



**City Council – Meeting Agenda  
April 2, 2019 – 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 of March 5, 2019.
  - Approve payment of bills.
5. Foley Fun Days – Nancy Kampa
6. Public Hearing – Wastewater Facility Plan
  - Presentation and Overview by City Wastewater Engineer Jessica Hedin.
  - Opportunity for Public Comment.
  - Discussion on Value Engineering Proposals.
  - Discussion on adoption of Resolution #2019-04 Approving Facility Plan
7. Presentation and Approval of Water Supply Plan
  - Adopt Resolution #2019- 03 Adopting Water Supply Plan
8. Advanced Disposal – Discussion on garbage contract.
9. Mayor's Comments & Open Forum
10. Department Reports:
  - Police Department –Katie McMillin
  - City Attorney – Adam Ripple
  - City Engineer – Jon Halter
    - Dewey Project Trees
  - Public Works – Mark Pappenfus
  - Administration – Sarah Brunn
11. Old Business
12. New Business
  - Discussion on City Garbage Hauling Contracting – Expiring July 1, 2019
  - Discussion on allowing Side-by-Side (UTV) vehicles in city limits.
13. Adjourn

CITY OF FOLEY, MINNESOTA  
CITY COUNCIL MEETING – March 5, 2019

The Foley City Council held a regular meeting on March 5, 2019, at 5:30 p.m. at the Foley City Hall.

Members Present: Mayor Gerard Bettendorf, Councilmembers Jeff Gondeck, Rosalie Musachio Gary Swanson and Jack Brosh.

Members Absent: None

The pledge of allegiance was recited.

Motion by Gondeck, seconded by Swanson, to approve the agenda. Motion carried, unanimous.

**Consent Agenda**

Motion by Gondeck, seconded by Musachio, to approve the consent agenda, which includes the following:

- Approve minutes of February 5, 2019.
- Approve closing of 3<sup>rd</sup> Avenue for Vet Horse Clinic on April 20, 2019.
- Approve Indemnification and Hold Harmless with Mille Lacs Vet Clinic.
- Adopt Resolution #2019-02 Approving 2018 Transfers.
- Approve payment of bills paid for by checks #51163 - #51215.

Motion carried, unanimous.

**Public Hearing – Sign Ordinance Amendments**

Mayor Bettendorf recessed the regular city council meeting at 5:32 p.m. to conduct a public hearing on the proposed zoning ordinance amendments. No one spoke except Musachio who spoke in support of it. Mayor Bettendorf reconvened the regular meeting at 5:33 p.m. Motion by Gondeck, seconded by Musachio, to adopt Ordinance #442 Sign Ordinance Amendments and approve summary publication. Motion carried, unanimous.

**Mayor's Comments & Open Forum**

No one spoke.

**Department Reports**

Police Chief Katie McMillin reviewed the monthly law enforcement report. McMillin also updated the council on Fun with Police and the school resource officer position and working at the school.

City Engineer Jon Halter had no updates to report. Musachio asked the replacement trees for the Dewey project trees to stay on the list of things to do when the weather cooperates. Musachio also reported that she heard the city of St. Cloud had a soil and water organization grow trees for their city. Halter will check into this option.

Public Works Director Mark Pappenfus updated the council on snow removal. Pappenfus also updated the council on the ordering of holiday decorations for the new downtown lights on Dewey Street. Staff also reported the radar feedback signs are now working properly.

City Administrator Sarah Brunn updated the council the work on the safe routes to school plan. A number of recommendations were presented that will be incorporated into the final plan. The council

supported moving forward with the recommendations and the school board also provided their support at a meeting the prior week.

Brunn also updated the council on the board of review meeting being held in April at the Benton County Assessor's Office and also provided an update on the phone issues that are being experienced with Midco.

### **Old Business**

Brunn updated the council on recent information brought forward regarding wastewater funding at the state level. The council had a lengthy discussion on how to handle the potential for state funding and if they desired to move things forward with the facility plan sooner than later to ensure the city remains eligible since there has been some progress on funding in a bonding bill. There are a number of unknown variables such as how much low interest loan versus grant funding.

Brosh indicated support for a mechanical treatment plant due to cost concerns with sending treatment to St. Cloud.

Swanson and Gondeck indicated concern for a 20-year fix and preferred a long-term investment of sending out wastewater to St. Cloud, which would provide more stability for the city in the future.

