, as defined in Subsection IV A hereof, and which is not included in Zone A or Zone B.

B. USE RESTRICTIONS:

1. GENERAL: Subject at all times to the height restrictions set forth in Subsection IV B, no use shall be made of any land in any of the safety zones defined in Subsection V A which creates or causes interference with the operations of radio or electronic facilities on the airport or with radio or electronic communications between the airport and aircraft, makes it difficult for pilots to distinguish between airport lights and other lights, results in glare in the eyes of pilots using the airport, impairs visibility in the vicinity of the airport, or otherwise endangers the landing, taking off, or maneuvering of aircraft.

2. ZONE A: Subject at all times to the height restrictions set forth in Subsection IV B and to the general restrictions contained in Subsection V B-1 Areas designated as Zone A

shall contain no buildings, temporary structures, exposed transmission lines, or other similar land use structural hazards, and shall be restricted to those uses which will not create, attract, or bring together an assembly of persons thereon. Permitted uses may include, but are not limited to, such uses as agriculture (seasonal crops), horticulture, raising of livestock, animal husbandry, wildlife habitat light outdoor recreation (non-spectator), cemeteries and auto parking.

3. ZONE B: Subject at all times to the height restrictions set forth in Subsection IV B, and to the general restrictions contained in Subsection V B-1, areas designated as Zone B shall be restricted in use as follows:

- a. Each use shall be on a site whose area shall not be less than three acres.
- b. Each use shall not create, attract, or bring together a site population that would exceed 15 times that of the site acreage.

- c. Each site shall have no more than one building plot upon which any number of structures may be erected.
- d. A building plot shall be a single, uniform and non-contrived area, whose shape is uncomplicated and whose area shall not exceed the following minimum ratios with respect to the total site area:

Site Area at Least (Acres)	But Less Than (Acres)	Ratio of Site Area to Bldg. Plot Area	Building Plot Area (sq. ft.)	Max. Site . Population (15 persons/A)
3		12:1	10,900	45
	4	12:1		
4		10:1	17,400	60
	6	10:1		
6		8:1	32,600	90
	10	8:1		
10		6:1	72,500	150
	20	6:1		
20	and up	4:1	218,000	300

- e. The following uses are specifically prohibited in Zone B: churches, hospitals, schools, theaters, stadiums, hotels and motels, trailer courts, camp grounds, and other places of public or semi-public assembly.
4. ZONE C: Zone C is subject only to height restrictions set forth in Subsection IV B and to the general restrictions contained in Subsection V B-1.

**SECTION VI: AIRPORT ZONING MAP**

The several zones herein established are shown on the Blue Earth Municipal Airport Zoning Map consisting of 3 sheets, prepared by Bolton & Menk, Inc., and dated December 21, 1976, attached hereto and made a part hereof, which map, together with

such amendments thereto as may from time to time be made, and all notations, references, elevations, data, zone boundaries, and other information thereon, shall be and the same is hereby adopted as part of this Ordinance.

## SECTION VII: NONCONFORMING USES

Regulations not retroactive. The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other changes or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of any non-conforming use. Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted and completed within two years thereof.

## SECTION VIII: PERMITS

A. FUTURE USES: Except as specifically provided in Paragraphs 1 and 2 hereunder, no material change shall be made in the use of land and no structure shall be erected, altered, or otherwise established in any zone hereby created unless a permit therefore shall have been applied for and granted by the zoning administrator, hereinafter, provided for. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted.

1. However, a permit for a tree or structure of less than 75 feet of vertical height

above the ground shall not be required in the horizontal and conical zones or in any approach and transitional zones beyond a horizontal distance of 4,200 feet from each end of the runway except when such tree or structure, because of terrain, land contour, or topographic features, would extend the height limit prescribed for the respective zone.

2. Nothing contained in this foregoing exception shall be construed as permitting or intending to permit any construction, alteration, or growth of any structure or tree in excess of any of the height limitations established by this Ordinance as set forth in Section IV.

