



CITY OF FREEPORT

125 Main Street E – PO Box 301 – Freeport, MN 56331 – 320-836-2112 – FAX 320-836-2116
For TTY/TDD Users 1-800-627-3529 or 711 Minnesota Relay Service www.freeportmn.org

December 29, 2014 - Special Meeting Agenda
Freeport City Hall - 6:30 pm

Call to Order

Resolution 2014-040 re: Employment Agreement with Clerk/Treasurer

Adjourn – *Motion to adjourn*

Next Meetings: Jan 7th

Memo

From: Mason Schirmer, Clerk-Treasurer
To: Freeport City Council
Date: December 23, 2014
Re: Employment Agreement

Included along with this memo is a draft resolution, entitled “Resolution 2014-040, A Resolution Approving Employment Agreement By And Between The City Of Freeport And Mason Schirmer.”

I informed the City Attorney about the document and I asked for his opinion. The city attorney recommended altering the original document. The following sections were changed:

Paragraph 4b

b. In the event the Employee is terminated with the City Council without cause and during such time that Employee is willing and able to perform the duties of City Clerk/Treasurer, then in that event, City Council agrees to pay Employee a lump sum cash payment equal to six (6) month’s salary and benefits...

The Attorney said 6-months is a longer duration than he has seen in city employment agreements.

I am proposing no change.

Paragraph 4c

If Employee’s employment is terminated with cause, the City Council is not obligated to pay severance of any kind, except for the value of accrued but unused leave to which Employee is entitled. Cause for termination shall include:

- i. Willful destruction, theft, misappropriation or misuse of city property
- ii. Intoxication on duty, whether by alcohol or non-prescriptive drugs;
- iii. Conviction of a crime involving moral turpitude or any felony; or
- iv. Dishonesty, fraud or misconduct in office.

The Attorney was concerned “cause” was being narrowly defined; so, the following was added:

- v. Violence or threatened violence
- vi. Falsifying Records
- vii. Intentional act of fraud, embezzlement or theft
- viii. Intentional disclosure of confidential information
- ix. Willful and continued failure to substantially perform the duties as stated in the job description
- x. Willful conduct that is demonstrably and materially injurious to the City
- xi. Excessively and unjustifiably absent or late
- xii. Harassing or abusing other employees, customers or clients

Paragraph 4d

Old In the event the City Council at any point during the course of this Agreement reduces the salary or other financial benefits of all other employees and, at the same time, reduces the salary or other financial

benefits of Employee by a percentage greater than the average percentage reduction applicable to other employees, or in the event the City Council refuses, following written notice, to comply with any material provision herein benefiting Employee, Employee may, at his option, be deemed “terminated” at the date of such reduction or such refusal to comply, and shall be entitled to severance pay and other benefits specified in Section 4(b).

The attorney was concerned the paragraph would add difficulty for council to make necessary adjustments to staffing; so, the paragraph was redeveloped:

New Employee is entitled to prior written notice and a one-year freeze-in-pay prior to a reduction in salary or other financial benefits, or in the event the City Council refuses, following written notice, to comply with any material provision herein benefiting Employee, Employee may, at his option, be deemed “terminated” at the date of such reduction or such refusal to comply, and shall be entitled to severance pay and other benefits specified in Section 4(b).

Paragraph 4e

Old Consideration of Employee’s termination by the City Council may not occur except for with cause within ninety (90) days after a General Municipal Election or Special Election wherein a new member or members are elected to the City Council.

The attorney was concerned the paragraph ties council’s hands too much; so, the paragraph was removed.

