

VILLAGE PRESIDENT
Seth Speiser

VILLAGE CLERK
Jerry Menard

VILLAGE TRUSTEES
Ray Matchett, Jr.
Mike Blaies
Denise Albers
Bob Kaiser
Michael Heap
Lisa Meehling

VILLAGE TREASURER
Bryan A. Vogel

VILLAGE OF FREEBURG

FREEBURG MUNICIPAL CENTER
14 SOUTHGATE CENTER, FREEBURG, IL 62243
PHONE: (618) 539-5545 • FAX: (618) 539-5590
Web Site: www.freeburg.com

VILLAGE ADMINISTRATOR
Tony Funderburg

PUBLIC WORKS DIRECTOR
John Tolan

POLICE CHIEF
Michael J. Schutzenhofer

ESDA COORDINATOR
Eugene Kramer

ZONING ADMINISTRATOR
Matt Trout

VILLAGE ATTORNEY
Weilmuenster & Keck, P.C.

March 7, 2019

NOTICE MEETING OF THE ELECTRIC COMMITTEE (Blaies/Albers/Heap/Meehling)

An Electric Committee Meeting of the Village of Freeburg will be held at the Municipal Center, Executive Board Room, on **Wednesday, March 13, 2019, at 5:30 p.m.**

ELECTRIC COMMITTEE MEETING AGENDA

- I. Items to be Discussed
 - A. Old Business
 1. Approval of February 13, 2019 Minutes
 2. Customer Issues
 3. Meadow Pines Subdivision
 4. Solar Program Update
 6. Ameren Pole Agreement
 - B. New Business
 1. Pole Attachment Ordinance and Right of Way Permit Application
 - C. General Concerns
 - D. Public Participation
 - E. Adjourn

At said Electric Committee Meeting, the Village Trustees may vote on whether or not to hold an Executive Session to discuss the selection of a person to fill a public office [5 ILCS, 120/2 - (c) (3)], litigation [5 ILCS, 120/2 - (c)(11)] personnel [5 ILCS, 120/2 - (c)(1)], collective negotiating matters between the public body and its employees or their representatives [5 ILCS 120/2 (C)(2)] or real estate transactions [5 ILCS, 120/2 - (c)(5)].

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ELECTRIC COMMITTEE MEETING
(Blaies/Albers/Heap/Meehling)
Wednesday, February 13, 2019 at 5:30 p.m.

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The meeting of the Electric Committee was called to order at 5:30 p.m. on Wednesday, February 13, 2019 by Chairman Mike Blaies. Committee members present were Chairman Mike Blaies, Trustee Denise Albers, Trustee Mike Heap, Trustee Lisa Meehling, Mayor Seth Speiser, Village Clerk Jerry Menard (5:43 p.m.), Trustee Bob Kaiser, Trustee Ray Matchett, Village Attorney Fred Keck, Public Works Director John Tolan, Police Chief Mike Schutzenhofer, Head Lineman Shane Krauss, Water/Sewer Department Leader Gregg Blumenkamp, Zoning Administrator Matt Trout, Village Administrator Tony Funderburg and Office Manager Julie Polson. Guest present: Janet Baechle.

A. OLD BUSINESS:

1. Approval of January 16, 2019 Minutes: Trustee Denise Albers motioned to approve the January 16, 2019 minutes and Trustee Lisa Meehling seconded the motion. All voting yea, the motion carried.
2. Customer Issues: Head Lineman Shane Krauss advised we had two small outages. A small tree branch brought down service on N. Edison; and the second one was a wire that broke off from the wind. Both were taken care of within two hours. Shane stated IMEA is experiencing a problem with their monitoring of our SCADA system. They are seeing outages but we aren't experiencing any. They will place it on their schedule to fix.
3. Meadow Pines Subdivision: Shane said it's been too wet to do anything. He is going to start on the transformers within the next week or so.
4. Traffic Lights Battery Backup: Shane advised the quote from Wissehr came in pretty high at about \$50,000. He said the battery backup has to be placed on a separate pole with a foundation, box and conduit which increased the cost. Both Village Administrator Tony Funderburg and Attorney Fred Keck recommended placing this on the 3- to 5-year plan.
5. Solar Program Update: Public Works Director John Tolan advised the ICC hasn't ruled on IMEA and non-investor owned utilities.

Attorney Keck said he and Tony need to meet with Ameren to discuss the attachment fees to the poles. We have approximately 18 – 20 poles.

B. NEW BUSINESS: Shane has been monitoring a transformer in the north sub for a while, and stated it needs to be serviced. Solomon can do the work remotely, and it will cost approximately \$9,000. Shane confirmed the work will be done during an off peak time. He is also working on getting a cylinder fixed that has a small leak since it is still under warranty.

Electric Committee Meeting Minutes
Wednesday, February 13, 2019
Page 1 of 2

1. Executive Session to Discuss Collective Negotiating Matters Between the Public Body and its Employees or their Representatives, 5 ILCS 120/2-(c)(2):

EXECUTIVE SESSION

5:41 P.M.

Trustee Lisa Meehling motioned to enter Executive Session citing Collective Negotiating Matters Between the Public Body and its Employees or their Representatives, 5 ILCS 120/2-(c)(2) and Trustee Mike Heap seconded the motion. All voting yea, the motion carried.

