



**City Council – Meeting Agenda
November 1, 2016 – 5:30 P.M. – Foley City Hall**

1. Call the meeting to order.
2. Pledge of Allegiance.
3. Approve the agenda.
4. Consent Agenda:
 - Approve minutes October 4, 2016
 - Adopt Resolution 2016-23 Stop Sign 4th AVE N & Main Street (provided at meeting)
 - Approve hiring of part-time police officer #5 off of eligibility list.
 - Appoint Jennifer Simon to Foley Library Board for remainder of 2016.
 - Appoint Laura Olson to Foley Library Board for 2016, 2017, 2018.
 - Approve Glen Oaks Mobile Home Park storm shelter designation.
 - Approve NPDES Professional Service Agreement.
 - Approve the hiring of temporary office staff in Administration.
 - Approve payment of bills.
5. Public Hearing – 4th Avenue N Assessments
 - Resolution 2016- 22 Adopting Assessments for 4th Avenue N
6. Discussion on Transportation Alternatives Grant – Letter of Intent
7. Update on Wellhead Protection.
8. Mayor’s Comments & Open Forum.
9. Department Reports:
 - Police Department –Katie McMillin
 - City Attorney – Adam Ripple
 - City Engineer – Jon Halter
 - Public Works – Mark Pappenfus
 - Administration – Sarah Brunn
10. Old Business
11. New Business
12. Adjourn

CITY OF FOLEY MINNESOTA
REGULAR CITY COUNCIL MEETING – October 4, 2016

The Foley City Council held a regular meeting on September 20, 2016, at 5:30 p.m. at the Foley City Hall.

Members Present: Mayor Dave Mosford, Councilmembers Gerard Bettendorf, Brian Weis, Kris du'Monceaux and Leslie LeCuyer.

The pledge of allegiance was recited.

Motion by Bettendorf, seconded by Weis, to approve the agenda. Motion carried, unanimous.

Consent Agenda

Motion by LeCuyer seconded by Bettendorf to approve the consent agenda which included the following:

- Minutes of September 20, 2016
- Accepting resignation of City Assessor Traci Balder effective 2018 Assessment.
- Adopting of Resolution 2016-20 Accepting SAL Donation.
- Adopting of Resolution 2016-21 Appointing Election Judges for General Election.
- Approving the payment of bills paid for by checks #49036 - #49086.

Motion carried, unanimous.

Public Hearing on Liquor License for John Kreuser, The Other Bar, 193 Highway 23 W

Mayor Mosford closed the regular city council meeting at 5:31 p.m. to conduct the public hearing on the liquor license. Mr. Kreuser introduced himself as the new owner and welcomed everyone to come visit the establishment. LeCuyer asked about Mr. Kreuser's restaurant experience. Mayor Mosford closed the public hearing at 5:33 p.m. Motion by du'Monceaux, seconded by Weis, to approve the liquor licenses. Motion carried, unanimous.

Discussion on 4th Avenue N Sidewalks

Mosford questioned the attendance of other representatives. City Engineer, Jon Halter, provided some documentation and overview of the sidewalk design. Chris Byrd, from Benton County, and Tim Paul, from MNDot, were also in attendance. Halter overviewed the design standards and requirements, including curving and sloping when reconstructing a state aid roadway in a very old downtown district. Some struggles in construction include matching existing buildings with existing road widths while still maintaining adequate parking. Mr. Halter provided pictures of other area communities with similar sidewalk situations. Halter elaborated that altering one area of area can have a huge impact on another. Mosford asked Halter to elaborate the difference between angled parking and parallel parking and how the need to have adequate parking in the downtown is also driving the design. The city determined a need to have angled parking as a priority. Mosford indicated there would be an open forum session later in the meeting for individuals to comment or ask questions. du'Monceaux questioned an option for a coloration or addition of a gritty material to help with the slope and potential slipperiness. Halter provided a few examples of what other cities have done with the transition piece. LeCuyer asked if comments by the public could be taken now. Chris Byrd, County Engineer, indicated the county reviewed the plans with the city engineer and determined the sloping solution is the best design to meet the overall needs of the city. Byrd continued that this type of design is not uncommon in