New <none>



CITY OF FREEPORT

125 Main Street E – PO Box 301 – Freeport, MN 56331 – 320-836-2112 – FAX 320-836-2116
For TTY/TDD Users 1-800-627-3529 or 711 Minnesota Relay Service www.freeportmn.org

RESOLUTION 2014-040

A RESOLUTION APPROVING EMPLOYMENT AGREEMENT BY AND BETWEEN THE CITY OF FREEPORT AND MASON SCHIRMER

Employment Agreement

This document shall constitute the Employment Agreement by and between the City of Freeport of the State of Minnesota, hereinafter called “City”, and Mason Schirmer, hereinafter called “Employee”, both of whom understand as follows:

WHEREAS, the City desires to employ the services of Employee as City Clerk/Treasurer of the City of Freeport, Minnesota, and;

WHEREAS, it is the desire of the City Council to (1) secure and retain the services of Employee and provide inducement for Employee to remain in such employment, (2) to make possible full work productivity by assuring Employee’s morale and peace of mind with respect to future security, and (3) to provide a just means for terminating Employee’s services;

WHEREAS, Employee desires to continue employment as City Clerk/Treasurer of said City;

NOW, THEREFORE, in consideration of the payment of \$100 to Employee and the mutual covenants herein contained, the parties hereto agree as follows:

1. Duties

City Council hereby agrees to employ Employee as City Clerk/Treasurer of said City to perform the duties of the municipal clerk and municipal treasurer as broadly stipulated by MN statutes 412.151 and 412.141 and to perform such other legally permissible and proper duties and functions stated in the Clerk-Treasurer job description and as the City Council shall from time to time assign.

2. Term

- a. The term of this Agreement shall commence on the date approved by City Council and automatically renew annually when Employee receives ‘Satisfactory’ performance evaluation or better.
- b. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from employment with the City, subject only to the provisions set forth in Section 4(a) of this Agreement.
- c. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Employee subject only to the provisions set forth in Section 4(b) of this Agreement.

- d. City Council may terminate this Agreement and Employee's employment under it if Employee becomes permanently disabled or suffers a serious health condition such that he is unable to perform his duties.

3. Performance Evaluation

In March of each year, the City Council shall conduct an evaluation of Employee's performance using the process and criteria mutually agreed upon between Employee and City Council and shall define and prioritize goals, expectations and performance objectives for Employee for the next twelve (12) months.

4. Termination and Severance Pay

- a. In the event Employee voluntarily resigns from employment, Employee shall give City Council thirty (30) days' advance notice.
- b. In the event the Employee is terminated by the City Council without cause and during such time that Employee is willing and able to perform the duties of City Clerk/Treasurer, then in that event City Council agrees to pay Employee a lump sum cash payment equal to six (6) months' salary and benefits by reference to Employee's salary in effect on the date of termination and the value of all accrued and unused benefits and leave as set forth in City Personnel Policy.
- c. If Employee's employment is terminated with cause, the City Council is not obligated to pay severance of any kind, except for the value of accrued but unused leave to which Employee is entitled. Cause for termination shall include:
 - i. Willful destruction, theft, misappropriation or misuse of city property
 - ii. Intoxication on duty, whether by alcohol or non-prescriptive drugs;
 - iii. Conviction of a crime involving moral turpitude or any felony; or
 - iv. Dishonesty, fraud or misconduct in office.
 - v. Violence or threatened violence
 - vi. Falsifying Records
 - vii. Intentional act of fraud, embezzlement or theft
 - viii. Intentional disclosure of confidential information
 - ix. Willful and continued failure to substantially perform the duties as stated in the job description
 - x. Willful conduct that is demonstrably and materially injurious to the City
 - xi. Excessively and unjustifiably absent or late
 - xii. Harassing or abusing other employees, customers or clients
- d. Employee is entitled to prior written notice and a one-year freeze-in-pay prior to a reduction in salary or other financial benefits, or in the event the City Council refuses, following written notice, to comply with any material provision herein benefiting Employee, Employee may, at his option, be deemed "terminated" at the date of such reduction or such refusal to comply, and shall be entitled to severance pay and other benefits specified in Section 4(b).

5. Salary and Benefits

Employee shall be entitled to the employment benefits set forth in City Personnel Policy and Compensation Plan.

