

VILLAGE PRESIDENT
Ray Danford

VILLAGE CLERK
Jerry Menard

VILLAGE TRUSTEES
Rita Baker
Seth Speiser
Charlie Mattern
Ray Matchett, Jr.
Steve Smith
Mike Blaies

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
Dennis Herzing

VILLAGE TREASURER
Bryan A. Vogel

PUBLIC WORKS DIRECTOR
Ronald Dintelmann

POLICE CHIEF
Melvin E. Woodruff, Jr.

VILLAGE ATTORNEY
Weilmuenster Law Group, P.C

March 18, 2013

NOTICE

MEETING OF THE PUBLIC WORKS COMMITTEE Trash/Water/Sewer (Mattern/Speiser/Matchett)

A Public Works Committee Meeting of the Village of Freeburg will be held at the Municipal Center, Executive Board Room, on **Wednesday, March 20, 2013, at 5:30 p.m.**

PUBLIC WORKS COMMITTEE MEETING AGENDA

- I. Items To Be Reviewed
 - A. Old Business
 1. Approval of February 27, 2013 minutes and Executive Session Min.
 2. Sewer Project/Phase 1B
 3. Sewer Problem areas
 4. Water main extension along Rentchler Road
 5. Budget billing
 6. CMI Construction request for reimbursement
 7. Clean Uniform Agreement Renewal
 8. Narrowbanding Requirements
 9. Electronics Recycling
 10. Fund Balances
 - B. New Business
 1. Freeburg Township Request for Waiver
 2. ClearWave
 - C. General Concerns
 - D. Public Participation
 - E. Adjourn

At said Committee Meeting, the Village Board of Trustees may vote on whether or not to hold an Executive Session to discuss potential litigation, [5 ILCS, 120/2 - (c)(11)]; the selection of a person to fill a public office [5 ILCS, 120/2 - (c) (3)] personnel [5 ILCS, 120/2 - (c) (1)]; or real estate transactions [5 ILCS, 120/2 - (c) (5)].

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PUBLIC WORKS COMMITTEE MEETING
Trash/Water/Sewer
(Mattern/Speiser/Matchett)
Wednesday, March 20, 2013 at 5:30 p.m.

VILLAGE ADMINISTRATOR
Dennis Herzing

VILLAGE TREASURER
Bryan A. Vogel

PUBLIC WORKS DIRECTOR
Ronald Dintelmann

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Melvin E. Woodruff, Jr.

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The Public Works Committee Meeting was called to order at 5:32 p.m. on Wednesday, March 20, 2013, by Chairman Charlie Mattern. Members present were Chairman Charlie Mattern, Trustee Seth Speiser, Trustee Ray Matchett, Jr., Mayor Ray Danford, Village Clerk Jerry Menard, Trustee Mike Blaies, Public Works Director Ron Dintelmann, Assistant Public Works Director John Tolan, Village Administrator Dennis Herzing and Office Manager Julie Polson. Guest present: Tim Pruett.

A. OLD BUSINESS:

1. Approval of February 27, 2013 minutes: Trustee Ray Matchett motioned to approve the February 27, 2013 minutes and Trustee Seth Speiser seconded the motion. All voting aye, the motion carried.
2. Sewer Project: Tim Pruett advised the three walkways and overflow structures are 100% completed. Moniger added about 63 tons of riprap. They also requested a reduction in their retainer since the project is over 50% complete and Tim was fine with that request. He will talk to them about testing the new sewer line as soon as possible. Ron and John said they are going to do the pavement repair on High St. and Cherry Tree Lane which will save about \$11,000. We will oil and chip those areas under the MFT program.

Trustee Ray Matchett motioned to recommend to the full Board Moniger's Pay Request #3 in the amount of \$34,911.42 be approved for payment and Trustee Seth Speiser seconded the motion. All voting aye, the motion carried.