many projects the county sees. Although challenging, Byrd indicated it meets the needs of the city as well as following state aid standards. Byrd indicated the city was able to obtain a variance for some of the standards. LeCuyer commented how surprising it was to see when the actual sidewalks were poured. LeCuyer indicated how the American with Disabilities Act (ADA) regulations provided the city with an unintended consequence. LeCuyer would have liked to have seen photographs in the plan review. LeCuyer asked if the road could have been brought up. Halter indicated raising the road in one spot would cause issues in other areas of the road.

Mosford asked if anyone in attendance would like to speak. Duane Walters, 7665 Ronneby Road NE representing the Foley American Legion, outlined some areas of the sidewalk where the finishing was a concern and asked if the finishing could be fixed. Walters indicated the requirements do not make sense and he was glad to see some council representation had contacted federal representatives. Walters did express some concern over the light placement, but overall was happy to see the project finishing soon. Halter commented that a few of the concrete panels will be replaced as Mr. Walters has pointed out. du'Monceaux asked if the connecting pieces in certain areas can be corrected. Halter indicated that the overall concrete has a two-year warranty and any issues will be resolved. Jim Bruno, Brickhouse Cinema, 160 4th Avenue N, asked about his entrance repairs. Halter indicated the curb and gutter was poured the past weekend and the remaining part should be done soon and will follow-up with Mr. Bruno. Bruno expressed concern of the road being lower in front of his building whereas the old road was much higher. Halter indicated variances are not allowed for ADA standards and also commented on the road design. Bruno indicated he would support some enhancements like epoxy and non-slip material on the sloped section. Halter indicated a number of items are still in progress. Tony Washa, 270 4th Avenue N, expressed concern over individuals slipping and falling on that slope. City Attorney Adam Ripple commented on following design standards and it does not prove negligence, however, snow and ice situations depend on the situation and proper maintenance. Washa indicated some scaling in the concrete has occurred and asked for some follow up on that item. du'Monceaux questioned Ripple on liability. Ripple indicated no additional liability based on the design standards. Ripple indicated the only concerns a property owner would have is if they are doing anything to add additional snow or ice or hazards on the sidewalks. LeCuyer expressed concern of more falls even though it doesn't mean additional liability on the city. LeCuyer expressed frustration with the ADA requirements and encouraged everyone to contact their legislators.

Tim Paul, representative from MNDot, indicated that failure to meet federal regulations could require state funding to be pulled and that other states such as Michigan and Pennsylvania have seen this happen. Paul indicated although frustrating it is necessary to obtain the state aid funding. Paul indicated that he reviewed the sidewalks and the design and it meets the standards and what is required. Paul elaborated that the sloping area is not a walking area and only should be crossed when getting in and out of cars. Paul indicated the best thing for Foley to do is to contact federal legislatures. Duane Walters asked if the standards could change and then the work would have to again be redone. Paul couldn't comment as it depends on the federal law and failure to meet standards is a liability for the county/city. LeCuyer asked if a redesign would be at the city expense. Halter indicated a redesign would not likely fix all the problems. Garrett Stauffnecker, address unknown, asked why the sidewalk is not flat like it was prior. Halter indicated the cross slope required for ADA would not allow for it. Julie Torell, 405 Dewey Street, indicated how sad the design is and how it will be difficult for many people to use. Torell questioned how the handicap parking will be determined and how large the storm water grates are. Halter commented that the grates are standard and not intended to be walked on. Halter