Pappenfus updated the council on a session he sat in on with pumping East Grand Forks waste to Grand Forks. East Grand Forks uses a pond system to control flow to Grand Forks, similar to an option Foley is pursuing.

Bettendorf and Musachio supported strength in numbers and long-term stability with sending to St. Cloud.

The council indicated a desire for staff to obtain more information such as more detail on our funding eligibility and if it shows some ability for grants to keep things moving forward with the St. Cloud option.

Motion by Gondeck, seconded by Musachio, to direct staff to gather information to finish the facility plan with the St. Cloud regionalization option including necessary public hearing preparation in April. Gondeck, Musachio, Bettendorf, Swanson – aye. Brosh – nay. Motion carried.

The council discussed the possible purchase of PID 020054100. There was discussion on the use of the land. Mayor Bettendorf closed the meeting at 6:20 p.m. to discuss sale price. Mayor Bettendorf reconvened the regular meeting at 6:33 p.m. The council directed the City Administrator to work with the owner of PID 020054100 on the offer discussed in closed session.

### **New Business**

Motion by Gondeck, seconded by Swanson, to adjourn. Motion carried, unanimous.

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Sarah A. Brunn, Administrator

# Bills List - April 2, 2019

Gross Salaries	Payroll - 3/15/19	\$	25,826.83
EFTPS	Federal Withholding	\$	4,955.70
MN Dept of Revenue	State Withholding	\$	1,009.32
State Treas. PERA	PERA	\$	4,753.98
Nationwide	Deferred Comp	\$	695.00
Pacific Life Ins	Deferred Comp/Roth IRA	\$	80.00
Further	HSA Contribution	\$	430.00

Gross Salaries	Payroll - 3/29/19	\$	27,448.87
EFTPS	Federal Withholding	\$	5,091.92
MN Dept of Revenue	State Withholding	\$	1,059.82
State Treas. PERA	PERA	\$	5,255.42
Nationwide	Deferred Comp	\$	695.00
Pacific Life Ins	Deferred Comp/Roth IRA	\$	80.00
Further	HSA Contribution	\$	430.00

## To Be Paid - 4/2/19

Adam Orton	Fure School Lodging	\$	473.50
Advanced Disposal	Garbage Services	\$	279.84
Andy's Towing	PD Towing Services	\$	269.80
Arnold's Equipment	Street Equipment Repair	\$	65.00
Auto Value	PW Repairs & Maint	\$	788.24
Batteries Plus	Fire Batteries	\$	111.85
Benton County Attorney	February 2019 Legal Fees	\$	979.00
Benton County Highway Department	PD Fuel	\$	653.91
Benton County News	2019 Subscription	\$	35.00
Cathy Theis	PD Transcription Services	\$	7.50
Central McGowan	PD & FD Medical Supplies	\$	132.47
Cintas	Uniforms & Mats	\$	426.96
Coborn's	Cleaning/Office Supplies	\$	176.68
Collins Brothers Towing	PD Services	\$	75.00
Crysteel Truck Equipment	Snow Equip Repair	\$	143.10
Delta Dental	Employee Dental Insurance	\$	960.25
East Central Energy	Utilities	\$	1,149.10
Emergency Medical Products	FD Supplies	\$	135.67
Emergency Response Solutions	FD Equipment	\$	3,764.47
F.I.R.E	FD Training	\$	400.00
Fairview Health Services	PD Employee Physicals	\$	297.00
Farm-Rite Equipment	Bobcat Plow repair & Compost Equipment	\$	3,742.46
First National Bank of Omaha	Credit Card Purchases	\$	610.69
Foley Fuel & Lumber	Street & Library Repairs	\$	148.60
Further	HSA Administration Fee	\$	32.30
Further	Employer HSA Contribution	\$	350.00
Galls	PD Uniforms	\$	67.50
Gilman Coop Creamery	Snow Fuel	\$	19.90
Hawkins	Water Chemicals	\$	4,056.70
Health Partners	April 2019 Employee Health Insurance	\$	6,447.67
Ickler	Sewer Maint	\$	23.63
Johnson Mobile Welding, LLC	Water Line Repair - 580 Grand St	\$	450.00
Kemble	Compost Grinding	\$	7,505.00
Keystone Interpreting Solutions, Inc	PD Interpreting Services	\$	194.75
League of MN Cities	Annual League Conference	\$	400.00
Marco	Copier Lease	\$	358.45
Midco	Telephone & Internet Services	\$	220.74
MN Dept of Revenue	2/18 Sales & Use Tax	\$	118.00
MN State Fire Chiefs Association	FD Training - Orton	\$	285.00
Murphy Chevrolet	PD Squad Repair	\$	43.90
Randy Atwood	2019 Pool License	\$	720.00
Shift Technologies	Backup Services	\$	1,249.00
Smith & Loveless, Inc	Sewer Maint	\$	2,777.93
South Central College	FD Training - McMillin	\$	150.00

