



# DYMOKE LAW OFFICE P.A.

Scott E. Dymoke  
Rachel J. Dymoke

300 Riverside Avenue NW  
P.O. Box 127  
Melrose, MN 56352-0127

Telephone (320) 256-4205  
FAX (320) 256-7201  
www.dymokelawoffice.com

November 22, 2017

Adrianna Hennen  
125 Main Street East  
Freeport, MN 56331

## Re: Proposed Excel Energy Easement

Dear Ms. Hennen:

I have reviewed the Project Information Statement, proposed Option Agreement (the "Option") and proposed Easement Agreement (the "Easement") submitted by Excel Energy for its new transmission line. Based on my review of these documents, I recommend that the City of Freeport and the Freeport EDA reject the proposed Option Agreement and proposed Easement Agreement. Xcel's proposed location for the new transmission line will negatively effect both the value and marketability of the Freeport EDA's remaining lots in the Freeport Industrial Park. My recommendation is based on the following analysis.

Xcel Energy wishes to construct a double circuit 69kV transmission line between its existing East Melrose-Wobegon Trail transmission line and Great River Energy's proposed Riverview Substation. The existing transmission line is north of Interstate I-94 and runs along County Road 157 and the Lake Wobegon Trail. Great River Energy's proposed substation is located south of Interstate I-94, along Rimcrest Road in Oak Township. To connect these facilities, Xcel requests a 75 foot easement through the Freeport Industrial Park. Within the easement, Xcel would construct metal power poles, 70 – 100 feet high, to support its new transmission lines.

Although the agreements are cast as an option for an easement and an easement, the terms of the Option and the Easement surrender almost all control and use of the easement property to Xcel. The Option period runs for two years until December 31, 2019, with a further right reserved to Xcel to extend the Option period for an additional three months until March 31, 2020. During the Option period:

1. The Freeport EDA, at its own expense, must provide Xcel with proof that it has marketable title to the effected property;
2. Xcel is given the right to enter upon the property to conduct surveys, tests and investigations;

3. Xcel reserves the right to change the final location and extent of the easement, and adjust the purchase price based on any changes to the extent and location of the easement; and
4. In the event of a sale of the property, the purchaser and any lender must agree to take title subject to the Option and Easement.

Upon execution of the Easement:

1. Xcel will have the right to construct any structures or facilities it deems necessary for conducting electricity, light, and communication impulses over, under, and across the property. Xcel will not be limited to constructing power line poles and stringing power lines. Additional structures and lines could be constructed in the easement for any purpose, including telephone, internet, and cable television. The City of Freeport and the Freeport EDA will not receive any additional compensation from Xcel if Xcel's use of the easement changes or intensifies;
2. No structures may constructed or trees planted on the property within the easement. Any other improvements within the easement will require Xcel's prior approval;
3. In the event Xcel determines to construct additional improvements or make repairs to its facilities, it will have the right to use the adjoining property (not just the easement area) during the construction of the improvements and repairs. Again, the City of Freeport and the Freeport EDA will not receive any additional compensation from Xcel for Xcel's use of the use of the adjoining property; and
4. Xcel will have the right to remove any structures, trees, and other objects on the property (not just within the easement area) that Xcel believes will interfere with its lines.

In effect, the Easement gives Xcel full control of the easement area, the right to use the adjoining property from time to time, and the right to limit the City of Freeport's and the Freeport EDA's use of the adjoining property.

In exchange for the City of Freeport and the Freeport EDA granting it these rights, Xcel is offering to pay \$0.285 per square foot for the property within the easement area (68,389 sq. ft. x \$0.285 = \$19,490.87 per sq. ft.). The offer does not include any compensation for the additional rights granted to Xcel in the adjoining property outside of the easement area. The Stearns County Assessor has determined that the 2017 estimated market value of the effected properties are:

<u>Freeport Industrial Park Plat 5</u>	<u>Total Value</u>	<u>Sq. Ft.</u>	<u>Value per Sq. Ft.</u>
Lot 1, Block 1	\$76,600.00	130,897	\$0.59/sq. ft.
Lot 2, Block 1	\$76,600.00	130,899	\$0.59/sq. ft.
Pt of Lot 5, Block 1	\$30,100.00	41,760	\$0.72/sq. ft.
Lot 6, Block 1	\$75,300.00	128,797	\$0.58/sq. ft.
Lot 7, Block 1	\$25,700.00	35,610	\$0.72/sq. ft.

The total estimated market value for the effected properties is \$284,300.00.

Given the almost absolute control Xcel will have over the easement area, arguably it should pay the full estimated market value of the property. Based on Xcel's proposed plans, the full estimated market value of the easement area per property is as follows:

<u>Freeport Industrial Park Plat 5</u>	<u>Sq. Ft. of Easement</u>	<u>Price per Sq. Ft.</u>	<u>Value</u>
Lot 1, Block 1	16,834.68	\$0.59/sq. ft.	\$9,932.46
Lot 2, Block 1	14,365.00	\$0.59/sq. ft.	\$8,475.35
Pt of Lot 5, Block 1	4,350.00	\$0.72/sq. ft.	\$3,132.00
Lot 6, Block 1	13,131.07	\$0.58/sq. ft.	\$7,616.02
Lot 7, Block 1	4,881.38	\$0.72/sq. ft.	\$3,514.59

The total value of the easement area based on the estimated market value equals \$32,670.42.

This above figure does not include compensation for the rights the Easement grants Xcel in the area of the lots adjoining the easement area. Assuming the right to restrict future development and to use the property for future construction has a value equal to 20 percent of the remaining lot area, the estimated value of these rights is as follows:

<u>Freeport Industrial Park Plat 5</u>	<u>Net Sq. Ft. of Lot</u>	<u>Price per Sq. Ft.</u>	<u>Value</u>
Lot 1, Block 1	114,062.32	\$0.12/sq. ft.	\$13,687.48
Lot 2, Block 1	116,534.00	\$0.12/sq. ft.	\$13,984.08
Pt of Lot 5, Block 1	37,410.00	\$0.14/sq. ft.	\$5,237.40
Lot 6, Block 1	115,665.93	\$0.12/sq. ft.	\$13,879.91
Lot 7, Block 1	30,728.62	\$0.14/sq. ft.	\$4,302.01

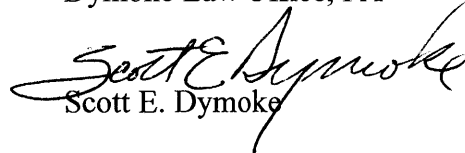
The total value for the rights in the area of the lots adjoining the easement area equals \$51,090.88.