indicated the handicap spaces will be at the corners near the ramps. Bettendorf indicated he walked the project and does not see an issue with the design and that the slopped areas are not considered a walkable area. du'Monceaux indicated frustration and also indicated some people will have to step on the slopped area to gain access to the sidewalk. LeCuyer indicated there was discussion on color difference and asked those in attendance if they would like the city to consider some type of application on the slopped section. Halter outlined some of the options and indicated a need to further research. Weis indicated concern with epoxy coming off during snow removal and expressed concern with the design, but limited options exist with federal regulations. Tim Paul, MNDot, recommended completing the project and letting it sit for a year before making a decision on the two foot section. Julie Torell questioned if more handicap accessible ramps could have been added along 4th Avenue in between the blocks. Paul and Halter indicated difficulty making the required sloping and the elimination of needed parking spaces. Bettendorf indicated the slopes are visible. du'Monceaux expressed concern over safety of the citizens. There was a question on plowing. Mark Pappenfus, Public Works Director, indicated the city should still be able to plow with some difficulty on getting around the lights. Tim Paul, MNDot presented some options on crossing issues.

Update on Dewey Street Project

City Administrator, Sarah Brunn, updated the council on the Dewey Street project and indicated a meeting with Chris Byrd was had and that delaying the project should not affect funding. Chris Byrd, Benton County Engineer, indicated continuing work with staff on an agreement to complete.

Update on Advanced Disposal

City Administrator, Sarah Brunn, and Public Works Director, Mark Pappenfus, updated the council on the garage pickup issue. Ken Hartman, 231 3rd Avenue, concerned citizen expressed frustration with not having alley pickup in the neighborhoods. Brunn indicated Advanced Disposal will be sending letters to those parties affected with a change back to alley pickup.

Mayor's Comments & Open Forum

No one else spoke.

Department Reports

Chief McMillin provided the monthly law enforcement report. There was a question on the gas lines being cut and McMillin reported no additional issues.

Ripple indicated the union mediation needs to be rescheduled due to a conflict with a party involved.

Halter indicated paving is scheduled this Thursday with striping the following week.

Pappenfus updated the council on sewer jetting, truck DOT inspections, and truck sales. Pappenfus indicated Benton County is interested in the 3/4 ton truck. Bettendorf and LeCuyer indicated support in working with the county. Pappenfus indicated he will bid out the plow truck. Pappenfus also indicated that campaign signs need to be out of the right-of-way and public works will be pulling any signs that are in the ROW. Pappenfus also informed the county of the upcoming Fire Department Open House on Saturday. LeCuyer questioned an update on the I/I project.

Brunn updated the council on water/sewer disconnection notices, Clean Up Day being held on Oct. 15, work on a new agreement with the Great River Regional Library, and an upcoming Foley Area C.A.R.E. event in which city officials are invited.

Old Business

There was no old business.

New Business

There was no new business.

Motion by Bettendorf, second by Weis, to adjourn.

Sarah A. Brunn, Administrator

DRAFT

Bills List - Novemember 1, 2016

Gross Salaries (Regular)	Payroll (10/05/16)	\$	21,702.71
EFTPS	Federal Withholding	\$	4,776.61
MN Dept of Revenue	State Withholding	\$	950.45
State Treas. PERA	PERA	\$	3,605.80
Nationwide	Deferred Comp	\$	425.00
Pacific Life Ins	Deferred Comp/Roth IRA	\$	60.00
Gross Salaries (Regular)	Payroll (10/20/16)	\$	20,857.59
EFTPS	Federal Withholding	\$	4,295.58
MN Dept of Revenue	State Withholding	\$	859.25
State Treas. PERA	PERA	\$	3,701.41
Nationwide	Deferred Comp	\$	425.00
Pacific Life Ins	Deferred Comp/Roth IRA	\$	60.00