Stearns DHIA Central Lab	Water Testing	\$	279.00
Streicher's	PD Uniforms	\$	372.93
Sun Life Assurance	Employee LTD Insurance	\$	181.88
USABLE Life	Employee Life Insurance	\$	207.50
USABlue Book	Water Supplies	\$	686.36
Verizon	Cell Phones	\$	296.31
Xcel Energy	Utilities	\$	4,444.83

***Additional To Be Paid - 4/2/19***

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**\$ 125,577.23**

March 18 2019

Jim Moshier  
320 Birch Drive  
PO Box 563  
Foley, MN 56329 Jim Moshier

City of Foley Council

As I will be out of Town for the Public Hearing on our wastewater treatment I write this letter. I support the option of hooking up to St. Cloud (not regionalization with someone else). I have spent over 50 years talking and solving issues on wastewater treatment and the environmental standards are only getting too expensive for small cities to handle on their own. Ten years ago this option was looked at and due to other issues on St. Clouds end it was not feasible. This time it would be a win-win for both cities.

Thank You for your time on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim", with a horizontal line extending from the end of the signature.

Jim Moshier  
Retired Public Work Director  
City of Foley

**From:** [Barrett, Kathe \(PFA\)](#)  
**To:** [Jessica Hedin](#)  
**Cc:** [Sarah Brunn](#); [Jon Halter](#)  
**Subject:** City of Foley - wastewater project preliminary PFA calculations  
**Date:** Tuesday, March 19, 2019 3:50:17 PM

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Preliminary/draft calculations show the following:

For the aerated pond option:

Does not trigger a grant

Eligible for a 20 year loan

150 basis point discount off market rate so loan interest rate would be in range of 1%-2% most likely

Cost per household approx. \$39 per month (after project completed)

For Regionalization option:

Does not trigger a grant

Eligible for 20 year or possibly 30 year loan

150 base discount only –loan interest rate 1%-2% most likely

Cost per household approx. \$65 per month (20 yr loan) or \$54 per month (30 yr loan) –after project completion

**From:** Jessica Hedin [mailto:[jhedin@sehinc.com](mailto:jhedin@sehinc.com)]  
**Sent:** Tuesday, March 19, 2019 9:05 AM  
**To:** Barrett, Kathe (PFA) <[kathe.barrett@state.mn.us](mailto:kathe.barrett@state.mn.us)>  
**Cc:** [sbrunn@ci.foley.mn.us](mailto:sbrunn@ci.foley.mn.us); Jon Halter <[jhalter@sehinc.com](mailto:jhalter@sehinc.com)>  
**Subject:** City of Foley - preliminary Forms 3 and 4

Kathe,

Per our conversation with the City of Foley last week we agreed to send over Forms 3 and 4 for two alternatives the City is considering for their wastewater treatment project. One option is an aerated pond and the other is regionalization. Please review and let us know if you need any more information or if you have any questions. Thanks.

Jessica Hedin, PE (MN) | Associate | Senior Professional Engineer  
SEH | 1200 25th Avenue South | PO Box 1717 | St Cloud, MN 56302-1717  
320.229.4369 direct | 612.247.2768 cell | 888.908.8166 fax  
[jhedin@sehinc.com](mailto:jhedin@sehinc.com) | [www.sehinc.com](http://www.sehinc.com)  
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**From:** [Repulske, Brett - RD, Cambridge, MN](#)  
**To:** [Sarah Brunn](#)  
**Cc:** [Jessica Hedin](#)  
**Subject:** RE: City of Foley - WW Funding Estimates  
**Date:** Friday, March 22, 2019 3:11:32 PM  
**Attachments:** [image001.png](#)

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Sarah,

I have reviewed the variables provided and feel that the City of Foley can likely get financing elsewhere. There are two major variables that have contributed to this determination – number of REU's and wastewater debt. Basically, the number of billable units can cash flow a lot of debt if there isn't a lot of existing debt on the system. I tried to also make some other assumptions and I couldn't get the maximum loan amount down near the project cost of either alternative. As I have it right now, the City could afford a \$23MM loan from RD before any grant could come into play. So if the City would be interested in a loan-only for the regionalization alternative, we could certainly explore that option further.