EXECUTIVE SESSION ENDED

5:48 P.M.

The regular committee meeting reconvened at 5:49 pm.

Trustee Lisa Meehling motioned to recommend to the full Board the Village enter into the Policemen's Benevolent & Protective Association's Memorandum of Agreement Regarding Overtime Guidelines and Trustee Denise Albers seconded the motion. All voting yea, the motion carried.

2. Fireworks' Sales: Tony stated we have someone who has asked to open up a fireworks stand in town. Chief Schutzenhofer has spoken with the State Fire Marshall about it. He agreed with our code under Section 27-9-15 which states that they can't sell fireworks. The issue of what defines a firework was discussed. If we approve the request, the applicant would have to then obtain a permit from the State Farm Marshall. Tony said we need to be clear on the novelty fireworks to make sure we are treating everyone the same. Attorney Keck said he agrees with our default provision where it says they can't do it. He did a quick surrounding community survey and only Belleville allows the sale of them and charges \$250 for the permit to sell them. The office of the Fire Marshall is the one who determines if they are selling the correct fireworks. Fred suggested if we allow them to do this, we need an ordinance to spell it out. Tony asked to take this discussion to Legal/Ordinance Committee. He also said if she is only selling the novelty fireworks, they are not considered true fireworks and would be permitted. They would be just like the ones sold by Dollar General, Ace and Toms.

C. GENERAL CONCERNS: None.

D. PUBLIC PARTICIPATION: Janet asked about the traffic light battery back-up and the cost increasing in the future. She feels the fireworks that aren't considered fireworks should be able to be sold by the person wanting to open up the stand.

E. ADJOURN: *Trustee Lisa Meehling motioned to adjourn at 6:11 p.m and Trustee Mike Heap seconded the motion. All voting yea, the motion carried.*



Julie Polson
Office Manager

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE MUNICIPAL CODE OF
THE VILLAGE OF FREEBURG, ILLINOIS, THROUGH THE ADDITION OF
ARTICLE III, REGULATION OF AND APPLICATION FOR ATTACHMENTS TO
VILLAGE OF FREEBURG, ILLINOIS, UTILITY POLES, TO
CHAPTER 20, PUBLIC RIGHTS-OF-WAY**

WHEREAS, the Village of Freeburg, St. Clair County, Illinois (hereinafter “Village”), is a non-home rule municipality duly established, existing and operating in accordance with the provisions of the Illinois Municipal Code (Section 5/1-1-1 et seq. of Chapter 65 of the Illinois Compiled Statutes); and

WHEREAS, Village has the authority to adopt ordinances and to promulgate rules and regulations governing the use of Village utility poles that protect the public health, safety, general welfare, and economic welfare of its residents; and

WHEREAS, other utility service providers, including electricity, telephone (land-line and cellular), internet, cable television, video service providers, and other entities or utilities have placed, or from time to time may request to place, devices, facilities and/or infrastructure on certain Village utility poles; and

WHEREAS, legislatures and regulatory agencies at the State and federal levels have implemented changes in the regulatory framework to enhance competition in the providing of various utility services; and

WHEREAS, the combination of legislative and regulatory changes and the development of new technologies has led additional service providers to seek opportunities to provide services throughout Village; and

WHEREAS, these regulatory and technological changes have resulted in demands for access to and use of Village utility poles; and

WHEREAS, Village utility poles are a limited public resource owned by Village for the benefit of its residents and Village has a custodial duty to ensure that the Village utility poles are used, repaired and maintained in a manner that best serves the public interest; and

WHEREAS, the corporate authorities of Village find and determine that it is necessary to, and in the best interests of, the public health, safety, general welfare, and economic welfare to establish uniform standards and regulations for access to and use of Village utility poles; and

WHEREAS, Village hereby finds that it is in the best interest of Village, the public, the utilities, and/ or the business entities of any kind using Village utility poles to establish a comprehensive set of standards and requirements to achieve various mutually beneficial goals as stated in *Article III – Regulation of and Application for Attachments to Village of Freeburg, Illinois, Utility Poles*.

NOW THEREFORE BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF FREEBURG, ILLINOIS AS FOLLOWS:

Section 1. Recitals. The facts and statements contained in the preambles to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. Adoption. The Municipal Code of the Village of Freeburg, Illinois, shall be amended by the addition of Article III, Regulation of and Application for Attachments to Village of Freeburg, to Chapter 20 Public Rights of Way, as follows:

ARTICLE III – REGULATION OF AND APPLICATION FOR ATTACHMENTS TO VILLAGE OF FREEBURG, ILLINOIS, UTILITY POLES

20-3-1 Purpose and Scope.

- a) Purpose. The purpose of Article III of this Chapter is to establish regulations, standards, and procedures for attachments to Village of Freeburg, Illinois (“Village”) utility poles.
- b) Conflicts with Other Chapters. Article III of this Chapter supersedes all Ordinances or parts of Ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.
- c) Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Ordinance, the person(s), utility, or business entity shall comply with the requirements of this Ordinance to the maximum extent possible without violating federal or State laws or regulations.

20-3-2 Definitions.