Paid 10/5/16 - 10/21/16

All Spec Services	Building Permit - September	\$	1,632.11
Advanced Disposal/Veolia	Garbage Hauling	\$	257.13
Amy Poppenhagen	Court Reporter -Jason Todd Case	\$	7.50
Arnolds Equipment	Bobcat - PTO Sensor Repair	\$	1,309.23
Benton County Attorney	Legal Fees & Costs	\$	3,410.00
Benton County Highway Dept.	Sept Fuel - Police Dept.	\$	402.47
Bond Trust Services Corporation	2015 Bond Continuation Disclosure	\$	450.00
Chamberlain Oil	oil - FD	\$	364.97
Coborns	Bleach, Swiffer & Glade - PW Supplies	\$	84.71
Custom Pools	Element Retaining Rod - Pool	\$	227.65
Emergency Autotomotive Technologies	Whelen Flange for Tion Series - PW	\$	41.83
Emergency Response Solutions	Balance Due from 2015 on Gas Monitor	\$	1,238.76
G & K Services	PW Uniforms	\$	327.33
Integra Telecom	Landlines Phones	\$	854.51
League of Minnesota Cities	Workers Compensation Premium	\$	34,076.00
League of Minnesota Cities	Property & Liability Premium	\$	54,790.00
League of Minnesota Cities	Mental Health First Aid - PD	\$	15.00
Marathon Fuel Card	Fuel - FD	\$	519.12
Minnesota Pipe	Drainage Supplies - PW	\$	117.20
Rinke Noonan	Legal	\$	25,436.60
Riteway Business Forms	Laser Checks	\$	194.46
Short Elliott Hendrickson	Private Property Inspection	\$	697.89
Stearns DHIA Central Lab	Water & Sewer Water Analysis	\$	842.00
Superamerica Fleet Card	PW Fuel	\$	81.84

To be Paid - 11/1/16

Alert All	Fire supplies - kid supplies	\$	972.50
AllSpec Services	Monthly billing statement - October	\$	1,661.41
Banyon	Yearly support - pay and fund accounting	\$	1,590.00
Central MN Fire Aid Association	Yearly Dues	\$	50.00
Cloudnet	Monthly account fee	\$	10.00
Continental Press Inc	First responder rescue forms	\$	63.06
Custom Surfacing	Blacktop street patching, repair/pave bike trail	\$	2,910.00
Emergency Response Solutions	pistol grip nozzle mount and strap	\$	268.06
Emergency Response Solutions	Fire supplies	\$	671.50
Foley Civic Group	Foley Fun Days payment	\$	6,000.00
Foley Hardware	General supplies	\$	531.46
Foley Rexall	Fire supplies	\$	20.38
G&K Services	Public Works Uniforms - cleaning x2	\$	218.22
Hawkins	Azone, freight, LPC-5	\$	1,305.98
Helmin Construction Inc.	Class 5 loaded x4	\$	6,992.85
Henry's	Glue Sewer Cap	\$	24.35
Integra	office phone service	\$	864.77
League of MN Cities	Workers Compensation - annual pay plan	\$	26.00
Katie McMillin	mileage reimbursement for E.M. training	\$	98.28
Kuechle Underground, Inc.	Pay App #3	\$	228,604.17
MN State Fire Chiefs Association	Registration - Nadeau	\$	300.00
MN State Fire Chiefs Association	Registration - Pappenfus	\$	300.00
MN State Fire Chiefs Association	Symposium only ticket - Herbrand	\$	75.00
Newman Traffic Signs	No Outlet, Frieght, Digital Print	\$	186.16

Gross Salaries (Regular)	Payroll (10/05/16)	\$	21,702.71
EFTPS	Federal Withholding	\$	4,776.61
MN Dept of Revenue	State Withholding	\$	950.45
State Treas. PERA	PERA	\$	3,605.80
Nationwide	Deferred Comp	\$	425.00
Pacific Life Ins	Deferred Comp/Roth IRA	\$	60.00
Gross Salaries (Regular)	Payroll (10/20/16)	\$	20,857.59
Amy Poppenhagen	statement for Heather Lynn Heckt	\$	17.50
Short Elliott Hendrickson Inc	2017 Dewey St. Project	\$	7,491.85
Short Elliott Hendrickson Inc	General Engineering	\$	994.00
Short Elliott Hendrickson Inc	City Hall alley	\$	1,029.75
Short Elliott Hendrickson Inc	4th Ave N project	\$	25,590.92
United States Postal Service	First class presort fee	\$	215.00
Verizon	Monthly cellular bill	\$	295.34
Visa - Police Dept	Staples, Best Glow.com	\$	367.14
Visa - Public Works	UPS shipping, Indelco Plastics	\$	86.26
Windahl Technologies	Onsite maintenance/repair/consultation/Adobe	\$	1,101.97
Xcel Energy	274 4th Ave N - Electric	\$	9.57
Xcel Energy	Electric-citywide	\$	5,033.06
		\$	485,074.22