- B. **EXISTING USES:** Before any existing use or structure may be replaced, substantially altered or repaired, or rebuilt within any zone established herein, a permit must be secured authorizing such replacement, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this Ordinance or any amendments thereto, or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.
- C. **NON-CONFORMING USES ABANDONED OR DESTROYED:** Whenever the Zoning Administrator determines that a non-conforming structure or tree has been abandoned or more than 80% torn down, physically deteriorated, or decayed no permit shall be granted that would allow such structure or tree to exceed the

applicable height limit or otherwise deviate from the zoning regulations. Whether application is made for a permit under this paragraph or not, the Zoning Administrator may order the owner of the abandoned or partially destroyed non-conforming structure, at his own expense, to lower, remove, reconstruct, or equip the same in the manner necessary to conform to the provisions of this Ordinance. In the event the owner of the non-conforming structure shall neglect or refuse to comply with such order for ten days after receipt of written notice of such order, the Zoning Administrator may, by appropriate legal action, proceed to have the abandoned or partially destroyed non-conforming structure lowered, removed, reconstructed or equipped and assess the cost and expense thereof against the land on which the structure is or was located. Unless such an assessment is paid within ninety days from the service of notice thereof on the owner of the land, the sum shall bear interest at the rate of eight per cent per annum from the date the cost and expense is incurred until paid, and shall be collected in the same manner as are general taxes.

#### SECTION IX: VARIANCES

Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Adjustment, hereinafter provided for, for a variance from such regulations. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical

difficulty or unnecessary hardship and relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this Ordinance; provided any variance so allowed may be subject to any reasonable conditions that the Board of Adjustment may deem necessary to effectuate the purposes of this Ordinance.

#### SECTION X: HAZARD MARKING AND LIGHTING

- A. NON-CONFORMING USES: The owner of any non-conforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Zoning Administrator to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Blue Earth, Minnesota.
- B. PERMITS AND VARIANCES: Any permit or variance granted by the Zoning Administrator or Board of Adjustment as the case may be, may, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question at his own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to pilots the presence of an airport hazard.

#### SECTION XI: AIRPORT ZONING ADMINISTRATOR

It shall be the duty of the Blue Earth City Administrator to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to

the City Administrator upon a form furnished by him. Permit applications shall be promptly considered and granted or denied by him. Variance applications shall be forthwith transmitted by the City Administrator for action by the Board of Adjustment hereinafter provided for.

## SECTION XII: BOARD OF ADJUSTMENT

A. ESTABLISHMENT: The Board of Adjustment shall consist of five members appointed by the Blue Earth-Faribault County Joint Airport Zoning Board, and each shall serve for a term of three years and until his successor is duly appointed and qualified. Of the members first appointed, one shall be appointed for a term of one year, two for a term of two years, and two for a term of three years. Upon their appointment the members shall select a chairman to act at the pleasure of the board. Members shall be removable by the Joint Airport Zoning Board for cause, upon written charges, after a public hearing.

B. POWERS: The Board of Adjustment shall have and exercise the following powers:

1. To hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this Ordinance.
2. To hear and decide special exceptions to the terms of this Ordinance upon which such Board of Adjustment under such regulations may be required to pass.
3. To hear and decide specific variances.

C. PROCEDURES:

1. The Board of Adjustment shall adopt rules for its governance and procedure in

harmony with the provisions of this Ordinance. Meetings of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board of Adjustment may determine. The Chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the Board of Adjustment shall be public. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Zoning Administrator and shall be a public record.

2. The Board of Adjustment shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming, or modifying any order, requirement, decision or determination which comes before it under the provisions of this Ordinance.
3. The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance.

### SECTION XIII: APPEALS

- A. Any person aggrieved, or any taxpayer affected by any decision of the Zoning Administrator made in his administration of this Ordinance may appeal to the Board of Adjustment. Such appeals may also be made by any governing body of a

municipality county, or airport zoning board, which is of the opinion that a decision of the zoning administrator is an improper application of this ordinance as it concerns such governing body or board.

- B. All appeals hereunder must be commenced within 30 days of the Zoning Administrator decision, by filing with the Zoning Administrator a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon.

#### SECTION XV: PENALTIES

Every person who shall construct, establish, substantially change, alter, or repair any existing structure or use, or permit the growth of any tree without having complied with the provision of this Ordinance or who, having been granted a permit or variance under the provisions of this Ordinance, shall construct, establish, substantially change or substantially alter or repair any existing growth or structure or permit the growth of any tree, except as permitted by such permit or variance, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$300 or imprisonment for not more than 90 days or by both. Each day a violation continues to exist shall constitute a separate offense. The Airport Zoning Administrator may enforce all provisions of this Ordinance through such proceedings for injunctive relief and other relief as may be proper under the laws of Minn. Stat. 360.073 and other applicable law.