For the purposes of Article III of this Chapter, the following terms shall have the following meanings:

- 1. “Attachments” means all cables, wires, antennas, transformers, power supplies, collectors, data collection devices, or any other approved device and all associated hardware and equipment reasonably necessary to the attachment of said cables, wires or devices owned and/or utilized by Licensee that occupy Licensor’s Facilities.
- 2. “Facility” or “Facilities” shall include any of “Licensor’s” or “Village’s” utility poles.
- 3. “Joint User” means any public utility, governmental body or other entity that owns poles to which Licensor is extended or may hereafter be extended joint use privileges or to whom Licensor has extended or may hereafter extend joint use privileges of Licensor's poles.
- 4. “Licensor” or “Village” means Village of Freeburg, Illinois.
- 5. “Entity” means any person(s), corporation, LLC, government, utility, sole-

proprietorship, partnership, or any other legally recognized business, government, or utility.

6. “Licensee” means any entity seeking to attach any attachments of any kind to Licensor’s poles

7. “Other Licensee” means any entity, or a Joint User, to whom Licensor has extended or hereafter shall extend the privilege of utilizing Licensor's Facilities, including entities furnishing telecommunications services.

8. “Utility Pole” means a utility pole owned or jointly used by Licensor for the distribution of electricity or any other utility use.

20-3-3 General Provisions.

1. No use, however extended, of Licensor's Facilities or payment of fees or charges required under this Ordinance shall create or vest in the attaching Entity any ownership or property rights in Licensor's Facilities, but the rights granted shall be and remain a license.

2. This Ordinance shall not constitute an assignment or apportionment of any of Licensor's rights to use the public or private property at the location of Licensor's Facilities.

3. Nothing herein contained shall be construed to compel Licensor to maintain any of Licensor's Facilities for a period longer than is necessary for its own service requirements.

4. Licensor does not represent or warrant that it has the right to grant to any Licensee the use of any right-of-way or easement upon which Licensor’s Facilities are located, nor to defend Licensee in the use of same.

5. Licensor assumes or accepts no responsibility or obligation to maintain Licensor's Facilities in any manner inconsistent with its then current maintenance practices due to the presence of Attachments.

6. Licensor may elect to abandon in place Licensor's Facilities despite the existence of Attachments thereon or therein, with no assumption of liability whatsoever.

7. As a condition precedent to the granting of any rights hereunder, Licensee shall secure any and all necessary permits and consents from state, federal, municipal or other public authorities or from the owners of private lands and property involved, to construct and maintain Attachments at locations it desires to use.

8. Upon the request of Licensor, Licensee shall submit evidence satisfactory to Licensor that it has paid any fees required for placing Attachments to Licensor’s utility poles, and obtained the appropriate authority and requisite consents required for placing Attachments to Licensor’s utility poles.

9. Licensee shall indemnify Licensor against all loss and expense, including attorney’s fees, which may result from claims of governmental bodies, owners of private

property or others that Licensee did not pay requisite fees and/or had not a sufficient right or authority for placing and maintaining Attachments at the locations of Licensor's Facilities.

10. No right granted under this Ordinance shall extend to any of Licensor's Facilities to the extent Licensor does not have the right to grant such rights or where the placement of facilities would result in a forfeiture of rights of Licensor to occupy the property affected. If the existence of Attachments on Licensor's Facilities would cause a forfeiture of the right of Licensor to occupy such property or if the use of any Facility is forbidden by governmental authorities or property owners, Licensee agrees to allow removal of Attachments forthwith upon notification by Licensor. If said Attachments are not so removed, Licensor may perform such removal without liability on its part. Licensee agrees to pay Licensor, or its agents or contractors, the cost thereof and for all losses or damages that may result.

11. Licensor shall permit Licensee's Attachments to Licensor's Utility Poles only when Licensor determines, in its sole judgment, that such right(s) should not be denied for:

- (i) insufficient capacity, or
- (ii) safety, reliability, or generally applicable engineering purposes.

12. Licensor shall have the right to grant, renew and extend rights and privileges to Entities, by contract or otherwise, to use Licensor's Facilities covered by this Ordinance.

20-3-4 General Requirements for Access.

1. No Attachments by Licensee shall be permitted on Licensor's Utility Poles without payment of all requisite fees, filing of all applications, obtaining all necessary permits, and final approval from Licensor.

2. No Attachments by Licensee shall be permitted in the space occupied by Licensor, except as approved by Licensor and according to this Ordinance.

3. All Attachments, including temporary Attachments, shall comply with the current edition of the National Electric Safety Code.

4. Licensor may designate reserved space for the future development of electric services, utility services, fiber services, cable services, emergency services and reclaim such space on its Poles from Licensee after notification to Licensee.

20-3-5 Installed Facilities.

1. Any connection by Licensee to Licensor's power and/or electric supply for purposes of installing Attachments shall be performed by Licensor, and a fee will be charged pursuant to **Exhibit A**.

2. With the exception of any connection by Licensee to Licensor's power and/or electric supply for purposes of installing Attachments, Licensee shall initially install all

Attachments and Licensee shall maintain the same so as not to conflict with the use of said Utility Pole by Licensor, Joint Users, or Other Licensees, or interfere with the use of facilities, infrastructure, or Attachments thereon or which from time to time may be placed thereon.

3. Licensee will at all times comply with all applicable laws and regulations and, at its sole cost and expense, secure and maintain all permits, licenses, land rights, easements and approval of third parties necessary for the construction, installation, operation, maintenance and removal of its Attachments.