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA

RESOLUTION 2016- 22

A RESOLUTION ADOPTING ASSESSMENT

WHEREAS, pursuant to proper notice duly given as required by law, the council has met and heard and passed upon all objections to the proposed assessment for Improvement of

- 4th Avenue North between Main Street and Stony Brook Creek.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF FOLEY, MINNESOTA:

1. Such proposed assessment, a copy of which is attached hereto and made a part hereof, is hereby accepted and shall constitute the special assessment against the lands named therein, and each tract of land therein included is hereby found to be benefited by the proposed improvement in the amount of the assessment levied against it.
2. Such assessment shall be payable in equal annual installments extending over a period of 10 years, the first of the installments to be payable on or before the first Monday in January 2017, and shall bear interest at the rate of 4 percent per annum from the date of the adoption of this assessment resolution. To the first installment shall be added interest on the entire assessment from the date of this resolution until December 31, 2026. To each subsequent installment, when due, shall be added interest for one year on all unpaid installments.
3. The owner of any property so assessed may, at any time prior to certification of the assessment to the county auditor, pay the whole of the assessment on such property, with interest accrued to the date of payment, to the city treasurer, except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption of this resolution; and he/she may, at any time thereafter, pay to the city treasurer the entire amount of the assessment remaining unpaid, with interest accrued to December 31 of the year in which such payment is made. Such payment must be made before November 15 or interest will be charged through December 31 of the next succeeding year.
4. The clerk shall forthwith transmit a certified duplicate of this assessment to the county auditor to be extended on the property tax lists of the county. Such assessments shall be collected and paid over in the same manner as other municipal taxes.

PASSED AND ADOPTED by the City Council of the City of Foley, Minnesota, this 1st day of November, 2016.

Dave Mosford, Mayor

ATTEST:

Sarah A. Brunn, City Administrator

Agreement for Professional Services

This Agreement is effective as of October 19, 2016, between City of Foley, Minnesota (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **Complete MPCA NPDES Permit Reissuance Application.**

Client's Authorized Representative: Sarah Brunn
Address: PO Box 709
Foley, MN 56329-0709
Telephone: 320.968.7260 **email:** sbrunn@ci.foley.mn.us

Project Manager: Jessica Hedin
Address: PO Box 1717
St. Cloud, MN 56302-1716
Telephone: 320.229.4369 **email:** jhedin@sehinc.com

Scope: The Basic Services to be provided by Consultant as set forth herein is provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 07.14.16), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

Assist Client with preparation of MPCA NPDES permit reissuance application. Consultant will complete MPCA NPDES permit reissuance application with information provided by the Client and prepare an updated topographical map as required in the application.

Schedule: Application completion is dependent upon receiving required information from the Client. The anticipated completion date is October 28, 2016.

Payment:

The fee is hourly estimated to be \$3,500 including expenses and equipment.

The estimated fee is subject to a not-to-exceed amount of \$3,500 including expenses and equipment.

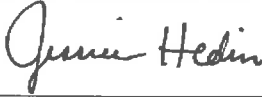
The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-1.

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by Consultant hereunder. In the event of a conflict between the documents, this document and the attached General Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:
None.

Short Elliott Hendrickson Inc.