When added to the value of the easement area, the total value of the property rights Xcel seeks to obtain in the Easement comes to \$83,761.30, or approximately 30% of the current market value of the Freeport EDA's property. This value is an estimate of the compensation that would be awarded to the City of Freeport and the Freeport EDA if Xcel condemned the property to establish its easement. In a condemnation action, the property owner is awarded the difference between the value of the property before the easement and the value of the property after establishment of the easement. The estimates approximate the diminished value of the Freeport Industrial Park property if it is subject to Xcel's easement. To establish the actual diminished value of the lots, the property would need to be appraised by an appraiser with experience in condemnation actions.

In light of the significant devaluation the Freeport Industrial Park property would experience as a result of Xcel Energy's proposed easement, I recommend that the City of Freeport and Freeport EDA do not grant Xcel Energy an easement over its property.

Thank you for allowing me to assist you with this matter. If you have any additional questions or concerns, please feel free to contact me.

Sincerely,  
Dymoke Law Office, PA

  
Scott E. Dymoke

## Adrianna Hennen

---

**From:** Lawler, Sean W <Sean.W.Lawler@xcelenergy.com>  
**Sent:** Wednesday, December 06, 2017 1:34 PM  
**To:** Adrianna Hennen  
**Cc:** Osendorf, Mark F  
**Subject:** RE: City of Freeport - Attorney Recommendation to EDA/Council  
**Attachments:** Easement Package\_V2.pdf

Adri,

Thanks for providing this information. I think that we may be able to satisfactorily address many of the concerns detailed in Mr. Dymoke's report ahead of the upcoming meetings with the EDA and City Council.

Xcel can agree to Mr. Dymoke's estimated market value of \$32,670.42 for the easement area. We've also determined that we will be able to construct, operate and maintain the transmission line without the originally requested rights to use the adjoining property from time to time for access and temporary construction areas. This would eliminate the compensation identified by Mr. Dymoke for the lots adjoining the easement area, estimated to be in the total of \$51,090.88. I've attached a revised version of the Easement Package reflecting these changes for your review and consideration prior to the upcoming Freeport EDA and Council meetings. As always, please let me know if there are any questions or concerns.

Furthermore, I respectfully ask that the EDA and City Council consider the existing 40' front, 40' corner, 20' rear and 15' side setbacks which encumber a significant portion of the proposed easement areas. These setbacks represent non-buildable areas which may have a lower property value comparatively to those portions of the properties located outside of the established setback areas. Also, during the review of this request please consider the purpose of the proposed transmission line is to strengthen the regional transmission system and improve the reliability of electric service to the City of Freeport and surrounding areas. The completion of this project will benefit the residents and businesses of Freeport, both current and future.

Thank you,

Sean Lawler  
**Xcel Energy | Responsible By Nature**  
Land Rights Agent  
414 Nicollet Mall, Minneapolis, MN 55401  
P: 612.330.1956 C: 320.247.0309  
E: [sean.w.lawler@xcelenergy.com](mailto:sean.w.lawler@xcelenergy.com)

---

**From:** Adrianna Hennen [<mailto:adrianna@freeportmn.org>]  
**Sent:** Wednesday, December 06, 2017 10:05 AM  
**To:** Lawler, Sean W  
**Subject:** City of Freeport - Attorney Recommendation to EDA/Council

**XCEL ENERGY SECURITY NOTICE: This email originated from an external sender. Exercise caution before clicking on any links or attachments and consider whether you know the sender. For more information please visit the Phishing page on XpressNET.**

Sean,

This is the opinion of our city attorney that will be presented to the EDA and Council.

Sincerely,

## OPTION FOR EASEMENT

KNOW BY THESE PRESENTS, that the undersigned, The Economic Development Corporation in and for the City of Freeport, Minnesota, hereinafter collectively called "Grantor", does hereby grant to Northern States Power Company, a Minnesota corporation, its successors and assigns, herein called "Grantee", the sole and exclusive option (the "Option") to purchase an easement, to be substantially in the form attached hereto as Exhibit A (the "Easement"), for the construction, operation, and maintenance of a proposed electric transmission line, together with all towers, structures, poles, crossarms, cables, wires, guys, supports, counterpoises, fixtures, and devices (collectively referred to as the "Facilities") used or useful in the operation and maintenance of said Facilities through, over, under and across the following described lands situated in the County of Stearns, State of Minnesota, to wit:

Lots 1, 2, 5, 6 and 7, Block 1, FREEPORT INDUSTRIAL PARK PLAT FIVE, according to the plat and survey thereof, on file and of record in the office of the County Recorder, in and for Stearns County, Minnesota (the "Property").

In consideration for the Option granted herein, Grantee shall pay to Grantor the non-refundable sum of \$7,500 within fifteen (15) days of execution of this Option (the "Option Price"). The Option Price shall be non-refundable to NSP, except as otherwise provided herein.

The Option must be exercised by means of a written notice ("Notice") from Grantee issued on or before December 31, 2019 (the "Option Period") by (a) the mailing of said notice by certified mail, return receipt requested, addressed to Grantor or (b) by personal delivery of said notice to Grantor.

The Option Period may be extended by Grantee until March 31, 2020, upon payment of \$2,500.00 in cash or by check to Grantor on or before December 31, 2019, which shall be non-refundable to the Grantee, except as otherwise provided herein.

Grantor covenants with Grantee, its successors and assigns, that Grantor is the owner of the above-described Property and has the right to sell and convey an easement in the manner and form aforesaid. Grantor shall within 30 days after request by Grantee, furnish Grantee documents showing that Grantor has marketable title to the Property. If title to the above-described lands is not marketable and is not made so within 30 days from the date of Grantee's written objections, this Option, at Grantee's sole discretion, shall be void and all money previously paid by Grantee for the Option shall be refunded.

During the Option Period and prior to giving the Notice, Grantee, its employees, agents, contractors and representatives shall have the right and license to enter upon the Property for the purpose of doing all those things which Grantee deems necessary or desirable to study, survey, inspect, test and plan for Grantee's proposed use of the Property, including, but not limited to, soil borings, conducting a hazardous substances investigation and conducting a feasibility or similar study which may cover such subjects as soil conditions, geological tests, engineering reports, topographic studies, flood protection, environmental impact reports, zoning and planning regulations, and any other tests and studies which Grantee may elect to perform on the Property, all at the sole cost and expense of the Grantee. Grantee agrees to pay to Grantor and/or to the tenant in possession of the Property a settlement of direct damages to the Property and the crops growing thereon as such Property and crops are affected by Grantee's exercise of the foregoing rights, if at all.