3. Sewer problem areas: Assistant Public Works Director John Tolan said Walden worked three days this week on the Route 15 crossing. Walden believes the line is encased in concrete under the highway. They have the liner ordered and we hope to get that lined early next week. John ordered some bacteria blocks and is placing them in the wet wells at the lift stations. John had Walden clean the line by Reifschneiders. We held off on doing anything with that area because we had included it in the sewer expansion project. If we aren't going to move forward with that, we may want to line that now. John checked the lift station at Reifschneiders and it is full of grease. The committee directed Dennis to send Crawford a letter and copy Reifschneiders requesting a log of when they cleaned their grease trap and also advise them the lift station needs to be serviced.
4. Water main extension along Rentchler Road: John said Mark Ehret told him to drop this issue.

Water/Sewer Committee Meeting
Wednesday, March 20, 2013

Page 1 of 3

VILLAGE BOARD OF TRUSTEES MEETINGS ARE HELD ON THE FIRST AND THIRD MONDAY OF EVERY MONTH

5. Budget billing: We will compile the suggestions and bring it to next month's committee for approval. Trustee Mattern did not feel it should be a requirement to be enrolled in direct debit to take advantage of the program. Seth liked Waterloo's policy and said we could mirror that one. We would probably have the accounts true up twice a year.
6. CMI Construction request for reimbursement: Dennis provided a copy of the letter sent to CMI denying their request for reimbursement.
7. Clean Uniform Agreement Renewal: John emailed the Clean representative about taking out the language where it states we are bound by the contract if it is sold to another company. He has not heard back from them.
8. Narrowbanding Requirements: Ron confirmed today with EFI that Chad did contact them. EFI informed Ron they are about two months out before they can get to FSH's telemetry system. Ron confirmed there was no delay on our part, we are waiting on FSH to take care of their system.
9. Electronics Recycling: Julie advised Koppeis is fine with the electronics recycling events being held at the Market Place. She said the firm will schedule 1 or 2 events and see how they go before they set any more dates. They are going to advertise the events in the Tribune and Julie will post them on the website.
10. Fund Balances: We will get a copy of the fund balances to everyone.

Dennis brought up the letter Attorney Manion wrote regarding the Fire Department Intergovernmental Agreement. Brian believes we have a right for the rent to be paid. Dennis suggested we have Brian talk to the Fire Department's attorney and see if they can work something out. Mayor Danford said the fire department is not looking to fight us in court but they don't want to go against their lawyer's advice. That being said, it doesn't mean they don't want to try and get this matter resolved. Ray also said we may want to amend the agreement to put language in there that addresses issues like this. John advised the committee all of our hydrants work and the fire department was never without water. John said we have 5-6 hydrants that need to be replaced or fixed. John said he told Hans we would have that done by the June 1st deadline. We normally test and flush the hydrants in the fall and bill the fire department the following spring. John said we are supposed to be holding a yearly meeting in March and does not think we ever have. He would like to see those meetings scheduled on a yearly basis.

B. NEW BUSINESS:

1. Freeburg Township Request for Waiver: Freeburg Township is requesting a waiver of the deposit fee for their property on Peabody Road. The committee asked to see if any other taxing bodies received deposit waivers. We will bring it back to the next committee meeting.
2. Clearwave: Quotes were provided for voice over fiber at \$540 per month with a \$2500 installation fee, and for voice and data over fiber at \$1040 per month with a

\$2500 installation fee. Julie requested a quote from AT&T but has not received it yet. Our current internet costs \$55 per month and our land lines cost around \$700 - \$900 per month. She will bring AT&T's quote back to committee next month.

Ron said our current leaf truck is in need of approximately \$2500 in repairs. He obtained a price on a 2012 dump truck on state bid at \$48,000 including the bed. He told the committee he didn't want to spend the money in repairs if we were going to purchase a truck. Dennis said we won't have to do an ordinance to waive the bidding process because it's being purchased on a state bid. We plan to pay the full purchase price rather than spreading out payments over 2 or 3 years. The committee agreed on purchasing a truck rather than repairing the old one.