City of Foley, Minnesota

By: 
 Jessica Hedin
Title: Project Manager

By: _____
Title: _____

Exhibit A-1
to Agreement for Professional Services
Between City of Foley, Minnesota (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated October 19, 2016

Payments to Consultant for Services and Expenses
Using the Hourly Basis Option

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

A. Hourly Basis Option

The Client and Consultant select the hourly basis for payment for services provided by Consultant. Consultant shall be compensated monthly. Monthly charges for services shall be based on Consultant's current billing rates for applicable employees plus charges for expenses and equipment.

Consultant will provide an estimate of the costs for services in this Agreement. It is agreed that after 90% of the estimated compensation has been earned and if it appears that completion of the services cannot be accomplished within the remaining 10% of the estimated compensation, Consultant will notify the Client and confer with representatives of the Client to determine the basis for completing the work.

Compensation to Consultant based on the rates is conditioned on completion of the work within the effective period of the rates. Should the time required to complete the work be extended beyond this period, the rates shall be appropriately adjusted.

B. Expenses

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client. Their costs are not included in the hourly charges made for services and shall be paid for as described in this Agreement but instead are reimbursable expenses required in addition to hourly charges for services:

1. Transportation and travel expenses.
2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets.
3. Lodging and meal expense connected with the Project.
4. Fees paid, in the name of the Client, for securing approval of authorities having jurisdiction over the Project.
5. Plots, Reports, plan and specification reproduction expenses.
6. Postage, handling and delivery.
7. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
8. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Client.
9. All taxes levied on professional services and on reimbursable expenses.
10. Other special expenses required in connection with the Project.
11. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses.

C. Equipment Utilization

The utilization of specialized equipment, including automation equipment, is recognized as benefiting the Client. The Client, therefore, agrees to pay the cost for the use of such specialized equipment on the project. Consultant invoices to the Client will contain detailed information regarding the use of specialized equipment on the project and charges will be based on the standard rates for the equipment published by Consultant.

The Client shall pay Consultant monthly for equipment utilization.

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General Conditions of the Agreement for Professional Services

SECTION I – SERVICES OF CONSULTANT

A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement ("Basic Services"). Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder.

B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
2. If Client has requested changes in the scope, extent, or character of the Project or the services to be provided by Consultant, the time of performance and compensation for Consultant's services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform its services in accordance with professional skill and care, then Consultant shall be entitled to a equitable adjustment in schedule and compensation.

C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for Basic Services, then Consultant shall promptly notify the Client regarding the need for additional services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional services, and to an extension of time for completion of additional services absent written objection by Client.
2. Additional services shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon 7 days written notice or, at its option, accept an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

SECTION II – CLIENT RESPONSIBILITIES

A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client's requirements for the services provided by Consultant and access to all public and private lands required for Consultant to perform its services.
2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant's services, including but not limited to, previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning, deed and other land use restrictions; as-built drawings, electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.
3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant's services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide services in a timely manner.
4. Client shall require all utilities with facilities within the Client's Project site to locate and mark said utilities upon request, relocate and/or protect said utilities as determined necessary to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant's reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.
5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.

SECTION III – PAYMENTS

A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Instruments of Service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding services or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices without the necessity of any mediation proceedings.

SECTION IV – GENERAL CONSIDERATIONS

A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. If requested in the scope of a Supplemental Letter Agreement, then Consultant may provide an Opinion of Probable Construction Cost. Consultant's Opinions of Probable Construction Cost provided for herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Construction Cost prepared by Consultant. If Client wishes greater assurance as to probable Construction Cost, Client shall employ an independent cost estimator or negotiate additional services and fees with Consultant.

B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter or disposer of hazardous or toxic substances, therefore the Client agrees to hold harmless, indemnify and defend Consultant and Consultant's officers, directors, subcontractor(s), employees and agents from and against any and all claims, losses, damages, liability and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind at the site.