Here are the variables I used in my determination:

"Affordable Rate" – 1.5% of MHI: \$59.94/mo./REU

REUs: 2065

Annual WW O&M: \$237,064

Existing WW Debt: \$190,540

RD Loan: 3.375%, 40 years

Please let me know if you have any questions.

Brett Repulske  
Area Specialist  
Rural Development  
United States Department of Agriculture  
110 Buchanan St. N | Cambridge, MN 55008  
Phone: (763) 689-3354 ext. 4 | Fax: (855) 804-4097  
Email: [brett.repulske@usda.gov](mailto:brett.repulske@usda.gov)  
[www.rd.usda.gov](http://www.rd.usda.gov)

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**From:** Sarah Brunn <[sbrunn@ci.foley.mn.us](mailto:sbrunn@ci.foley.mn.us)>  
**Sent:** Tuesday, March 19, 2019 7:49 AM  
**To:** Repulske, Brett - RD, Cambridge, MN <[Brett.Repulske@mn.usda.gov](mailto:Brett.Repulske@mn.usda.gov)>  
**Cc:** Jessica Hedin <[jhedin@sehinc.com](mailto:jhedin@sehinc.com)>  
**Subject:** City of Foley - WW Funding Estimates

Brett –

Please see attached cost breakdown and an REU calculation, I'm hoping this info will be helpful to you in coming up with some estimates for the City of Foley.



I would only need estimates run on the last 2 alternatives – aerated pond and regionalization.

I've copied our wastewater engineer Jessica Hedin on this email if you have further questions regarding these figures.

Please let me know if you require additional information.

Thanks.

**Sarah A. Brunn**

**City Administrator**

[sbrunn@ci.foley.mn.us](mailto:sbrunn@ci.foley.mn.us)



**City of Foley**

**251 4<sup>th</sup> Avenue North**

**P.O. Box 709**

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March 26, 2019

Sarah A. Brunn  
City Administrator  
City of Foley  
251 4th Avenue North  
P.O. Box 709  
Foley, MN 56329

**RE: Letter Agreement between Client and AE2S (DRAFT)  
Wastewater Treatment Facility Plan – Peer Review**

Dear Ms. Brunn:

Advanced Engineering and Environmental Services, Inc. (AE2S) proposes to render professional engineering services for peer review of the recent draft Wastewater Treatment Facility – Facility Plan (Assignment) to the City of Foley, Minnesota (CLIENT).

This Agreement, including Exhibit A, sets forth the terms and conditions under which the CLIENT and AE2S shall be governed regarding the Assignment.

**Scope of Basic Services**

AE2S will perform the following tasks:

- Review the Wastewater Treatment Facility - Facility Plan (draft January 9, 2019)
- Comment upon the merits and potential long-term risks of the recommended alternative.
- Review the alternative for connection to the Saint Cloud wastewater system and provide commentary on potential modifications to the alternative to improve costs and/or operations.
- Review the opinion of cost for connection to the Saint Cloud wastewater system and provide an alternative opinion of cost, which will generally be at a similar level of detail as the Facility Plan opinion(s) of cost.
- Qualitatively identify other alternatives that were not previously considered including alternate receiving stream(s) to alleviate risk of sulfate regulations. Note that further development of receiving stream alternatives would require input and review from MPCA, which would be beyond the scope of this initial screening.
- Interaction with the AE2S financial team, which is working with the City of Saint Cloud to refine the potential wastewater “buy-in” costs.
- Prepare a brief Technical Memorandum summarizing the peer review findings delivered as PDF.
- Present findings of peer review to City Staff at City of Foley office.
- Additional Services not included in this scope:
  - Present findings at City Council Meeting.
  - Additional planning/review beyond items identified in the scope.
  - Financial analysis.
  - Connection fee negotiation.
  - Design.

- Bidding.
- Construction administration.
- Operational assistance.

### **Additional Services**

Services resulting from significant changes in the general scope, extent, or character of the Assignment are not included as a part of the Scope of Basic Services. If authorized in writing by the CLIENT, AE2S will provide services beyond the scope of this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit B.