4. Licensee shall make no modification to any of Licensor's Facilities without first having obtained Licensor's written consent according to this Ordinance, or by verbal consent during emergency situations only.

5. Any inspections, whether made by Licensor or any other Entity, shall not relieve Licensee of any responsibility, obligation, or liability assumed under this Ordinance for its Attachments.

20-3-6 Charges for Service and Payment Terms.

1. Licensee shall reimburse Licensor for any labor, material, fees and services supplied by Licensor to install and/or maintain Attachments under this Agreement. Licensor shall supply additional detail of such costs upon request by Licensee.

2. Unless otherwise specified, all charges shall be due in full to Licensor within thirty (30) days of billing.

3. A carrying charge equal to the lesser of 9% per annum or the maximum amount allowed by law shall accrue on any outstanding balance owed Licensor after thirty (30) days.

4. Licensee will be responsible for Licensor's attorney's fees and costs incurred in connection with enforcement of any provision of this Agreement.

20-3-7 Licensee shall reimburse Licensor for the Attachment and Use Fee as provided in Exhibit A.

20-3-8 Payment and Liens.

1. Licensee shall promptly pay for all charges for work and materials in connection with the Attachments, and shall promptly pay all taxes levied in connection therewith and Licensee shall hold Licensor's property harmless from any associated liens or encumbrances.

20-3-9 Protection Against Accidents/Damages/Indemnification

1. The Licensee shall exercise due care and take all appropriate safety precautions necessary or advisable for the prevention of accidents, and shall comply with all laws and regulations applicable to any work performed regarding Licensee's Attachments and any work

performed on or near Licensor's Facilities, to avoid damage, loss, or injury of any and all kinds or nature whatever to persons and property.

2. The Licensee waives all claims against Licensor, its affiliates, parents, subsidiaries or successors, their officers, lawyers, agents and employees for damage to property or Attachments of Licensee arising out of any work performed regarding Licensee's Attachments and any work performed on or near Licensor's Facilities.

3. To the extent permitted by law, the Licensee shall hold harmless, defend and indemnify Licensor, its officers, employees, lawyers, and agents from and against all claims, liabilities, judgments, costs and expenses for personal injury or death of any person(s) and for damage to the property of any third person(s), arising out of any work performed regarding Licensee's Attachments and any work performed on or near Licensor's Facilities. This indemnity shall apply whether such death or injury is to the person(s) of any officer(s), agent(s), servant(s) or employee(s) of the Licensee, or their properties or to any other person whomsoever.

4. The Licensee shall be responsible for any damage to the property of Licensor arising out of the performance of any Licensee work.

5. Licensor reserves to itself, its successors and assigns, the right to maintain and operate Licensor's Facilities in such manner as will best enable it to fulfill its own service requirements. Licensor will not be liable to Licensee, Licensee's customers, or any others for any interruptions of service to Licensee, or for interference with operation of the Attachments arising in any manner, out of use of the maintenance, operation and/or Facilities hereunder, and to the extent permitted by law, Licensee shall indemnify, defend, protect and save harmless Licensor from any and all claims, demands, suits, judgments, liabilities, loss, damages, including punitive damages, court costs and expenses, including attorney's fees, in any manner arising therefrom.

6. Licensee assumes the risk of liability for and to the extent permitted by law shall indemnify, defend, protect and save harmless Licensor from and against any and all claims and suits for damages, including punitive damages, or loss for infringement of copyright, for libel or slander, for business disparagement, for unauthorized use or treatment of other program material, and from and against all claims and suits for infringement of patents with respect to the manufacture, use and/or operation of Attachments in combination with Licensor's Facilities.

7. Licensee is hereby advised that energized electric lines, which must be avoided, are or may be installed in the vicinity of the Attachments. Licensee shall warn and alert each of its employees or contractors working for it of the existence, location, and nature of the energized electric lines. Any work to be performed by Licensee is undertaken with full knowledge and awareness of and assumption of the risk involved in performing work with the existence of the energized lines. Licensee shall insure that adequate equipment is provided for working in the vicinity of electric facilities, and shall provide adequate supervision and assistance for such workers so as to avoid accidental contact with hazardous electric facilities.

8. Licensee will promptly notify Licensor of any damage caused to Licensor's Facilities and shall notify Other Licensees of any damage caused to their equipment and shall notify Licensor

and Other Licensees of any claims or damages of any kind directly or indirectly associated with the Attachments.

9. Licensee and each of its contractors shall carry insurance naming Licensor, its subsidiaries and affiliates as additional insured parties on a primary and non-contributory basis. Licensee's Insurance requirements are as follows:

- 1) Commercial general liability insurance, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as "X," "C," and "U" coverages) and products-completed operations coverage with limits not less than:
 - i) Five million dollars (\$5,000,000) for bodily injury or death to each person;
 - ii) Five million dollars (\$5,000,000) for property damage resulting from any one accident; and
 - iii) Five million dollars (\$5,000,000) for all other types of liability;
- 2) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of one million dollars (\$1,000,000) for personal injury and property damage for each accident;
- 3) Worker's compensation with statutory limits; and
- 4) Employer's liability insurance with limits of not less than one million dollars (\$1,000,000) per employee and per accident.