C. Limitations on Consultant's Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed five hundred thousand dollars (\$500,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional five hundred thousand dollars of liability limits, up to a maximum limit of liability of five million dollars (\$5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including, without limitation, lost rentals, increased rental expenses, loss of use, loss of income, lost profit, financing, business and reputation and for loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.
3. It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated

with this Agreement. The Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

SECTION V – DISPUTE RESOLUTION

A. Mediation

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or services provided under this Agreement, (except for unpaid invoices which are governed by Section III), shall be submitted to nonbinding mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.

B. Litigation – Choice of Venue and Jurisdiction

1. Any dispute not settled through mediation shall be settled through litigation in the state where the Project at issue is located.

SECTION VI – INTELLECTUAL PROPERTY

A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service") and Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Consultant shall retain all of its rights in its proprietary information including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be Work Product or Work for Hire and Consultant shall not be restricted in any way with respect thereto.

B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its services, Client shall have the right in the form of a license to use Instruments of Service resulting from Consultant's efforts on the Project. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subcontractors and the right to reuse component information contained in them in the normal course of Consultant's professional activities. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of services are available to Client subject to Consultant's current rate schedule.

C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify and hold harmless Consultant from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.

TO: FOLEY CITY COUNCIL
FROM: SARAH BRUNN, CITY ADMINISTRATOR
SUBJECT: 11-01-16 COUNCIL MEETING
DATE: OCTOBER 28, 2016

Stop Sign Resolution

During the course of the project staff reviewed the intersection of Main & 4th Avenue N. Staff is recommending replacing the existing Yield sign to a Stop sign. The city has a current ordinance that addresses stop signs that is extremely out of date and only lists a handful of existing stop signs (Code of Ordinances - Section 1020). The city attorney recommends adopting Resolution 2016-23 in which the city council approves the change from a Yield sign to a Stop sign.

Part-time police officer hiring

During the background investigation it was determined we could not proceed with the hiring of #4 on the eligibility list. This item was discussed at the public safety committee meeting and they are in support of proceeding with next individual on the eligibility list.

Library Board Appointments

The library board has had a couple vacancies on their board for a while. Two individuals have volunteered to serve and we are asking for appointment on the consent agenda. The odd term years are necessary to keep a balance of new appointments and existing members.

Glen Oaks Mobile Home Park

The MN Department of Health is requesting Glen Oaks designate a storm shelter that is approved by the City. I reached out to the owner of the park and he provided us with documentation that the city needs to approve to meet the requirement. The MN Department of Health has indicated the provided location is sufficient to meet their requirements.

NPDES Professional Services Agreement

The city's wastewater permit is up for renewal next year. The agreement included in your packet is for services from S.E.H. to assist in this process.

Temporary Office Staff

I am requesting the city council approve me proceeding with the hiring of temporary office staff, as needed, for the administration office. We are dealing with a staff member out, possibly for an extended period, and a number of accounting functions which need to be completed as we move into year end.

4th Avenue N Final Assessment Hearing

The city council must hold the final assessment hearing on the 4th Avenue N improvements. The final notices have been mailed to affected property owners and a full list is included in your council packet. Staff reviewed the final amounts and recommends a 10 year term @ 4% interest which was indicated in the notice and adopting resolution. Following the public hearing, the council should address Resolution 2016 – 22 Adopting Assessment. Any property owners wishing to pay the entire amount in full without interest will need to make such payment to City Hall by November 15th.

Transportation Alternatives Grant – Letter of Intent (LOI)

We will provide an update to the city council at the meeting on the Transportation Alternatives Grant – LOI. The city has applied for this grant the past 2 years and is intending to re-apply. The county has agreed to be our sponsoring agency and the school has also committed funding to support the pedestrian crossings.

The TA grant was presented to both the Planning Commission and Public Safety Committee who support and recommend the city proceed with the application. Staff can answer questions you have at the meeting.

Update on Wellhead Protection

Staff will be providing an update on the city's wellhead protection plan at the meeting.

Upcoming Reminders

- General Election is November 8th.
- Planning Commission Meeting – November 14th