C. **GENERAL CONCERNS:** None.

D. **PUBLIC PARTICIPATION:** None.

E. **ADJOURN:** *Trustee Seth Speiser motioned to adjourn at 6:38 p.m. and Trustee Ray Matchett, Jr., seconded the motion. All voting aye, the motion carried.*


Julie Polson,
Office Manager

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Ray Danford

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PUBLIC WORKS COMMITTEE MEETING
Trash/Water/Sewer
(Mattern/Speiser/Matchett)

Wednesday, February 27, 2013 at 4:30 p.m.

VILLAGE ADMINISTRATOR
Dennis Herzing

VILLAGE TREASURER
Bryan A. Vogel

PUBLIC WORKS DIRECTOR
Ronald Dintelmann

POLICE CHIEF
Melvin E. Woodruff, Jr.

VILLAGE ATTORNEY
Weilmuenster Law Group, P.C.

The Public Works Committee Meeting was called to order at 4:30 p.m. on Wednesday, February 27, 2013, by Chairman Charlie Mattern. Members present were Chairman Charlie Mattern, Trustee Seth Speiser, Trustee Ray Matchett, Jr., Mayor Ray Danford, Public Works Director Ron Dintelmann, Assistant Public Works Director John Tolan, Village Administrator Dennis Herzing and Office Manager Julie Polson. Guest present: Janet Baechle.

A. OLD BUSINESS:

1. Approval of January 16, 2013 minutes: Trustee Ray Matchett motioned to approve the January 16, 2013 minutes and Trustee Seth Speiser seconded the motion. All voting aye, the motion carried.
2. Sewer Project: Administrator Herzing talked to Tim Pruett about the project. He said there isn't much going on right now. Tim talked to Moniger about the walkways at the lagoon. It is too sloppy and wet right now to do anything. Tim will start pushing them to start the new sewer on West St. Normally you wait 30 days and we are past that.
3. Sewer problem areas: Assistant Public Works Director John Tolan called Walden and asked them to break out their bid on the two highway crossing projects. We will take care of the Route 15 highway crossing this year and address the Apple St. crossing in next year's budget.
4. Water main extension along Rentschler Road: Dennis said Brian will have this done shortly.
5. Budget billing: Jane compiled information from surrounding municipalities and their policies on budget billing. Some of their requirements include the resident having to live at a specific address for the past 12 months which provides the average for that location, true-up the account 1 or 2 times a year, resident must be current on their bill. The committee discussed offering the program to our residents, maybe only allowing a sign up for the program one time a year, true-up once or twice a year. The trustees will review the information and discuss it next month.
6. Recycling center code revision: The committee talked about revising the code on recycling center participants to include Freeburg property owners that don't live in the village or township. A decision was made not to revise the code but we will put it on the website and also in the paper.
7. CMI Construction request for reimbursement: Dennis will send CMI a letter.

Water/Sewer Committee Meeting
Wednesday, February 27, 2013
Page 1 of 2

B. NEW BUSINESS:

1. Clean Uniform Agreement renewal: Clean provided us with a renewal contract with updated pricing. It is a 6-year contract and Mayor Danford is concerned about the language in the contract that states they can sell the company and we are bound by that. John said he is very pleased with their service and he will talk to them to see if that clause can be taken out of the agreement.
2. Narrowbanding Requirements: Public Works Director Ron Dintelmann said FSH has a telemetry system that we operate our valves and towers with and they are out of compliance with the narrow banding requirements. Charlie thinks the Village should send a letter to FSH voicing our concerns. John said he will talk to Chad first and see if he has done anything before we send the letter.
3. Electronics Recycling: Julie received a request from Artie's Recycling to hold electronics' recycling once a month at the Marketplace parking lot. The committee agreed with the request. Julie will contact them and advise the Village is fine with the request but they would need to contact Joe Koppeis to receive his approval. Julie will put the dates on the website calendar.

Dennis brought up the garbage rates and stated the last time rates were raised was in 2010/2011. We are currently charging the residents \$9.95 for trash pickup and the Village has absorbed Waste Management's increase for the past few years without raising the rates. Dennis based the budget on raising the rate to \$10.50 for this year.