10. Prior to installing any Attachments under this Agreement to Licensor's Facilities, Licensee shall furnish Licensor certificates of insurance evidencing coverage as required herein which shall provide that the certificate issuer shall give at least thirty (30) days' written notice to Licensor prior to cancellation or termination of any insurance coverage.

11. Nothing contained in this insurance provision shall operate to relieve Licensee from its duties to Licensor under the indemnity provisions of this Ordinance.

20-3-10 Assignment

1. Licensee shall not assign, transfer or sublet any part thereof or the privileges granted by this Ordinance without written consent from Licensor.

2. In the event such consent or consents are granted by Licensor, Licensor has the right to any fees that would otherwise be due from Licensee, and the privileges granted by this Ordinance shall extend to and bind the successors and assigns of Licensor and Licensee.

3. Notwithstanding anything in this Ordinance to the contrary, Licensor may, at its discretion, require that a new application be submitted and additional fees be paid by the successor rather than assigning rights under this Ordinance.

4. Licensee shall not sub-license to a third party any of their rights to Licensor's Facilities. Such action shall constitute a violation of this Ordinance and shall submit Licensee to any remedy allowed at equity or by law sought by Licensor.

20-3-11 Termination of the License between Licensor and Licensee

1. The initial term of the license between Licensor and Licensee shall be ten (10) years ("Initial Term"), and shall automatically renew for two (2) year terms unless terminated pursuant to this Section.

2. The license between Licensor and Licensee may be terminated: (a) by mutual consent, or (b) after the Initial Term, by either Party by giving the other Party at least one (1) year prior written notice of its intent to terminate, or (c) by a Party if the other Party (i) terminates or suspends its business, (ii) becomes subject to any bankruptcy or insolvency proceeding under federal or state law, (iii) becomes insolvent or unable to pay its obligations as they accrue, or (iv) becomes subject to direct control by a trustee, receiver or similar authority.

3. If Licensee shall fail to comply with any of the provisions of this Agreement, or shall default or breach any of its obligations hereunder and shall fail to correct such default, non-compliance or breach within sixty (60) days after written notice from Licensor, Licensor may, at its sole option, (i) terminate the License, (ii) terminate the rights covering the Utility Poles as to which such default, non-compliance or breach shall have occurred, (iii) require the default or breach to be corrected and decline to permit additional Attachments until all breaches have been corrected, or (iv) remove, relocate or rearrange the affected Attachments at Licensee's expense. Licensor shall be entitled to seek any remedy at law or in equity in order to enforce any of its remedies provided for herein.

4. In the event of termination of the license between Licensor and Licensee, or any of Licensee's rights, privileges or authorizations according to this Ordinance, Licensee shall remove Attachments immediately from Licensor's Facilities; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to this Ordinance to Licensor until such Attachments are actually removed. In the event that Licensee does not remove Attachments with respect to rights that have been terminated within six (6) months, or in the event that Licensee does not remove Attachments within six (6) months after termination of the license, Licensor shall have the option to accept ownership of Attachments at no cost to Licensor, in which case Licensee shall furnish a proper bill of sale or to remove Licensee's Attachments and deliver same to Licensee, all at Licensee's expense.

20-3-12 Attachment Removal

1. Should Licensor under any applicable provision of this Ordinance remove Attachments from Licensor's Facilities, Licensee shall reimburse Licensor for the actual and reasonable cost of removal and storage, and all other amounts due to Licensor hereunder.

20-3-13 Abandonment of Poles

1. If the Licensor desires, at any time, to abandon any Utility Pole under this Agreement, it shall give the Licensee notice to that effect at least ninety (90) days prior to the date on which it intends to abandon such Poles.
2. Should Licensor abandon any Utility Pole, Licensor has the unilateral right to take the Utility Pole down and out of service. At such time, Licensee may seek to install a new Utility Pole at Licensee's expense, or locate any Attachments underground.
3. Upon request by Licensee, and at Licensor's sole discretion, the Licensor may assign, to the extent it has any, to the Licensee, the rights to any abandoned Utility Pole, any easements, permits or other rights, assignable by their terms, which are needed for the continued presence of the Attachments and/or poles.
4. The Licensee shall indemnify and save harmless the Licensor from all obligation, liability, damages, cost, expenses or charges incurred thereafter because of, or arising out of, the presence or condition of such Utility Pole or of any Attachments thereon.

20-3-14 Limitation of Liability

1. Licensor shall not be liable to Licensee for any interruption of Licensee's use of Attachments, or for incidental, special or consequential damages, including, but not limited to, lost profits, lost savings or loss of use, even if Licensor has been advised as to the possibility of such damages.

20-3-15 Force Majeure

1. Licensor shall not be liable for any damages, costs, expenses or other consequences incurred by Licensee or by any other person or entity as a result of any delay in or inability to provide usable space to Licensee due to circumstances or events beyond the reasonable control of Licensor, including, but not limited to fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of the public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, no availability of equipment from vendor, changes requested by Licensee, or any other circumstances beyond the control and without the fault or negligence of the Licensor.

2. Notwithstanding any Force Majeure condition, Licensee shall remain liable for all amounts owed to Licensor under this Agreement.

20-3-16 Venue and Choice of Law

1. Any license granted by Licensor to Licensee, or any dispute arising from this Ordinance, shall be governed by and construed in accordance with the laws of the state of Illinois, and any dispute shall be resolved in the courts of St. Clair County, Illinois.