If the Option is exercised, Grantee shall pay Grantor the following as consideration for the easement rights described herein and set forth in the Easement, and as set forth on the attached Easement Purchase Price Schedule.

Grantor and Grantee agree that Grantor will execute and deliver the Easement to Grantee either contemporaneously with the Option or upon Grantee's exercise of the Option.

If Grantor executes and delivers the Easement to Grantee contemporaneously with the execution and delivery of this Option, Grantor acknowledges and agrees that the Easement Area(s) shown to Grantor as of the date hereof are preliminary in nature and subject to change, in Grantee's discretion, during the Option Period. Grantor acknowledges and agrees that the Easement Purchase Price will be based on the Easement Area(s) as finally determined by Grantee. Grantee agrees to provide Grantor a copy of the Easement to be recorded, which reflects said final Easement Area(s), along with payment of the Easement Purchase Price. Grantor further acknowledges and agrees that said Easement will be effective and recordable upon Grantee's tender of payment as described herein and without further action on the part of Grantor.

If Grantor agrees to execute and deliver to Grantee the Easement upon Grantee's exercise of the Option and delivery of the Notice, Grantee acknowledges and agrees that the Easement Area(s) shown to Grantor as of the date hereof are preliminary in nature and subject to change, in Grantee's discretion, during the Option Period. Grantor acknowledges and agrees that the Easement Purchase Price will be based on the Easement Area(s) as finally determined by Grantee. Grantor agrees that any change to the Easement Area(s) shall not alter Grantor's obligations to execute and deliver the Easement to Grantee upon Grantee's delivery of the Notice and tender of the Easement Purchase Price. Grantee will deliver the Easement showing the Easement Area(s) as finally determined by Grantee with Grantee's delivery of the Notice if Grantee exercises the Option. Upon delivery of the Notice, Grantor shall promptly and properly execute, acknowledge, and deliver to Grantee the recordable easement, the same having been executed and acknowledged by all persons necessary to convey the Easement to Grantee. The Easement Purchase Price shall be promptly paid upon Grantor's delivery of the foregoing.

NSP shall be responsible for all costs of recording the Easement on the Property. NSP may, at its expense, record the Memorandum of Option Agreement for Easement executed contemporaneously herewith.

During the Option Period, Grantor shall have the right to mortgage, lease, or otherwise encumber the Property, but only if such mortgage, lease or encumbrance is subordinate to the rights of the Grantee under this Option Agreement.

If Grantor is unable to perform Grantor's obligations hereunder or defaults in the performance of those obligations, Grantee shall be entitled to all remedies available at law or in equity, including the right to obtain specific performance and/or monetary damages, and/or the right to rescind any exercise of the Option. Grantee shall be entitled to its reasonable costs and expenses, including attorney fees, in the event Grantee takes action to obtain any of the foregoing remedies because Grantor is unable or has failed to abide by any of the terms hereof.

**IN WITNESS WHEREOF**, the undersigned has caused this instrument to be duly executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.





## **EXHIBIT A**

### **EASEMENT**

The undersigned The Economic Development Corporation in and for the City of Freeport, Minnesota hereinafter called "Grantor", in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant unto Northern States Power Company, a Minnesota corporation, hereinafter called "Grantee," its successors and assigns, the right, privilege and easement to survey, construct, operate, maintain, rebuild, relocate, upgrade or remove electric lines with all towers, structures, poles, foundations, crossarms, cables, wires, guys, supports, counterpoises, fixtures, devices and equipment appurtenant thereto (collectively referred to as "Facilities"); said Facilities being necessary for the purposes of conducting electric energy, light, and communication impulses, through, over, under and across the following described lands situated in the County of Stearns, State of Minnesota, to wit:

See Exhibit A (the "Premises").

The easement granted herein shall be limited to that part of the Premises, more particularly described on Exhibit A as the "Easement Area."

Grantee shall have the right to enter upon the Premises to survey for and locate the Facilities, and construct, operate, maintain, relocate, or remove the Facilities, and also the right to trim or remove from said Easement Area any structures, trees (including tall or leaning trees located within the Premises adjacent to the Easement Area, which may endanger the Facilities) or objects, except fences, which in the opinion of Grantee will interfere with said lines.

The Facilities and supporting structures from time to time may be reconstructed or relocated on said Easement Area with changed dimensions and to operate at different voltages.

Grantee shall have the right to install within the Easement Area additional equipment and facilities for the distribution of energy, light, and communication impulses. All Facilities installed and placed by or on behalf of Grantee in the Easement Area shall remain the property of Grantee.

Grantor agrees to not erect any buildings, structures or other objects, permanent or temporary, except fences, upon the Easement Area. Grantor further agrees to not plant any trees within the Easement Area, and to not perform any act that will interfere with or endanger the Facilities.

Grantor reserves the right to cultivate, use and occupy the Easement Area in a manner that is not inconsistent with Grantee's rights granted herein. Grantor also reserves the right to dedicate and have or permit to be improved, maintained, graded and used for the purposes of streets, curbs and gutters, sewers, water and underground utilities (hereinafter called "Improvements"), the portion of said Easement Area not occupied by the structures supporting Grantee's Facilities, provided that said Improvements do not in the opinion of Grantee impair the structural or electrical integrity of or ability to maintain said electric Facilities. Grantor further agrees to not materially alter the existing ground elevations in a manner that could interfere with Grantee's construction, operation, maintenance, relocation, or removal of its Facilities; or to result in a ground or other clearance of less than the minimum requirements specified by the National Electrical Safety Code and any other applicable laws or regulations or other codes in effect. Grantor, its agents or assigns must submit plans of Improvements or other installations within the Easement Area for review and written determination of compatibility by Grantee prior to installation of the Improvements.

After installation of the Facilities or after the exercise of any of the rights granted herein, Grantee agrees to restore the Property and the Easement Area to as near their original condition as is reasonably possible and remove therefrom all debris and spoils resulting from the use of the Property and Easement Area. Grantee shall pay for all actual damages to crops directly caused by the construction or maintenance of said lines. Claims on account of such damages may be referred to Grantee's nearest office.