Trustee Ray Matchett motioned to recommend to the full Board the resolution amending the solid waste collection fees as follows: from 4/1/13 – 3/31/14 - \$10.50; from 4/1/14 – 3/31/15 - \$10.75; and from 4/1/15 – 3/31/16 - \$11.25 and Trustee Seth Speiser seconded the motion. All voting aye, the motion carried.

Dennis said Debbie has been working on providing the reserve fund balances and it looks like the water department has about \$380,000 in depreciation and capital reserves and the sewer reserves are about \$150,000. Charlie would like to see our fleet updated and we need to look at the sewer fund and talk about raising rates. The first step which is addressed in the budget is updating our water/sewer maps. Dennis said we are looking at a \$40,000 deficit in both the water and sewer funds and is okay with that.

C. GENERAL CONCERNS: None.

D. PUBLIC PARTICIPATION: Janet complimented the guys on keeping the trucks clean

E. ADJOURN: *Trustee Seth Speiser motioned to adjourn at 5:36 p.m. and Trustee Ray Matchett, Jr., seconded the motion. All voting aye, the motion carried.*


Julie Polson,
Office Manager



RHUTASEL and ASSOCIATES, INC.

CONSULTING ENGINEERS • LAND SURVEYORS

Mar. 20, 2013

Village President and Board of Trustees
Village of Freeburg
14 Southgate Center
Freeburg, Illinois 62243

RE: Village of Freeburg WW Collection & Treatment System Improvements 1B
IEPA Loan L17-3647

Ladies and Gentlemen:

Please find enclosed copies of the Contractor's Pay Request #3 from Moniger Excavating, Inc., Inc. for \$34,911.42.

We recommend approval of the pay request and recommend the Village Board to authorize Rhutasel to forward the Pay Request and any Engineering Expenses the Board wishes to the IEPA for payment from the loan. If you have any questions, please give me a call.

Very truly yours,

RHUTASEL AND ASSOCIATES, INC.

Tim Pruett, P.E.

TWP:kw

Reply To:

4 Industrial Drive, P.O. Box 97
Freeburg, Illinois 62243-0097
Phone: (618) 539-3178
Fax: (618) 539-3174
E-mail: raai.freeburg@rhutasel.net

www.rhutasel.net

201 South Locust Street
Centralia, Illinois 62801-3508
Phone: (618) 532-1992
Fax: (618) 532-1993
E-mail: raai.centralia@rhutasel.net

PAY ITEM NO.	DESCRIPTION OF WORK	UNIT	AFP_001 QUANTITY	AFP_002 QUANTITY	UNIT RATE	COST TO DATE
0001	CHERRY TREE LANE/HIGH STREET SEWER	LF	944	-	34.25	\$ 32,332.00
0002	8" Gravity Sewer	EACH	3	-	1,475.00	\$ 4,425.00
0003	4" Diameter Manhole (1-10 Deep)	EACH	8	-	755.00	\$ 6,040.00
0004	Wye & Lateral	EACH	1	-	1,755.00	\$ 1,755.00
0005	Connection to Manhole #174	LF	704	-	27.00	\$ 19,008.00
0006	Case III Backfill	LF	0	-	16.50	\$ -
0007	Pavement Repair Cherry Tree Ln/ High St.	EACH	1	-	1,400.00	\$ 1,400.00
0008	Tree Removal (28'Dia.)	LF	0	-	9.75	\$ -
0001	SWIMMING POOL LIFT STATION	LS	0	-	65,400.00	\$ -
0001	All work shown or specified in bidding documents					
0001	PITTS STREET LIFT STATION	LS	0	-	72,000.00	\$ -
0001	All work shown or specified in bidding documents					
EAST WASTEWATER LAGOON IMPROVEMENTS						
0001	Cell #1 Effluent Structure Walkway	EACH	0.25	-	5,780.00	\$ 1,445.00
0002	Cell #2 Effluent Structure Walkway	EACH	0.25	-	6,830.00	\$ 1,707.50
0003	Cell #2 Highwater Overflow Structure Walkway	EACH	0.25	-	5,665.00	\$ 1,416.25
0004	Emergency Overflow Structure Modification	EACH	0.25	-	1,635.00	\$ 408.75
0005	Rip Rap in Place	TONS	166.38	-	36.00	\$ 5,989.68
0006	Sludge Removal Cells #1 & #2	EACH	1	-	274,300.00	\$ 274,300.00
Base Contract Amount						\$ 350,227.18
Change Orders						
C.O. #001						
C.O. #002						
C.O. #003						
C.O. #004						
Subtotal Change Orders						
Total Contract + Change Orders						\$ 285,267.18