#### SECTION XVI: CONFLICTS

Where there exists a conflict between any of the regulations or limitations prescribed in this

Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or regulation shall govern and prevail.

#### SECTION XVII: SEVERABILITY

A. In any case in which the provision of this Ordinance, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the constitution of this state or the Constitution of the United States, such holding shall not affect the application of this Ordinance as to other structures and parcels of land, and to this end the provisions of this Ordinance are declared to be severable.

#### SECTION XV: PENALTIES

Every person who shall construct, establish, substantially change, alter, or repair any existing structure or use, or permit the growth of any tree without having complied with the provision of this Ordinance or who, having been granted a permit or variance under the provisions of this Ordinance, shall construct, establish, substantially change or substantially alter or repair any existing growth or structure or permit the growth of any tree, except as permitted by such permit or variance, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$300 or imprisonment for not more than 90 days or by both. Each day a violation continues to exist shall constitute a separate offense. The Airport Zoning Administrator may enforce all provisions of this Ordinance through such proceedings for injunctive relief and other relief as

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Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or regulation shall govern and prevail.

#### SECTION XVII: SEVERABILITY

A. In any case in which the provision of this Ordinance, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the constitution of this state or the Constitution of the United States, such holding shall not affect the application of this Ordinance as to other structures and parcels of land, and to this end the provisions of this Ordinance are declared to be severable.

B. Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the parts so declared to be unconstitutional or invalid.

#### SECTION XVIII: EFFECTIVE DATE

This Ordinance shall be published on July 14, 1977 in the Blue Earth Post, an official newspaper

in Blue Earth, Minnesota, and shall take effect on the 15<sup>th</sup> day of July, 1977. Copies thereof shall be filed with the Commissioner of Aeronautics, State of Minnesota, and the Register of Deeds, Faribault County, Minnesota.

Passed and adopted after public hearing by the Blue Earth Faribault County Joint Airport Zoning Board this 5<sup>th</sup> day of July, 1977.

EXHIBIT A  
BLUE EARTH MUNICIPAL AIRPORT  
ZONING ORDINANCE

This Ordinance affects all or a portion of the following sections of land:

TYPE OF AIRPORT ZONING

Name and Number Of Township	Airspace Obstruction Zoning Section IV of Ordinance. Page 1 of Zoning Map.	Land Use Safety Zoning Zoning Section V of Ordinance. Page 3 of Zoning Map.
Blue Earth Township T102N R27W	Sections: 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33 & 34	Sections: 20, 21, 27, 28, 29, 30, 31, 32, 33 & 34
Elmore Township T101N R27W	Sections: 3, 4, 5, 6, 7, 8, 9 & 10	Sections: 4, 5, 6, 8 & 9
Jo Daviess Township T102N R28W	Sections: 35 & 36	
Pilot Grove Township T101N R28W	Sections: 1	

## APPENDIX L

### MISCELLANEOUS ORDINANCES

	<b><u>Ordinance No.:</u></b>	<b><u>Date of Adoption:</u></b>	<b><u>Brief Description:</u></b>
1.	07-04	3/19/07	Restrictive Covenant regarding the Steinberg Nature Park located in Blocks Ten (10), Fourteen (14), Fifteen (15), and Lot Two (2) of Block Eleven (11) of School Subdivision of the NW1/4 of 16-102-27.
2.	07-09	7/16/07	<p>To designate as “Dr. Homer H. Russ Street” the name of a street to be located within the Morgan and Wilkins Subdivision in the City of Blue Earth.</p> <p>To designate as “Riverview Lane” the name of a street to be located within the Original Plat of Blue Earth City, now City of Blue Earth, and legally described as follows:</p> <p>That portion of East Street according to the Original Plat of Blue Earth City, now City of Blue Earth in Faribault County, Minnesota lying between East Second Street and the East Branch of the Blue Earth River.</p>
3.	07-10	8/6/07	To designate as “Dr. H. Russ Street” the name of a street to be located between Lot 1 and

Lot 2 of the Morgan and  
Wilkins Subdivision within  
the City of Blue Earth.