Grantor covenants for the benefit of Grantee, its successors and assigns, that Grantor is the owner of the Premises and has the right to convey easements as set forth herein. The easements and covenants contained in this instrument shall run with and against the Premises. It is mutually understood and agreed that this instrument covers all the agreements and stipulations between the parties and that the terms herein may only be modified in writing. This instrument shall be governed by the laws of Minnesota.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**The remainder of this page is intentionally blank.**





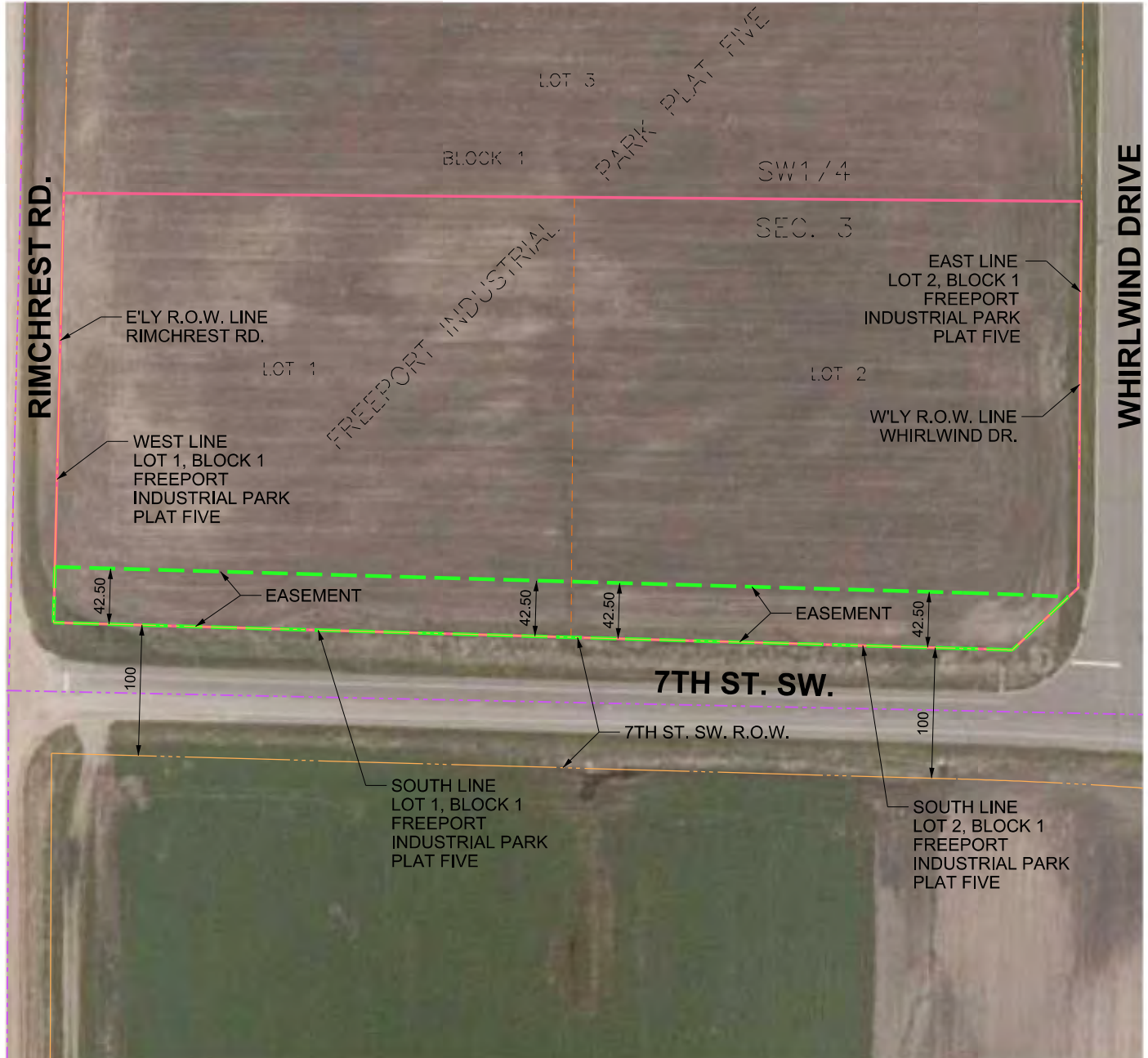
NORTHERN STATES POWER  
MINNESOTA

**EXHIBIT A SHEET 1 OF 2 SHEETS**



Scale: 1"=120'

Location: City of Freeport, Stearns County, Minnesota  
Grantor: The Economic Development Authority



2017-11-10 VIEW ONLY!

LINE: 0795  
PARCEL: ECONOMIC DEVELOPMENT  
SEC. 3, T.125N., R.32W., 5TH P.M.  
CO.: STEARNS

SHEET 1 OF 2 AREAS:  
CONTAINING 0.74 ACRES, MORE OR LESS



NORTHERN STATES POWER  
MINNESOTA

**EXHIBIT A SHEET 2 OF 2 SHEETS**



Scale: 1"=80'

Location: City of Freeport, Stearns County, Minnesota  
Grantor: The Economic Development Authority



SOUTH LINE LOT 6, BLOCK 1 FREEPORT INDUSTRIAL PARK PLAT FIVE  
**2017-11-10 VIEW ONLY!**

LINE: 0795  
PARCEL: ECONOMIC DEVELOPMENT  
SEC. 3, T.125N., R.32W., 5TH P.M.  
CO.: STEARNS

**SHEET 2 OF 2 AREAS:**  
CONTAINING 0.83 ACRES, MORE OR LESS

## Easement Purchase Price Schedule to Option for Easement

<b>Parcel: 03</b>		<b>Name: Freeport Economic Development Authority</b>	
The Easement Areas to be acquired described below correspond with Exhibit A to the Easement and, as set forth in the Option, are preliminary and subject to change.	<b>Square Feet (From Survey)</b>	<b>Proposed Easement Payment</b>	
<b>Easement Area</b>	<b>68,389</b>	<b>\$32,670.42</b>	
	<b>Signing Bonus Per Tax Parcel</b>	<b>Number of Tax Parcels</b>	<b>Signing Bonus</b>
<b>Option Signing Bonus</b>	<b>\$1,500.00</b>	<b>5</b>	<b>\$7,500.00</b>
<b>Total Compensation Amount</b>			<b>\$40,170.42</b>

\*This document shall not be recorded and shall not be admissible in any proceeding.

---

THE SPACE ABOVE THIS LINE IS RESERVED FOR RECORDING PURPOSES.