	(\$)	SCHEDULED VALUE	(\$)	BALANCE TO FINISH
	\$	-	\$	32,332.00
	\$	-	\$	4,425.00
	\$	-	\$	6,040.00
	\$	-	\$	1,755.00
	\$	-	\$	19,008.00
	\$	-	\$	11,616.00
	\$	-	\$	1,400.00
	\$	-	\$	2,340.00
	\$	-	\$	65,400.00
	\$	-	\$	72,000.00
	\$	1,445.00	\$	4,335.00
	\$	1,707.50	\$	5,122.50
	\$	1,416.25	\$	4,248.75
	\$	408.75	\$	1,226.25
	\$	5,989.68	\$	9,202.32
	\$	274,300.00	\$	-
	\$	285,267.18	\$	240,450.82

	QUANTITY TO DATE	BID QUANTITIES	QUANTITY TO FINISH
	944	944	0
	3	3	0
	8	8	0
	1	1	0
	704	704	0
	0	704	704
	1	1	0
	0	240	240
	0	1	1
	0	1	1
	0	1	1
	0.25	1	0.75
	0.25	1	0.75
	0.25	1	0.75
	0.25	1	0.75
	166.38	422	255.62
	1	1	0

AA DOCUMENT 0201 - APPLICATION AND CERTIFICATE FOR PAYMENT - MAY 1983 EDITION - AA REGISTERED - COPYRIGHT 1983
 THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006

APPLICATION FOR MUNICIPAL UTILITIES

VILLAGE OF FREEBURG, ILLINOIS

7/6/13

I, THE UNDERSIGNED, HEREBY MAKE APPLICATION FOR:

ELECTRICITY:

- Residential
- Commercial
- Industrial
- _____
- Water
- Sewer
- _____

LOCATED AT: 8380 Peabody Road Street, Freeburg, Illinois.

- I OWN the above mentioned property.
- I RENT the above mentioned property.
- Other _____

THE APPLICANT UNDERSTANDS AND AGREES to pay all bills for Utility Service rendered within 14 days from billing date and that on failure to do so make full payment thereof, the Utility Service from the Village will be terminated on the 15th day of the month following billing. A service charge must be paid before the service is restored. The applicant absolves the Village of Freeburg, Illinois, from liability for any damages applicant may sustain if service is disconnected for non-payment of bills.

RATES:

- Out of Village
- In Village

ACCOUNTS ARE DUE UPON RECEIPT OF BILLS.
10% PENALTY WILL BE ADDED TO ALL BILLS IF NOT PAID BEFORE THE 7th OF THE MONTH DUE.

Dated at Freeburg, Illinois, this 6 day of March, 2013

ELECTRIC DEPOSIT —
WATER DEPOSIT 60⁰⁰ on hold
SEWER DEPOSIT —

APPLICANT'S SIGNATURE: *Dale A. Recker*
APPLICANT'S PHONE 618-589-5639

PAID \$ 60⁰⁰ on hold

Jane A. Kramp



Freeburg Township Road District

Freeburg Township (Dale Recker) asked if we would waive the water deposit for them.



VILLAGE OF FREEBURG

Voice Proposal

March 11, 2013

Julie,

Thank you for the opportunity to provide this proposal for Clearwave Voice Service over Fiber at the listed location.