20-3-17 Miscellaneous

1. Should Licensor replace a Utility Pole, Licensor has the unilateral right to require Licensee to relocate any Attachments onto the new Utility Pole at Licensee's expense. Licensor shall provide thirty (30) days' notice to Licensee prior to any Utility Pole replacement, unless the Utility Pole replacement is an emergency situation. In an emergency situation, Licensor shall replace any Utility Pole as soon as safely possible, and Licensee shall reimburse Licensor for any fees associated with relocating Licensee's Attachments.

2. Licensee shall follow all National Electric Safety Code ("NESC") rules and regulations regarding all Attachments on Village Utility Poles. In addition, Licensee must refrain from using multi-colored and unsecured riser tubes on Village Utility Poles. Licensee shall use a riser guard for purposes of preserving the aesthetic appearance of Village and Village's Utility Poles.

3. Licensee is responsible for the maintenance and appearance of all Attachments on Village Utility Poles. Licensee shall repair any damaged or unsightly Attachments within thirty (30) days of notification by Licensor.

4. Licensor has the right to change the fees assessed or increase the fees charged to any Licensee through an amendment of the fees assessed or the rate charged from time to time, and on an annual basis.

5. Failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Ordinance, or to give notice or declare this Ordinance or the rights hereunder terminated shall not constitute a general waiver or relinquishment of any of the terms or conditions herein contained, but the same shall be and remain at all times in full force and effect.

6. In the event that any of the terms of this Ordinance are found to be unenforceable for any reason, Licensor, at its sole option, may declare the remainder of the Agreement to be null and void, or may, in its sole discretion, waive any such provision found to be ineffective and enforce the remaining provisions of this Ordinance.

7. This Ordinance supersedes all previous agreements, whether written or oral, between Licensor and Licensee for placement and maintenance of Attachments on Licensor's Facilities.

EXHIBIT A

1. Standard Pole attachment - \$15.00/year
2. Collectors/Amplifiers - \$3/month + .0800 per Kwh
3. Other attachments not covered above will be charged by calculating the feet of pole used for device installation per NESC requirements X \$3.00 plus the monthly cost of electric consumption, if applicable, calculated using operating specifications of the device times

.0800 per Kwh.

4. Tying in the electric for powered devices - \$150.00 per device.

5. Stand Alone Pole - \$51/year plus materials and labor.

6. 5G Small Cell Wireless – See Ordinance

Section 3. This ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

Village of Freeburg

Application for Right-of-Way Access Permit

Reference: Village of Freeburg – Ordinance No. xxxx Adopted xx xx, xxxx
The ordinance can be found at www.freeburg.com

NOTE: Applicant may designate portions of application materials that it reasonably believes contain proprietary or confidential information as “Proprietary” or “Confidential” by clearly marking each page of such materials accordingly.

Application Date: _____ **Permit Number:** _____

Pre-construction Meeting Date: (Required): _____

Pre-construction meeting required. No construction shall begin pursuant to a permit issued under Article I of this Chapter prior to attendance by the permittee and all major contractors and subcontractors who will perform any work under the permit at a pre-construction meeting. The pre-construction meeting shall be held at a date, time and place designated by the City with such City representatives in attendance as the City deems necessary. The meeting shall be for the purpose of reviewing the work under the permit, and reviewing special considerations necessary in the areas where work will occur, including, without limitation, presence or absence of other utility facilities in the area and their locations, procedures to avoid disruption of other utilities, use of rights-of-way by the public during construction, and access and egress by adjacent property owners. The requirement for a pre-construction meeting may only be waived by City.

Application Fee: \$100.00 **Check/Cash/CC:** _____

Security Fund Fee: _____ **Check/Cash/CC:** _____

Applicant: Utility/Consultant/Contractor/Property Owner (Circle One)

PROPERTY INFORMATION

Street Address: _____

Job Value: _____ **Estimate Start Date:** _____

APPLICANT INFORMATION

Applicant Name: _____

Company: _____

Street Address: _____

City: _____ **State:** _____ **Zip:** _____

Contact Name: _____

Contact Phone Number: _____ **Alternate Phone Number:** _____

Email: _____

PROPERTY OWNER INFORMATION

Property Owner Name: _____
Company: _____
Street Address: _____
City: _____ State: _____ Zip: _____
Contact Name: _____
Contact Phone Number: _____ Alternate Phone Number: _____
Email: _____

UTILITY INFORMATION

Utility: _____
Street Address: _____
City: _____ State: _____ Zip: _____
Contact Name: _____
Contact Phone Number: _____ Alternate Phone Number: _____
Email: _____

CONTRACTOR INFORMATION

Contractor: _____
Street Address: _____
City: _____ State: _____ Zip: _____
Contact Name: _____
Contact Phone Number: _____ Alternate Phone Number: _____
Email: _____

CONSULTANT INFORMATION

Consultant: _____
Street Address: _____
City: _____ State: _____ Zip: _____
Contact Name: _____
Contact Phone Number: _____ Alternate Phone Number: _____
Email: _____
NOTE: Additional consultants may be listed on a separate sheet of paper.

Create a drawing: Indicate the location, the length, width and depth of each hole. The drawings may be hand drawn below as long as the drawings provide the Village of Freeburg with all of the information needed. In the case of pole attachments, please indicate pole identification number, location and dimensioned detailed drawing of the proposed pole along with proposed new attachments, making sure all alterations meet current NESC guidelines.