### MEMORANDUM OF OPTION AGREEMENT FOR EASEMENT

Notice is given that The Economic Development Corporation in and for the City of Freeport, Minnesota (“Grantor”) has given to Northern States Power Company, a Minnesota corporation (“Grantee”), the sole and exclusive option to purchase an easement for electric transmission facilities and related purposes across the real property (the “**Property**”) located in Stearns County, Minnesota described as:

Lots 1, 2, 5, 6 and 7, Block 1, FREEPORT INDUSTRIAL PARK PLAT FIVE, according to the plat and survey thereof, on file and of record in the office of the County Recorder, in and for Stearns County, Minnesota.

pursuant to that certain Option Agreement for Easement dated of even date herewith (the “**Option Agreement**”).

The Option Agreement contains all of the terms of the option and is included by reference as if fully set forth herein. The Option Agreement held by Grantee expires December 31, 2019, unless otherwise terminated or extended.

The parties have agreed to record this notice in the County Recorder’s Office as notice of the Option Agreement, rather than recording the full length Option Agreement.

IN WITNESS WHEREOF, Grantor has executed this Memorandum of Option Agreement for Easement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**The remainder of this page is intentionally blank.**



**SIGNATURE PAGE TO  
MEMORANDUM OF OPTION AGREEMENT FOR EASEMENT**

**GRANTOR  
THE ECONOMIC DEVELOPMENT  
CORPORATION IN AND FOR THE CITY  
OF FREEPORT, MINNESOTA**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, its \_\_\_\_\_ as an authorized agent for The Economic Development Corporation in and for the City of Freeport, Minnesota.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

This Instrument was drafted by: SWL  
Northern States Power Company d/b/a Xcel Energy  
414 Nicollet Mall  
Minneapolis, MN 55401

---

THE SPACE ABOVE THIS LINE IS RESERVED FOR RECORDING PURPOSES.

## EASEMENT

The undersigned The Economic Development Corporation in and for the City of Freeport, Minnesota hereinafter called "Grantor", in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant unto Northern States Power Company, a Minnesota corporation, hereinafter called "Grantee," its successors and assigns, the right, privilege and easement to survey, construct, operate, maintain, rebuild, relocate, upgrade or remove electric lines with all towers, structures, poles, foundations, crossarms, cables, wires, guys, supports, counterpoises, fixtures, devices and equipment appurtenant thereto (collectively referred to as "Facilities"); said Facilities being necessary for the purposes of conducting electric energy, light, and communication impulses, through, over, under and across the following described lands situated in the County of Stearns, State of Minnesota, to wit:

See **Exhibit A** (the "Premises").

The easement granted herein shall be limited to that part of the Premises, more particularly described on Exhibit A as the "Easement Area."

Grantee shall have the right to enter upon the Premises to survey for and locate the Facilities, and construct, operate, maintain, relocate, or remove the Facilities, and also the right to trim or remove from said Easement Area any structures, trees (including tall or leaning trees located within the Premises adjacent to the Easement Area, which may endanger the Facilities) or objects, except fences, which in the opinion of Grantee will interfere with said lines.

The Facilities and supporting structures from time to time may be reconstructed or relocated on said Easement Area with changed dimensions and to operate at different voltages.

Grantee shall have the right to install within the Easement Area additional equipment and facilities for the distribution of energy, light, and communication impulses. All Facilities installed and placed by or on behalf of Grantee in the Easement Area shall remain the property of Grantee.

Grantor agrees to not erect any buildings, structures or other objects, permanent or temporary, except fences, upon the Easement Area. Grantor further agrees to not plant any trees within the Easement Area, and to not perform any act that will interfere with or endanger the Facilities.

Grantor reserves the right to cultivate, use and occupy the Easement Area in a manner that is not inconsistent with Grantee's rights granted herein. Grantor also reserves the right to dedicate and have or permit to be improved, maintained, graded and used for the purposes of streets, curbs and gutters, sewers, water and underground utilities (hereinafter called "Improvements"), the portion of said Easement Area not occupied by the structures supporting Grantee's Facilities, provided that said Improvements do not in the opinion of Grantee impair the structural or electrical integrity of or ability to maintain said electric Facilities. Grantor further agrees to not materially alter the existing ground elevations in a manner that could interfere with Grantee's construction, operation, maintenance, relocation, or removal of its Facilities; or to result in a ground or other clearance of less than the minimum requirements specified by the National Electrical Safety Code and any other applicable laws or regulations or other codes in effect. Grantor, its agents or assigns must submit plans of Improvements or other installations within the Easement Area for review and written determination of compatibility by Grantee prior to installation of the Improvements.

After installation of the Facilities or after the exercise of any of the rights granted herein, Grantee agrees to restore the Property and the Easement Area to as near their original condition as is reasonably possible and remove therefrom all debris and spoils resulting from the use of the Property and Easement Area. Grantee shall pay for all actual damages to crops directly caused by the construction or maintenance of said lines. Claims on account of such damages may be referred to Grantee's nearest office.

Grantor covenants for the benefit of Grantee, its successors and assigns, that Grantor is the owner of the Premises and has the right to convey easements as set forth herein. The easements and covenants contained in this instrument shall run with and against the Premises. It is mutually understood and agreed that this instrument covers all the agreements and stipulations between the parties and that the terms herein may only be modified in writing. This instrument shall be governed by the laws of Minnesota.

**IN WITNESS WHEREOF**, the undersigned has caused this instrument to be duly executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**The remainder of this page is intentionally blank.**



# Memo

---

From: Adrianna Hennen, Clerk-Treasurer

To: Freeport City Council

Date: 12/13/17

Re: Resolution 2017-13 Fire Department Personnel Policy

---

There are a couple items the fire department is requesting get changed within their personnel policy. The first you will see on page 11. They updated the requirements making it mandatory to attend at least 6 regular or special meetings, and at least 50% of the drills per year. They are also requesting that members make it to 35% of calls per year.

There is also an addition on page 12. They wanted to address the response time and the members that work in town, versus living out of town.

Please contact John Gilk with any questions regarding these changes and additions.

**City of Freeport, Minnesota  
RESOLUTION 2016-15**

**FIRE DEPARTMENT PERSONNEL POLICIES**

**Scope**

The Freeport Volunteer Fire Department (the “Department”) has been organized with the objective of preserving and protecting residents and property from and during such fires and/or emergencies as may occur in the City of Freeport and Freeport Area Fire Service. The purpose of these policies is to set forth the policies and procedures governing the operation of the Department.

**Organization**

The Department shall be organized of members and officers, and such standing committees as may be deemed necessary for the proper transaction of business. .

**Officers**

The officers shall include a Fire Chief, a First Assistant, a Second Assistant, and Secretary.

**Article I. APPOINTMENT OF OFFICERS**

Officers within the Department shall be appointed pursuant to the following policy and must be an active member of the Freeport Fire Department at the time of appointment. An “active member” shall be defined for the purposes of this policy as a firefighter in good standing and meeting drill and attendance requirements.