Proposed Service Plan:

		MRC	Install
Location	Voice and Data Service		Fee
14 Southgate Ctr Freeburg,IL 62243	18POTS via Fiber	\$540.00	\$2500.00
Totals for Monthly Charges & Installation Fees		\$540.00	\$2500.00

Pricing does not include monthly taxes. Pricing stands for 15days after receiving this proposal.

Service Descriptions

Voice Service	<p>Analog Plain Old Telephone Service (POTS) over fiber. Featuring unlimited local calling within the customer's LATA (see attached LATA map for unlimited calling area) and basic calling feature bundle (Caller ID, Call Waiting, Call FWD Variable, Call Block, Anonymous Call Block, Speed Call 30, Distinctive Ring (upon request), and *69.</p> <p>\$21.15 + \$8.85 IAC (Interstate Access Charge) per line IAC is a government regulated fee and is subject to change at any time</p>
Long Distance	<p>Domestic long distance service (continental U.S.A. excluding AK, HI, P.R.). Flat rate, \$0.04/minute, Inbound/outbound, 6-second billing increments</p>
Data Service	<p>Features symmetrical upload and download speeds, dedicated bandwidth, guaranteed performance and reliability, and scalable bandwidth options.</p>
Terms	<p>Five (5) year Term Liability Agreement commences upon signing of agreement and remains in force through 60 continuous months of billing for service.</p>
Equipment	<p>Carrier network equipment necessary to terminate and connect services will be provided by Clearwave and will remain property of Clearwave. Customer will be responsible for repair or replacement of equipment for any damage or loss due to any cause, including acts of God, excluding normal manufacturer defects and warranty covered repairs. See Network Service Agreement for complete terms and conditions.</p>
Pricing	<p>Pricing is valid for 15 days from the date of this proposal. Pricing does not include monthly taxes, if applicable. Taxes and regulatory fees are always subject to change. Any changes to the proposed service configuration(s) may void entire pricing proposal.</p>

The Clearwave Fiber Advantage:

- Customized, cost-effective solutions to fit your needs
- Robust and scalable connectivity
- State-of-the-art, self-healing, redundant fiber optic ring architecture
- 24x7x365 monitoring for optimal network performance and reliability
- World-class data center and collocation facilities
- Locally staffed, enterprise-level customer support
- One source, one bill, one phone number to call

Thank you again for giving Clearwave Communications the opportunity to provide your location with data and voice service over fiber.

Best,

Dan Poelker
Account Executive
618.410.6626 (Cell)
dpoelker@corp.clearwave.com



VILLAGE OF FREEBURG

Voice and Data Proposal

March 11, 2013

Julie,

Thank you for the opportunity to provide this proposal for Clearwave Data and Voice Service over Fiber at the listed location.

Proposed Service Plan:

Location	Voice and Data Service	MRC	Install Fee
14 Southgate Ctr Freeburg, IL 62243	10Mbps Dedicated Access over Fiber	\$500.00	\$2500.00
	18POTS via Fiber	\$540.00	
Totals for Monthly Charges & Installation Fees		\$1040.00	\$2500.00

Pricing does not include monthly taxes. Pricing stands for 15 days after receiving this proposal.

Service Descriptions

Voice Service	<p>Analog Plain Old Telephone Service (POTS) over fiber. Featuring unlimited local calling within the customer's LATA (see attached LATA map for unlimited calling area) and basic calling feature bundle (Caller ID, Call Waiting, Call FWD Variable, Call Block, Anonymous Call Block, Speed Call 30, Distinctive Ring (upon request), and *69.</p> <p>\$21.15 + \$8.85 IAC (Interstate Access Charge) per line IAC is a government regulated fee and is subject to change at any time</p>
Long Distance	<p>Domestic long distance service (continental U.S.A. excluding AK, HI, P.R.). Flat rate, \$0.04/minute, Inbound/outbound, 6-second billing increments</p>
Data Service	<p>Features symmetrical upload and download speeds, dedicated bandwidth, guaranteed performance and reliability, and scalable bandwidth options.</p>
Terms	<p>Five (5) year Term Liability Agreement commences upon signing of agreement and remains in force through 60 continuous months of billing for service.</p>
Equipment	<p>Carrier network equipment necessary to terminate and connect services will be provided by Clearwave and will remain property of Clearwave. Customer will be responsible for repair or replacement of equipment for any damage or loss due to any cause, including acts of God, excluding normal manufacturer defects and warranty covered repairs. See Network Service Agreement for complete terms and conditions.</p>
Pricing	<p>Pricing is valid for 15 days from the date of this proposal. Pricing does not include monthly taxes, if applicable. Taxes and regulatory fees are always subject to change. Any changes to the proposed service configuration(s) may void entire pricing proposal.</p>