6. Dues and Subscriptions

The City Council agrees to budget for and pay the professional dues, subscriptions, courses, institutes, seminars and travel expenses of Employee for participation in professional activities pertinent to serving as Clerk/Treasurer. The City Council encourages Employee to attend continuing education opportunities relevant to serving as Clerk/Treasurer.

7. General Provisions

- a. The text herein constitutes the entire Agreement between the parties pertaining to the employment of Employee by the City and supersedes any and all prior and contemporaneous agreements, representations, promises and understandings of the parties, whether oral or in writing.
- b. During the life of this Agreement, any provisions of this Agreement may be amended by the parties by mutual written agreement. Such amendments shall be incorporated into and made a part of this Agreement. This Agreement supersedes in its entirety and any prior employment agreement entered into between the City and Employee.
- c. If any provisions, or any portion thereof, contained in the Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of the Agreement or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- d. This Agreement shall become effective when approved by City Council.

DATED THIS 29TH DAY OF DECEMBER, 2014

Motion by:

Second by:

Council members in favor:

Opposed or abstained:

Matthew Worms, Mayor

ATTEST:

Mason Schirmer

From: Adam Ripple <ARipple@rinkenoonan.com>
Sent: Monday, December 29, 2014 12:06 PM
To: Mason Schirmer
Cc: Mary Jo Rowan
Subject: RE: 15542-0001 City of Freeport: Main File (prev set up as Tax Increment Financing): Agenda Packet
Attachments: LMC Contracts & Agreements - from Hiring Chapter.pdf

Mason:

You have asked me to outline some of the pros and cons to employment agreement. From my perspective there are three big pros and three big cons:

PROS

Aids in recruitment and retention of high-level employees.
Sets terms of severance before an often-charged separation arises.
Prevents miscommunications—assuming everything is in the contract.

CONS

Alters the at-will employment relationship, which often favors employer flexibility.
Creates additional liability (contract compliance) and obligations (severance compensation) for the City.
May lead to additional contracts or unionization of other employees, which complicates management.

For additional perspective, I have also attached an excerpt of the LMC HR Manual; I do not agree with everything in the manual.

Also, I see that your memo addresses some of the concerns we discussed last week. However, I would like to elaborate for the council:

1. Paragraph 4.b. 6 months of severance is longer than I have seen for a contract. The council should also understand that it could be on the hook for unemployment compensation in addition to the severance amount. One option to reduce exposure is to structure severance pay as part of ordinary payroll that would cease upon the employee obtaining new employment.
2. Paragraph 4.c. In addition the new language, I suggest adding:
 - a. immoral conduct, regardless of whether it results in prosecution
 - b. insubordination
 - c. inefficiency or incompetence that is not corrected after written notice
 - d. misconduct that would make the employee ineligible for unemployment benefitsThe concern is that the Council could have legitimate reasons for firing the employee that would not fit neatly into the narrow definition.
3. Paragraph 4.d. I suggest simply deleting this paragraph in its entirety. Salary is going to be the big deal, and a change in salary would be a revision the contract that must be approved by both the City and Employee. (See additional comments below)

In addition, I have some other comments that we may or may not have discussed (perhaps some were with Mayor Worms):

1. Paragraph 5 should spell out salary, PERA, insurance, vacation/PTO, address the use of comp time, and mileage or other reimbursements.
2. The current job description should be added as an exhibit.
3. My understanding is that the city does not have an employment handbook. It should, and this contract to reference and incorporate those terms.

4. A term of 5 years is very long for an initial contract. Automatic renewal is not a good idea.
5. Consideration greater than \$100 would be better.
6. The contract should have a provision that states, " Employee shall devote his full time and attention and energy to his duties as City Administrator."
7. To be a valid contract, it must be signed by both parties. There needs to be a signature line for Mason.

I will be prepared to address these comments with the council. See you tonight.