**Purpose**

This policy is intended to detail the process to be used for the appointment of firefighters to the officer positions within the Department.

**Applicability of Freeport Fire Department New Firefighter Hiring Procedure and other personnel policies**

Unless otherwise clearly stated, the relevant policies contained in the Freeport Fire Department New Member Hiring Policy shall apply to the extent they accommodate the procedures contained in this policy for the appointment of officers. *See article IV.*

**Selection Process for Officers**

The Officers will be appointed by the City Council to serve for a term of approximately one (1) year. However, since delays in the process may occur, the term shall be for such time beginning on the day following appointment by the City Council until the Council again appoints officers. It is anticipated that the normal term will run from approximately January 1st to January 1st of the second following year. The Officers will be appointed pursuant to the following process:

1. At the first meeting in October of the Department, the current Chief will post a notice in a conspicuous place in the Fire Hall, advising interested persons to complete and return to the Chief a form stating their interest in a position(s) and qualifications. The positions sought must be indicated on the form.
2. All forms must be submitted to the City Clerk before the close of City Hall by the second Monday of November.
3. The election committee of the Department, which will consist of two random department members, will review the forms and determine by the first December meeting of the Fire Department (or the next monthly meeting in the case of a vacancy) those persons that meet the minimum eligibility requirements for the positions.
4. The Department will make nominations for each of the officer positions. After the nominations have been made, the Chief will deliver to the City Clerk the names of the nominated individuals, the forms submitted under paragraph 1, and any other materials made or used by the Department in making its determinations.
5. The City will review the materials and forms and consider the appointments of the nominees selected by the members of the Department at the December council meeting.
6. In the event the Council disagrees with a nominee(s), it will appoint the nominee(s) with whom it agrees and refer the remaining appointments back to the Department, which will make a recommendation to the Council.

### **Removal**

During the term of their appointment, any officer may be removed at the discretion of the City Council. The City Council may remove for any reason including, but not limited to, the following: 1) negligence or misconduct in the performance of duties; 2) insubordination or willful refusal to perform a position's duties or such duties assigned by a supervisor, 3) abuse of his or her authority; 4) inability to perform his or her duties consistent with generally accepted standards for the position; and 5) any violation of applicable City or Fire Department policies and codes governing conduct.

### **Eligibility Criteria For The Positions of Officer**

Before an individual may be appointed to the position of officer in the Freeport Fire Department he or she must meet the following minimum eligibility requirements:

\*If no eligible person meets all of the below criteria, the Department may approve the nomination of an existing member of the fire department. However, the nomination cannot be approved until the candidate develops an approved plan for satisfying the eligibility criteria. This plan must be approved by the Council.

1. Five (5) years of firefighter experience with the Freeport Fire Department, or seven (7) years firefighter experience with at least three (3) years with the Freeport Fire Department.
2. The person has demonstrated through his/her previous firefighting experiences, leadership and expertise in firefighting ability.
3. In the case of appointment for Chief only, the person must have held the position of Chief or Assistant Chief at the Freeport Fire Department, or an officer (Chief, Assistant Chief, or Captain) with another fire department within the past five (5) years.
4. The person must demonstrate availability during daytime hours. The person will be required to obtain a letter from his/her current employer, if not already on file, verifying their understanding and commitment to allowing him or her to perform the required duties.
5. The person must have attended one (1) or more State of Minnesota sponsored, and Fire Chief approved, leadership coursework, or, in the alternative, demonstrates the ability to attend such a course within 12 months of being appointed.
6. The person must have demonstrated knowledge of and the ability to operate all Department vehicles and equipment.

## **Article II. DUTIES**

### **Duties of the Fire Chief**

The Fire Chief shall have those duties contained in the approved Job Description, which shall be kept on file with the City. *See attached description.*

### **Duties of the First and Second Assistants**

The Assistant Chiefs have those duties contained in the approved Job Description, which shall be kept on file with the City. *See attached description.*

### **Duties of the Secretary**

The Secretary shall have the duty to attend all regular and special meetings of the Department, record all votes, and take and keep accurate minutes of all regular and special meetings of the Department.

### **Duties of the Members**

A member of the Department shall have those duties contained in the approved Job Description, which shall be kept on file with the City. In addition, firefighters will be responsible to:



1. Properly attend all meetings and regular drills, and on every fire alarm to assemble at the Fire Station without delay to assist in getting the apparatus to the fire and in readiness for operation as soon as possible;
2. Attend at least six (6) regular or special meetings and at least fifty percent (50%) of the drills per year (December 1st through November 30st).
3. Attend thirty-five percent (35%) of calls per year.
4. Notify the Fire Chief prior to being absent from the City for twenty-four (24) continuous hours or more.
5. Address problems or questions relating to the operation of the Department to his or her immediate supervisor as soon as possible for further handling.
6. Report any unsafe equipment, materials, and/or acts to his or her immediate supervisor as soon as possible.
7. Report any loss or damage of equipment and tools to his or her immediate supervisor as soon as possible.
8. Refrain from giving detailed or confidential information relative to any emergency call to a person or persons not connected with the Department except as authorized by the Fire Chief.
9. Report conditions that may affect their performance to the Chief or officer in charge. Members must also report all injuries that occur while performing the duties of a firefighter immediately to the Fire Chief or officer in charge.
10. Remain at the fire hall after arriving in response to an emergency call until given permission to leave by the officer in charge.
11. Remain at the fire scene until given permission to leave by the officer in charge.
12. Obey the commands of their officers while on duty.
13. Become familiar with the handling and working of all equipment and with these Personnel Policies and shall conduct his or herself accordingly.
14. Upon leaving the Department, return Department/City property to the Fire Chief.
15. Submit to and pass a physical every three (3) years.

16. Notify the Fire Chief in the event of a change in employment or residence. In the case of a change in employment, the member must obtain from his or her new employer a letter demonstrating availability to perform his or her duties with the Department.
17. Ensure that the first truck out of the Fire Station has an adequate number of members on board;
18. As a driver of a truck, you will remain the operator unless relieved by chief or officer in charge.
19. The first vehicle out will be filled in the following order: driver, then back of rig and the passenger will be the officer in charge
20. As the first member to reach the Fire Station in response to a call, assumes command of the Department until the arrival of a more senior member or officer.
21. Use only his or her personal equipment assigned by the Department.
22. As designated by the Fire Chief, check Department trucks pursuant to the approved checklist.
23. Obtain his or her first responder certification within twelve (12) months of being hired and keep his or her first responder certification current at all times while a firefighter.