### **CLIENT'S Responsibilities**

CLIENT shall do the following in a timely manner, so as not to delay the services of AE2S:

1. Designate a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive information, and interpret and define CLIENT's policies and decisions with respect to services for the Assignment.
2. Provide relevant information regarding requirements for the Assignment. AE2S shall be entitled to use and rely upon all information provided by CLIENT or others in performing AE2S's services under this Agreement.
3. Provide access to the relevant site sufficient for AE2S to perform its services under this Agreement.
4. CLIENT shall, so long as AE2S is not in default, promptly pay AE2S for such services as have been performed satisfactorily hereunder in accordance with the fee terms set forth herein.

CLIENT shall bear all costs incident to compliance with its responsibilities pursuant to this section.

### **Fees**

AE2S shall render services under this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit B not to exceed \$5,000 without written authorization from CLIENT, plus reimbursement for all project related expenses.

### **Performance Schedule**

AE2S shall use commercially reasonable efforts to complete Basic Services within a reasonable time period.

### **Contract Documents**

This Agreement includes the following documents, incorporated herein by reference:

1. Exhibit A - Terms and Conditions;
2. Exhibit B - Hourly Fee and Expense Schedule;
3. All other attached Exhibits referenced in this Agreement;
4. Any drawings or specifications provided by the CLIENT in writing; and

Sarah A. Brunn, City of Foley

**RE: Letter Agreement for Foley Wastewater Facility Plan – Peer Review (DRAFT)**

March 26, 2019

Page 3 of 3

5. Any duly executed written amendments.

There are no contract documents other than this Agreement and those documents listed above.

If this Agreement sets forth your understanding of our agreement, including the scope of work desired, fees, terms, and conditions, please sign in the space provided and return a copy to AE2S. Thank you for the opportunity to assist in this project and we look forward to working with you.

Sincerely,

Scott Schaefer

Wastewater Practice Leader, AE2S

**AE2S**

**CLIENT**

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_  
Scott Schaefer, PE

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

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

## Standard Terms and Conditions

The Agreement is supplemented to include the following terms and conditions:

1. Standard of Care

a. The standard of care for all professional services performed or furnished by AE2S under this Agreement will be the care and skill ordinarily used by members of AE2S's profession practicing under similar circumstances at the same time and in the same locality. AE2S makes no warranties, express or implied, under this Agreement or otherwise, in connection with AE2S's services.

b. CLIENT shall be responsible for, and AE2S may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to AE2S pursuant to this Agreement. AE2S may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

2. Payments to AE2S

Invoices will be prepared in accordance with AE2S's standard invoicing practices and will be submitted to CLIENT by AE2S monthly, unless otherwise agreed. Invoices are due and payable within 30 days. If CLIENT fails to make any payment due AE2S for services and expenses within 30 days, the amounts due AE2S will be increased at the rate of 1.75% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, AE2S may, after giving seven days written notice to CLIENT, suspend services under this Agreement until AE2S has been paid in full all amounts due for services, expenses, and other related charges. All payments shall be made in United States Dollars.

3. Insurance

AE2S will maintain insurance coverage for Workers' Compensation, Professional Liability, General Liability, and Automobile Liability and will provide certificates of insurance to CLIENT upon request.

4. Indemnification and Allocation of Risk

a. To the fullest extent permitted by law, AE2S shall indemnify and hold harmless CLIENT and CLIENT's officers, directors, members, and employees from any and all costs, losses, and damages (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of AE2S or AE2S's officers, directors, members, partners, employees, or Consultants. The parties expressly agree that AE2S or AE2S's officers, directors, members, partners, or employees have no duty to defend CLIENT and CLIENT's officers, directors, members, and employees against any claims, causes of action, demands, lawsuits, or proceedings of any kind.

b. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless AE2S, AE2S's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) to the extent caused by the negligent acts or omissions of CLIENT or CLIENT's officers, directors, partners, employees, and consultants with respect to this Agreement.

c. In addition to the indemnity provided under paragraph 4.b. of this Exhibit, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless AE2S and AE2S's officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising

out of, or resulting from Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this paragraph 4.c. shall obligate CLIENT to indemnify any individual or entity to the extent of that individual or entity's own negligence or willful misconduct.

d. To the fullest extent permitted by law, AE2S's total liability to CLIENT and anyone claiming by, through, or under CLIENT for any injuries, losses, damages and expenses caused in part by the negligence of AE2S and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that AE2S's negligence bears to the total negligence of CLIENT, AE2S, and all other negligent entities and individuals.