NOTE: Large or complex jobs may require additional drawings to be attached to this application. Such drawings are the responsibility of the permit applicant.

A large, empty rectangular box with a thin black border, occupying most of the page. It is intended for the applicant to draw and provide details for the proposed work, such as hole locations and pole attachments.

- The project will be completed in compliance with the time period provided as a condition of the permit.
- **Permit application must be made a minimum of 24hrs prior to excavation with the exception of an emergency.**
- **Permit applications involving pole attachments must be made a minimum of 14 days prior to proposed work start date. Projects involving more than 10 poles will require additional time for review and approval.**
- The permit holder shall notify the police department (618) 654-2131 prior to any partial or full street closure.
- Any excavation that must remain open overnight shall be covered and barricaded.
- Barricades provided by contractor.
- All permit holders shall notify J.U.L.I.E. prior to excavation (800) 892-0123.
- All work shall be in accordance with applicable O.S.H.A. regulations.

Violation of the city ordinance shall be punishable by a fine of not less than \$500.00.

Permit Fees (Calculations will be used to determine the Compacted Rock Backfill, Pavement Replacement, Sidewalk Replacement and Grassed Area Restoration)

- Excavation.....\$20 Flat Fee
- Right of Way..... \$100 Flat Fee
- Compacted Rock Backfill... To Be Calculated
- Pavement Replacement... To Be Calculated
- Sidewalk Replacement... To Be Calculated
- Grassed Area Restoration... To Be Calculated
- Pole Attachment (simple)...\$15 per pole
- Pole Attachment (requiring structural analysis)... To Be Calculated

NOTE: Applicant will be responsible to pay any make ready costs in addition to Pole Attachment permit fee above.

Evidence that the applicant, property owner, utility, contractor and/or consultant has placed on file with the City:

- 1) A written traffic control plan demonstrating the protective measures and devices that will be employed consistent with the Illinois Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
Initials: _____ Date Received: _____
- 2) An emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended response by the applicant. The intended response shall include notification to the City and shall promote protection of the safety and convenience of the public. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this Section unless the City finds that additional information or assurances are needed;
Initials: _____ Date Received: _____
- 3) Drawings, plans and specifications showing the work proposed complies with applicable codes, rules, and regulations;
Initials: _____ Date Received: _____
- 4) Evidence of insurance as required in Section 20-1-8 of Article I of this Chapter;
Initials: _____ Date Received: _____
- 5) Evidence of posting of the security fund as required in Section 20-1-10 of Article I of this Chapter;
Initials: _____ Date Received: _____
- 6) Any request for a variance from one or more provisions of Article I of this Chapter (See 20-1-21); and
Initials: _____ Date Received: _____

- 7) Such additional information as may be required by the City.

Supplemental Application Requirements for Specific Types of Utilities

In addition to the requirements of Subsection c) of this Section, the permit application shall include the following items, as applicable to the specific utility that is the subject of the permit application:

- 1) In the case of the installation of a new electric power, communications, telecommunications, cable television service, video service or natural gas distribution system, evidence that any “Certificate of Public Convenience and Necessity” or other regulatory authorization that the applicant is required by law to obtain, or that the applicant has elected to obtain, has been issued by the ICC or other jurisdictional authority;
- 2) In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures;
- 3) In the case of water lines, indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied;
- 4) In the case of sewer line installations, indicate that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control and the Water Reclamation Facility, and Village of Freeburg, Illinois Code of Ordinances, have been satisfied; or
- 5) In the case of petroleum products pipelines, state the type or types of petroleum products, pipe size, maximum working pressure, and the design standard to be followed.

Applicant’s Duty to Update Information

Throughout the entire permit application review period and the construction period authorized by the permit, any amendments to information contained in a permit application shall be submitted by the utility in writing to the City within thirty (30) days after the change necessitating the amendment.

Article I of this Chapter and applicable ordinances, codes, laws, rules, and regulations, the City Director of Planning and Zoning shall issue a permit therefor as soon as practicable. In all instances, it shall be the duty of the applicant to demonstrate, to the satisfaction of the City Director of Planning and Zoning, that the construction proposed under the application shall be in full compliance with the requirements of Article I of this Chapter.

Additional City Review of Applications of Telecommunications Retailers

- 1) Pursuant to Section 4 of the Telephone Company Act, 220 ILCS 65/4, a telecommunications retailer shall notify the City that it intends to commence work governed by Article I of this Chapter for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the City not less than ten (10) days prior to the commencement of work requiring no excavation and not less than thirty (30) days prior to the commencement of work requiring excavation. The City Director of Planning and Zoning shall specify the portion of the right-of-way upon which the facility may be placed, used and constructed.
- 2) In the event that the City Director of Planning and Zoning fails to provide such specification of location to the telecommunications retailer within either: (i) ten (10) days after service of notice to the City by the telecommunications retailer in the case of work not involving excavation for new construction, or (ii) twenty-five (25) days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under Article I of this Chapter.