### **Article III. SENIOR FIREFIGHTER**

#### **Definition**

A firefighter with twenty years or more of service who has retired from the Relief Association in good-standing, but who has maintained an active first responder certification is eligible to be selected as senior firefighter.

#### **Duties**

Upon recommendation by the Chief, the City Council may appoint one or more senior firefighters. The purpose of the senior firefighter position is to supplement the personnel needs of the department with otherwise retired firefighters who will be available for daytime calls, but will be exempt from the minimum fire call requirement applicable to regular volunteer firefighters. The senior firefighter will not be required to attend other training or drills the department hosts, except as determined necessary by the Chief. The senior firefighter may be exempted from the response time requirements generally applicable to volunteer firefighters.

### **Conditions of Service**

The Council may set such other conditions of service for senior firefighters as may seem prudent. Senior firefighters may be terminated at will. Senior firefighters are subject to all city policies and procedures to the same extent as other firefighters, except as expressly provided.

### **Compensation**

Senior Firefighters will be eligible for call time compensation. No other compensation or benefits will be provided for senior firefighters.

## **Article IV. MULTIPLE DEPARTMENT MEMBERS**

1. Must make first three (3) months of drills and meetings to familiarize them with the department;
2. After three (3) months they must keep up certifications with primary department;
3. They are obligated to attend annual meeting and annual Ham barbeque fundraiser.
4. The department the fireman identifies as parent department is the department the fireman will receive retirement benefits from.  
*Ex: John lives in Avon and is on the Fire Department. John works in Freeport and is on their daytime only crew. John would receive retirement benefits through Avon Fire Department.*

## **Article V. NEW MEMBER HIRING POLICY**

### **Purpose**

The purpose of these procedures is to explain how candidates are selected as volunteer firefighters with the Freeport Volunteer Fire Department.

### **City Policies**

All city personnel and hiring policies of general applicability apply to the hiring of volunteer firefighters, unless those policies specifically contain an exemption. Persons assisting in the hiring process should become familiar with the City Personnel Policies Manual. During any active hiring process, the City Clerk will make sure that participants in the process are provided

with a working copy of these policies, the City Personnel Policies Manual and any other policies and procedures applicable to the process.

### **Coordination/File Maintenance**

All files and records associated with the hiring process as well as ongoing employment records are personnel records of the City. They must be maintained in a secure location in officially designated secure storage facilities on City property. Routine access to these files are limited to the Fire Chief or one officer designated by the chief to supervise the personnel process and to the City Clerk or one City employee designated by the City Clerk as responsible for city personnel records maintenance, and to legal counsel to the extent needed to assist the city with personnel related legal issues. Application and related personnel records are available to the hiring committees at their committee meetings. No personnel records (original or copies) may be removed from City premises. If authorized by a specific decision of the council, and after consultation with council, personnel records needed by the Council to assist the Council in decision making may be made available to the council.

### **Selection Process**

The Fire Department has primary responsibility for performing such selection components as reference checks, oral interviews, physical fitness testing, and training. The Department recommends candidates for final selection by the City Council.

### **Information to Potential Applicants**

The City maintains an application year from May 1 to April 30 of the following year. Any potential applicant may obtain information about the job application process at any time, whether there are potential vacancies or not, and may obtain and complete an application. Each applicant must submit a letter from his or her employer demonstrating availability to perform the required duties. Applications received during a period when there are no potential vacancies will not be considered active applications, but will be retained for future review. An application received at City Hall on or after May 1 will be kept on file until April 30, at which time, any applicant must complete an updated application form. Applications received will receive no further processing until the Chief certifies that there is a potential vacancy. When, after consultation with the City Clerk, the Chief certifies that there is a potential vacancy the City will set an application deadline. The City will post and advertise an announcement that there are pending vacancies and will commence the application review procedure. The City will contact persons who have previously filed an application form during the application year to determine if they wish to activate their application for formal review.

### **Data Practices**

Persons who apply should understand that once an application is on file for active review, certain applicant data might be publicly available. An applicant who files an application consents to release of any data regarding that application which is required to be released under Minnesota law. Any requests for applicant data should be directed in writing to the City Clerk. The City will maintain all records and will assure that data privacy and public data access laws are followed.

### **Application Review Process**

Preliminary Screening Interview: The Chief or his designee will review the initial applications for completeness and compliance with minimum requirements. If the application is incomplete on its face or discloses that the applicant does not meet minimum requirements, the application shall be rejected at this point. Any person whose application is rejected by the Chief (or designee) because the applicant fails to meet minimum requirements, or because the application is incomplete, may request a summary paper review of that decision by sending a letter explaining the applicant's position to the Chief with a copy to the City Clerk. The Chief's decision is final and binding, except that the Council reserves the right on its own motion to review and reverse any such decision.

### **Veteran's Preference**

The City considers all eligible applicants at the final interview. For this reason, all veterans who meet minimum job requirements for the position will be considered as finalists.

### **Previous Employment Investigation**

In the event that the applicant meets minimum criteria, the department will advise the applicant that the Department will conduct a previous employment investigation pursuant to Minn. Stat. Section 299F.036. The Applicant will provide appropriate releases as provided in subdivision 2 of that section. With the assistance of appropriate city personnel, the Chief will cause a request for disclosure to be issued to all employers of the applicant for whom the applicant worked during the preceding ten years. All such information obtained will be filed in a secure location as provided above, and will be maintained in strict confidence, subject to all applicable data privacy laws.

### **Reference Check**

The applicant shall supply at least two references of persons familiar with the applicant's capabilities, character and work history. If the applicant meets the minimum requirements, the Department shall conduct a reference check by contacting the applicant's references. The Chief or his or her designee shall conduct reference checks and shall maintain a written summary of the references so obtained.

### **Agility Test**

Prior to oral interview, applicants who meet the minimum qualifications shall take the agility test. Passage of the agility test is a minimum requirement for the position. The agility test consists of:

- Beam Walk
- Backboard Carry
- Hose Coupling/Drag

The Department will keep a record of the applicant's performance on the test. An applicant may use the results of an agility test performed within 365 days of the oral interview. The requirements of the test are public information. Applicants are expected to consult with their

own physician to make sure that the test is within their physical capabilities. The applicant must sign a waiver of liability for injuries sustained during the test.