Adam A. Ripple
Attorney

RINKE NOONAN

Suite 300, US Bank Plaza
P.O. Box 1497
St. Cloud, MN 56302
(320) 251-6700 General
(320) 257-3868 Direct
(320) 656-3500 Fax

[website](#) | [email](#) | [bio](#) | [map](#)



For prompt assistance, please contact my paralegal,
Mary Jo at (320) 656-3553 or mjrowan@rinkenoonan.com

From: Mason Schirmer [<mailto:mason@freeportmn.org>]
Sent: Monday, December 29, 2014 10:35 AM
To: Adam Ripple
Subject: 15542-0001 City of Freeport: Main File (prev set up as Tax Increment Financing): Agenda Packet

Adam,

See attached PDF.

Sincerely,

Mason Schirmer, MCMC
Clerk-Treasurer, City of Freeport
(320) 836-2112
mason@freeportmn.org



This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

RELEVANT LINKS:

[Minn. Stat. § 181.56.](#)

[HR Reference Manual, Chapter 1.](#)

- The date of the agreement.
- The hire date.
- Rate of pay.
- Hours in a regular work day.
- Whether the employee is eligible for overtime and if so at what rate.
- A statement of any job duties or responsibilities, if not performed properly, can result in deductions from the employee’s paycheck and the terms of those deductions.

If the city does not provide the written agreement of hire, the city will have the burden of proof if there is a dispute with the employee over any of the terms described above (e.g., pay rate, hire date, etc.).

An offer letter or verbal offer of employment can unintentionally create a binding employment contract if it is not carefully worded. To avoid this, cities with at-will employment policies should:

- Include a clear statement that the employment relationship is “at-will.”
- Avoid stating wage rates as annual amounts—instead use the hourly wage rate for nonexempt employees and the payroll period rate for exempt employees.
- Avoid any language that could be interpreted as a commitment of employment, such as “appointment,” “permanent,” “contract,” “for cause,” and “welcome to your new home/family.”
- Be careful about how an offer of employment is made when it is subject to city council approval (i.e., make sure the candidate knows that only the council has the final authority to hire an employee).
- Refer to the City Employment Basics Chapter for general information related to employment at-will.

In addition to meeting a legal requirement and confirming terms of employment, the offer letter is a great tool for informing new employees of when and where to arrive on the first day, who to report to, and who to contact for any questions prior to the first day of employment.

IX. Contracts and agreements

Cities sometimes use written contracts or agreements with individual employees to outline the terms and conditions of employment. This practice can create legal issues for the city that otherwise might have been avoided by using personnel policies that apply to all employees. However, there are some situations where an individual employment agreement may be necessary or desirable.

RELEVANT LINKS:

See HR Reference Manual, [Chapter 1](#).
MN Dep't of Labor & Industry,
[Labor Standards: Frequently asked questions about termination](#).

For example, it may be necessary for a city to offer this type of agreement in order to recruit qualified candidates for manager or administrator positions. In this situation, the employment agreement can offer some advantages.

Cities sometimes create unintentional contracts with employees through the use of verbal commitments, inadvisable employee handbook language, and offer letters to job candidates. These types of unintentional contracts can then cause problems for the city. Avoiding certain types of language and promises can help ensure that the city does not create an unintentional contract.

An attorney should review all contracts and written agreements to make sure they do not create unintended consequences for the city.

A. Employment-at-will

Minnesota is an employment-at-will state, which means either the city or the employee can end the employment relationship (e.g., the employee can quit or the city can terminate his or her employment) without giving notice or a reason. There are numerous limitations on employment-at-will. For example, a collective bargaining agreement (union contract), a civil service system, and various employment laws protect the rights of employees to be terminated completely at-will. In addition, a poorly worded employment agreement, contract, or handbook can take away a city's rights to terminate at-will.