The Clearwave Fiber Advantage:

- Customized, cost-effective solutions to fit your needs
- Robust and scalable connectivity
- State-of-the-art, self-healing, redundant fiber optic ring architecture
- 24x7x365 monitoring for optimal network performance and reliability
- World-class data center and collocation facilities
- Locally staffed, enterprise-level customer support
- One source, one bill, one phone number to call

Thank you again for giving Clearwave Communications the opportunity to provide your location with data and voice service over fiber.

Best,

Dan Poelker
Account Executive
618.410.6626 (Cell)
dpoelker@corp.clearwave.com



WEILMUNSTER
LAW GROUP, P.C.

March 20, 2013

Dennis Herzing
Village Administrator
Village of Freeburg
Freeburg Municipal Center
14 Southgate Center
Freeburg, IL 62243

Re: Fire Protection District Intergovernmental Agreement

Dear Dennis,

You have asked that I review the 2007 Intergovernmental Agreement between the Village of Freeburg and the Freeburg Fire Protection District to determine whether the Village may be entitled to recover money from the Fire Protection District under Paragraph 4 of the Agreement for its use of the Village water supply system and hydrants. Based upon my review of the Agreement and my review of Illinois legal authority, it is my opinion that the Village of Freeburg is likely entitled to recover all or substantially all of the payments due under Paragraph 4 of the Agreement.

Paragraph 4 of the Agreement provides in pertinent part, "In consideration for the provision of water for fire suppression and the use of fire hydrants connected to the Village's water supply system, District agrees to pay to Village the sum of \$35.00 per year per fire hydrant..." Paragraph 5 of the Agreement provides, "Village agrees in consideration of the foregoing payment that it will undertake to maintain all fire hydrants connected to the Village water supply system in good working order; that all hydrants on the system will be flow tested at least annually and written record of the testing and maintenance performed by Village will be supplied to District at the time or before District makes the annual payment provided wherein this Agreement..."

It is my understanding that the hydrants have been recently flow tested and the results have been provided to the District and the District has made payment of the water fee for 2013, which based upon the number of hydrants in the Village totals approximately \$9,500.00. That during the prior two (2) years (2011 and 2012) annual flow testing records were not provided to

J. MICHAEL WEILMUNSTER
jmw@weilmuenterlaw.com
Licensed in Illinois and Missouri

FREDERICK W. KECK
fwk@weilmuenterlaw.com
Licensed in Illinois and Missouri

J. BRIAN MANION
jbm@weilmuenterlaw.com
Licensed in Illinois and Missouri

NATHANIEL O. BROWN
nob@weilmuenterlaw.com
Licensed in Illinois

the District before April 1st and the District did not remit payment under Paragraph 4. It is further my understanding that other than the Village's failure to perform testing and provide the annual testing or maintenance records and other than the District's failure to make payment the parties have at all times continued to follow the Agreement in all respects. Based upon the foregoing, the District has taken the position that it has no obligation under the Agreement to make the 2011 and 2012 water payments due to the failure of the Village to timely provide it with annual testing and maintenance records.