- 3) Upon the provision of such specification by the City, where a permit is required for work pursuant to Section 20-1-4 of Article I of this Chapter, the telecommunications retailer shall submit to the City an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of Subsection (a) of this Section

INSURANCE:

Required Coverages and Limits. Unless otherwise provided by franchise, license, or similar agreement, each utility occupying right-of-way or constructing any facility or infrastructure in the right-of-way shall secure and maintain the following liability insurance policies insuring the utility as named insured and naming the City, and its elected and appointed officers, officials, agents, lawyers, and employees as additional insureds on the policies listed in paragraphs 1 and 2 below:

- 1) Commercial general liability insurance, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as “X,” “C,” and “U” coverages) and products-completed operations coverage with limits not less than:
 - A) Five million dollars (\$5,000,000) for bodily injury or death to each person;
 - B) Five million dollars (\$5,000,000) for property damage resulting from any one accident; and
 - C) Five million dollars (\$5,000,000) for all other types of liability;
- 2) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of one million dollars (\$1,000,000) for personal injury and property damage for each accident;
- 3) Worker’s compensation with statutory limits; and
- 4) Employer’s liability insurance with limits of not less than one million dollars (\$1,000,000) per employee and per accident.

If the utility is not providing such insurance to protect the contractors and subcontractors performing the work, then such contractors and subcontractors shall comply with this Section.

Excess or Umbrella Policies. The coverages required by this Section may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

Copies Required. The utility shall provide copies of any of the policies required by this Section to the City within ten (10) days following receipt of a written request therefor from the City.

Maintenance and Renewal of Required Coverages. The insurance policies required by this Section shall contain the following endorsement:

“It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt by the City, by registered mail or certified mail, return receipt requested, of a written notice addressed to the City Manager of such intent to cancel or not to renew.”

Within ten (10) days after receipt by the Village of said notice, and in no event later than ten (10) days prior to said cancellation, the utility shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section.

Self-Insurance. A utility may self-insure all or a portion of the insurance coverage and limit requirements required by Subsection a) of this Section. A utility that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under Subsection a), or the requirements of Subsections b), c) and d) of this Section. A utility that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial

ability to self-insure the insurance coverage and limit requirements required under Subsection a) of this Section, such as evidence that the utility is a “private self-insurer” under the Workers Compensation Act.

Effect of Insurance and Self-Insurance on Utility’s Liability. The legal liability of the utility to the City and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this Section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

Insurance Companies. All insurance provided pursuant to this section shall be effected under valid and enforceable policies, issued by insurers legally able to conduct business with the licensee in the State of Illinois.

SECURITY FUND:

Purpose. The permittee shall establish a Security Fund in a form and in an amount as set forth in this Section. The Security Fund shall be continuously maintained in accordance with this Section at the permittee’s sole cost and expense until the completion of the work authorized under the permit. The Security Fund shall serve as security for:

- 1) The faithful performance by the permittee of all the requirements of Article I of this Chapter;
- 2) Any expenditure, damage, or loss incurred by the City occasioned by the permittee’s failure to comply with any codes, rules, regulations, orders, permits and other directives of the City issued pursuant to Article I of this Chapter; and
- 3) The payment by permittee of all liens and all damages, claims, costs, or expenses that the City may pay or incur by reason of any action or non-performance by permittee in violation of Article I of this Chapter including, without limitation, any damage to public property or restoration work the permittee is required by Article I of this Chapter to perform that the City must perform itself or have completed as a consequence solely of the permittee’s failure to perform or complete, and all other payments due the City from the permittee pursuant to Article I of this Chapter or any other applicable law.

Amount. The dollar amount of the Security Fund shall be sufficient to provide for the estimated cost to restore the right-of-way to at least as good a condition as that existing prior to the construction under the permit, as determined by City Director of Planning and Zoning, and may also include related costs that the City estimates are likely to be incurred if the permittee fails to perform such restoration. Where the construction of facilities or infrastructure proposed under the permit will be performed in phases in multiple locations in the City, with each phase consisting of construction of facilities or infrastructure in one location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the City Director of Planning and Zoning may, in the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the Security Fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this Subsection (c) for any single phase.

Withdrawals. The City, upon fourteen (14) days’ advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this Subsection, may withdraw an amount from the Security Fund, provided that the permittee has not reimbursed the City for such amount within the fourteen (14) day notice period. Withdrawals may be made if the permittee:

- 1) Fails to make any payment required to be made by the permittee hereunder;
- 2) Fails to pay any liens relating to the facilities that are due and unpaid;
- 3) Fails to reimburse the City for any damages, claims, costs or expenses which the City has been compelled to pay or incur by reason of any action or non-performance by the permittee; or
- 4) Fails to comply with any provision of Article I of this Chapter that the City determines can be remedied by an expenditure of an amount in the Security Fund.

Closing and Return of Security Fund. Upon completion of the work authorized under the permit, the permittee shall be entitled to the return of the Security Fund, or such portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets necessary to compensate the City for failure by the permittee to comply with any provisions of Article I of this Chapter or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the City to the extent necessary to cover any reasonable costs, loss or damage incurred by the City as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the permittee.

Date Applicant's written notice of project completion, request for final inspection and return of Security Fund was received: _____

Date of final inspection approval: _____

Amount of Security Fund returned to Applicant: _____

Signature of Village of Freeburg Representative approving the return of Security Fund: _____

Date return of Security Fund is approved for processing: _____

Signature of Applicant: _____ **Date:** _____