B. Liability issues

From a liability perspective, the problems created by individual employment agreements generally outweigh any advantages. In fact, employment contracts can create potential claims just by their existence. Because a contract is legally binding on both parties, any disagreement over interpretation of the contract falls to the courts to decide. This process can be time consuming, difficult, demoralizing, and expensive to resolve. Furthermore, it is nearly impossible to write contract language so clear it will never be misunderstood or misinterpreted by any of the parties involved.

This is further complicated by the fact there is usually a period of time—years, sometimes decades—between signing the initial contract and the time when a disagreement occurs over its contents. For these reasons, the League generally advises cities use individual employment agreements sparingly, with careful thought, and upon advice of an attorney.

RELEVANT LINKS:

[LMC Sample City Administrator Employment Agreement.](#)

C. Why use contracts at all

The primary reason a city may want to consider using an individual employment agreement is for reasons of recruitment. Experienced city manager/administrator candidates may refuse to work for a city without an individual employment agreement that outlines their terms and conditions of employment, particularly severance pay issues. There are a number of reasons for this, but probably the one most often cited by these professionals is that the relationship between the city council and the chief administrative officer can change over time. Due to the nature of the work, city managers/administrators are more likely than other city employees to be directly affected by political changes. Each city council hires those who will be able to work well with their individual personal styles and overall philosophy for running the city. However, the persons occupying council seats change at nearly every election. Over time, the styles and philosophy of the council changes and the relationship may no longer work well for the council. Employment agreements, and in particular severance pay provisions, acknowledge this change in relationship is a reality of city government and is not the fault of any of the parties. It allows the employee a safety net to protect his/her income.

There can be some advantages to an individual employment agreement once the city, in consultation with an attorney, decides an agreement is necessary. For example, an individual employment agreement, if well-thought-out and well-drafted, can sometimes:

- Help avoid miscommunication about verbal offers and terms.
- Clarify special terms and conditions of employment unique to the position, such as car allowances, additional vacation, or memberships in professional associations.
- Protect the city's "front-end" investment in the employee, such as relocation expenses, by specifying the employee must reimburse such expenses if he or she resigns within a certain period of time.
- Eliminate the need to negotiate a settlement at an emotionally difficult time for all parties concerned by addressing severance issues up-front.
- Specify how and when performance evaluations will be conducted, as well as outline the expectations for the position in general terms.
- Help to remove the appearance of self-interest when the manager or administrator recommends changes to personnel policies.

RELEVANT LINKS:

See HR Reference Manual, [Chapter 6](#).

D. Other problems with contracts

Besides the liability issues mentioned earlier in this section, individual employment agreements can cause other problems. For example:

- Provisions in the agreement can become outdated when state and federal laws change.
- Allowing the chief administrative officer to operate under a separate contract may cause other levels of supervisors and managers to be resentful or demand their own contracts.
- Future councils may be bound by contract provisions the city previously agreed to.

E. Unintentional contracts

1. Verbal commitments

Supervisors, managers, city administrators, and council members can sometimes unintentionally create a verbal “contract” with an employee by making statements that lead the employee to believe there is a commitment by the city to employ him or her indefinitely. Or at the very least, cities can take actions that give rise to employees claiming the city created a verbal contract. Examples of verbal statements to avoid include:

- Telling employees they don’t need to worry about losing their jobs as long as they continue to do good work.
- Telling employees their city “never fires anyone.”
- Describing a position as being a “job for life.”

The city increases the likelihood a verbal commitment will be seen as a contract by the courts if an official action is taken consistent with the verbal commitment (e.g., after a councilmember promises a “job for life” to a particular job candidate, the full city council then votes to approve the hiring of that job candidate).

2. Employee handbooks

While it is generally a good practice for a city to put its personnel practices in writing, sometimes written policies or employee handbooks can unintentionally create an employment contract between the city and its employees. This may restrict the city’s ability to terminate an employee or create other problems for the city. Furthermore, employee handbooks and/or personnel policies should include disclaimers that explicitly state they are not intended to create a unilateral contract and that employment with the city is at-will.