### **Oral Interview Committee**

The oral interview committee will review the applications of all active applicants who meet the minimum qualifications. The oral interview committee shall consist of the Fire Department Executive Committee. The applicants may be asked such legally permissible questions as may be appropriate during the interview process. Each member of the interview committee will keep a record of his or her impressions of the candidate. Following the interview, the committee will seek to agree on the successful applicants by consensus, but may, if necessary, select the candidates by majority vote. Higher preference will be given to applicants living and working nearest to the Fire Station. The names of the approved candidates will be forwarded to the City Council for approval. The Council retains final decision-making authority.

### **Conditional Offer/Medical Examination**

If the council approves an applicant, then the City will make an offer for at-will employment as a firefighter, conditional upon the applicant's passage of a medical examination. The City will retain the services of a qualified medical examiner for this purpose. Each applicant must pass the medical examination of the City's selected medical examiner. The City will provide the medical examiner with a copy of the job description and the standard examination criteria. The examiner may request copies of the applicant's medical records. If the medical examiner determines that additional tests may be necessary, the medical examiner may conduct such further tests, provided that the City must first authorize any additional expense.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except information as specifically allowed by this law. To comply with this law, we will not ask you to provide any genetic information in connection with the medical examination or when responding to any request for medical information. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

### **Initial 12-Month Period of Employment**

Each new firefighter shall be assigned an Assistant Chief with responsibility for monitoring training and performance issues during the initial 12-months of employment, subject to the supervision of the Chief. The Assistant Chief will initially meet with the new employee to discuss expectations and establish a regular review procedure. During the first 12 months of employment, the City Clerk, or the Clerk's delegate, will maintain a written performance record to assist in evaluation. The Assistant Chief will make a written evaluation entry at least monthly. A copy of the record will be provided to the employee, who will sign the record to signify that the employee has received a copy of the record. After a fire call, drill, or training event, if the Assistant Chief identifies performance issues or areas of recommended professional growth, the

Assistant Chief will identify those areas in writing, with a copy to the employee and the employee's personnel file. The Assistant Chief will meet with the new employee and discuss any written report. Assistant Chiefs are encouraged as well to provide regular positive reviews where warranted. The City Clerk will work with the Chief and Assistant Chiefs to make sure that written documentation of performance satisfy city policies regarding appropriate documentation.

## **Article VI. EMPLOYMENT AT WILL**

The City of Freeport has the right to terminate any employee, including firefighters, at any time for any reason or no reason. Firefighters may terminate employment at any time for any reason.

## **Article VII. MEETINGS**

The Fire Department will have regular business meetings at 9:00 p.m. on the first Monday of every month, except when a national holiday falls on that day, in which case it shall be held on the following Monday, and special meetings as called from time to time at the discretion of the Fire Chief.

## **Article VIII. DISCIPLINE**

Members of the Department are employees of the City of Freeport and expected to follow all City ordinances, Codes, and policies to the extent applicable. Any member may be disciplined pursuant to the City's personnel policy and Code of Conduct, including suspension and expulsion from membership, misconduct including but not limited to:

1. Missing any regular or special meeting or drill, unless excused by the Fire Chief or an Assistant Chief.
2. Failure to notify the Fire Chief prior to being absent from the City for twenty-four (24) continuous hours or more.
3. Appearing at any meeting of the Department, any drill, or on duty under the influence of alcohol or illegal substances. The procedure for determining substance shall be that which is contained in the City's personnel policies.
4. Use of insulting, indecent, profane, or improper language.

5. Conduct unbecoming a firefighter, acts of moral turpitude, or other conduct that disparages or is detrimental to the Department's performance.
6. Taking property from the scene of an emergency for personal use or gain.
7. Converting, misappropriating, or misusing funds or property from the Department, City, or Relief Association.
8. Insubordination, disobedience of orders, or interfering with the officer in charge by giving counter orders, commencing a quarrel with any other member of the Department or members of any other department.
9. Violating City policies, including, but not limited to, the Code of Conduct, the Sexual Harassment Prevention Policy, and the Drug Free Workplace Policy.
10. After arriving at the fire hall, absenting oneself therefrom without the permission of the officer in charge.
11. After arriving at the scene of a fire, leaving without the permission of the officer in charge.
12. Taking or borrowing any article from the Fire Station without the permission of the Fire Chief or, in the absence of the Fire Chief, the most senior officer present.
13. Failure to return a completed physical form, if required, by December 31st.
14. Failure to notify the Fire Chief in the event of a change in employment or residence.
15. Failure to attend at least six (6) regular or special meetings and at least fifty percent (50%) of the drills per year (December 1st through November 30th).
16. Failure to attend thirty-five (35%) of fire calls per year.
17. Failure to keep his/her first responder certification current.
18. Missing three (3) consecutive regular meetings, unless excused by the Fire Chief or an Assistant Chief.



## Article IX. LEAVE OF ABSENCE

A member of the Freeport Fire Department may request a leave of absence (for good cause) for a period of up to one (1) year. The request will be reviewed and approved by the Fire Chief and the City Clerk, who may consult with the Fire Department Executive Committee. "Good Cause" shall include, but not be limited to: illness, job related matters, family related matters, or other personal matters that may be reasonably perceived as temporarily interfering with the member's performance of his or her duties. A leave of absence shall be granted upon receipt of a written request to the Fire Chief from the individual concerned. If the Fire Chief does not receive a written request, the individual will be automatically discharged. Any member who is granted a leave of absence shall relinquish all property of the Freeport Fire Department to the Chief during their absence. Members called into military service shall be granted all rights according to the federal law governing right to active membership.

## Article X. CHANGES IN EMPLOYMENT OR RESIDENCE THAT AFFECT RESPONSE TIME

Any member of the Freeport Fire Department, who shall have a change in employment or residence, shall notify the Fire Chief. The Executive Committee will review the new employment or residence to evaluate the impact on the member's response time. In the event the Executive Committee finds that the member is no longer able to respond to emergency calls in a timely manner, such delay prevents the member from performing the duties of the position, the Department would be better served by having the duties performed by a new hiree, and there is such a new hiree eligible to be hired, the member may be recommended to the Council to consider discharging the member or other appropriate action.

Fire department members must be able to achieve a 10 minute response time from their residence to the fire hall, while obeying traffic laws. Exceptions are made for members who work in Freeport, but live further than 10 minutes.

**This resolution repeals and replaces all other personnel policies of the Freeport Volunteer Fire Department.**

**Policy adopted by the Freeport City Council on this 19<sup>th</sup> day of December, 2017.**

\_\_\_\_\_  
Rodney Atkinson, Mayor

ATTEST:

\_\_\_\_\_  
Adrianna Hennen, Clerk-Treasurer