First, I disagree with the District's position that the Village was required to provide reports or records before payment was due. Paragraph 5 provides that the records would be "supplied to the District at the time or before District makes the annual payment". Thus, the contract allows the Village to provide the records at the same time payment is provided. Illinois Law would treat these contractual obligations as simultaneous acts rather than as successive acts. Where an agreement requires the acts of both parties to be done at the same time, one is not obligated to perform one's part before the other. For example, where a defendant promised to pay the plaintiff a certain sum of money on the condition that the plaintiff turn over to him by proper assignment a warehouse receipt, turning over of the warehouse receipt by proper assignment and the payment of money are concurrent acts and the defendant has no right to demand that the warehouse receipt be turned over without the payment of money, nor has the plaintiff the right to demand money without turning over by proper assignment the warehouse receipt. See Paddock v. W.H. Buchanan & Co., 110 Ill.App.29 (1st Dist. 1903); Ladd v. Cochran & McCluer Co., 274 Ill.App.427 (1st Dist. 1934).

The next issue is the effect of the Village providing the testing and maintenance records to the District late. Untimely performance of contractual obligations is treated differently in different situations. Where time is of the essence in a contract, a party who fails to perform within the time fixed renders himself liable in damages to the other party. However, a failure to perform within the time specified in the contract, is not fatal to a recovery where time is not of the essence in the contract. In this case, the Agreement does not reference that time is of the essence. Accordingly, the Village may not be barred from recovering damages based on its failure to strictly comply with the timeframes for testing and providing testing records to the District.

The next issue to be considered is whether the Village materially breached the Agreement. Under general contract principles, a material breach of a contract provision by one party may be grounds for releasing the other party from his/her contractual obligations. Whether a breach of contract is material involves a determination of whether the breach worked to defeat the bargained for objective of the parties or caused disproportionate prejudice to the non-breaching party, whether custom and usage consider such a breach to be material, and whether the allowance of reciprocal non performance by the non breaching party will result in his/her accrual of an unreasonable or unfair advantage. Determination of the materiality of a breach of contract turns on the facts of each case. See Solai & Cameron, Inc. v. Plainfield Community Consol. School Dist. No. 202, 374 Ill.App.3d 825 (3rd Dist. 2007); Steam Sales Corp. v. Summers, 937 N.E.2d 715 (Ill.App. 2nd Dist. 2010). In this case, the District's failure to make the contractual payment is certainly a material breach of the Agreement, since it is the only performance owed on the part of the District. There is a good argument that the Village's breach



is not material and that the main objective of the Agreement was for the District to have access to Freeburg's water supply and for Freeburg to provide and maintain working hydrants. The inspection and the provision of the inspection records could arguably be said to be incidental or immaterial.

Whether a breach is material or not is important because one who has committed a material breach of contract may not be able to recover damages against the other party for their breach. However, even in such a case a different remedy exists. Where a party has performed under an agreement but not exactly in accordance with the contract the party may recover based upon quantum meruit. Quantum meruit is an equitable remedy that allows a party to recover the value of a benefit conferred on another party, when allowing the party to retain the value of the benefit would unjustly enrich the party to the detriment of the other party. An example of quantum meruit would be if a person contracted to have a house built and the builder without receiving any payment built the foundation of the house and then abandoned the project. The builder could not seek partial payment from the buyer because he has breached the contract by not completing the project. However, if the buyer hired someone else to finish building the house on top of the foundation, then the builder could seek his time and materials from the buyer. In this case, the Village has conferred a valuable benefit on the District by providing it with access to its water supply system and by maintaining the hydrants for the past two (2) years. The Village, under quantum meruit, could recover its time and materials or the fair market value of the benefit it conferred on the District.

In conclusion, it is my opinion that the Village has a valid cause of action against the Freeburg Fire Protection District for providing the District with access to the water supply system. If this matter can't be resolved, I would recommend bringing a suit in the Arbitration Division (for suits seeking less than \$50,000.00) of St. Clair County Circuit Court seeking damages for breach of contract and (as an alternative theory) damages under the theory of quantum meruit. If you have any other questions or concerns or would like me to do anything further on this matter please do not hesitate to contact me.

Sincerely,

WEILMUNSTER LAW GROUP, P.C.

By: 
J. Brian Manion

JBM/jls