5. Exclusion of Special, Incidental, Indirect, and Consequential Damages

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, AE2S and AE2S's officers, directors, partners, employees, agents, and Consultants, or any of them, shall not be liable to CLIENT or anyone claiming by, through, or under CLIENT for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Assignment or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranties, express or implied, of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them.

6. Limit of Liability

To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of AE2S and AE2S's officers, directors, partners, employees, agents, and AE2S's Consultants, and any of them, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them, shall not exceed total compensation received by AE2S as part of this agreement.

7. Termination of Contract

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, CLIENT shall pay to AE2S all amounts owing to AE2S under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.

8. Access

CLIENT shall arrange for safe access to and make all provisions for AE2S and AE2S's Consultants to enter upon public and private property as required for AE2S to perform services under this Agreement.

9. Hazardous Environmental Conditions

It is acknowledged by both parties that AE2S's scope of services does not include any services related to a "Hazardous Environmental Condition," i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Assignment. In the event AE2S or any other party encounters a Hazardous Environmental Condition, AE2S may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove

the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations. CLIENT acknowledges that AE2S is performing professional services for CLIENT and that AE2S is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with AE2S's activities under this Agreement.

10. Patents

AE2S shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.

11. Ownership and Reuse of Documents

All documents prepared or furnished by AE2S pursuant to this Agreement are instruments of service, and AE2S shall retain an ownership and property interest therein. Reuse of any such documents by CLIENT shall be at CLIENT's sole risk; and CLIENT agrees to indemnify, and hold AE2S harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by CLIENT or by others acting through CLIENT.

12. Use of Electronic Media

a. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the AE2S. Files in electronic media format of text, data, graphics, or of other types that are furnished by AE2S to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

b. When transferring documents in electronic media format, AE2S makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by AE2S at the beginning of this Assignment.

c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. AE2S shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.

13. Contractors

AE2S shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall AE2S have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at a project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work. AE2S neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between CLIENT and such contractor. AE2S shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except AE2S's own employees) at a project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by AE2S.

14. Force Majeure

AE2S shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond AE2S's reasonable control.

15. No Third Party Beneficiaries

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and AE2S and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or AE2S. AE2S's services under this Agreement are being performed solely for CLIENT's benefit, and no other entity shall have any claim against AE2S because of this Agreement or the performance or nonperformance of services hereunder.

16. Assignment

Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.

17. Binding Effect

This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.

18. Severability and Waiver of Provisions

Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and AE2S, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

19. Survival

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

20. Headings

The headings used in this Agreement are for general reference only and do not have special significance.

21. Controlling Law

This Agreement is to be governed by the law of the State of Minnesota without regard to its conflicts of laws principles.

22. Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

23. Executed in Counterparts

This Agreement may be executed in counterparts, each of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement shall constitute effective delivery of this Agreement. Each party agrees that the delivery of the Agreement by facsimile or electronic mail shall have the same force and effect as delivery of original signature and that each Party may use such facsimile or electronic mail signatures as evidence of the execution and delivery of the Agreement by the parties to the same extent that an original signature could be used.

**This is EXHIBIT B, consisting of 1 page, referred to in and part of the Agreement between CLIENT and AE2S dated March 26, 2019.**

**Hourly Fee and Expense Schedule**

Reimbursable Expenses and Standard Hourly rates in effect on the date of the Agreement are set forth below. Rates are subject to annual adjustment effective January 1.

**Labor Rates\***

Administrative I	\$59.00
Administrative II	\$73.00
Administrative III	\$87.00
Communications Specialist I	\$90.00
Communications Specialist II	\$103.00
Communications Specialist III	\$118.00
Communications Specialist IV	\$142.00
Communications Specialist V	\$157.00
Construction Services Rep I	\$83.00
Construction Services Manager I	\$136.00
Construction Services Manager II	\$147.00
Construction Services Manager III	\$166.00
Construction Services Manager IV	\$183.00
Construction Services Manager V	\$201.00
Engineering Assistant 1	\$69.00
Engineering Assistant 2	\$88.00
Engineer I	\$103.00
Engineer II	\$132.00
Engineer III	\$157.00
Engineer IV	\$178.00
Engineer V	\$194.00
Engineer VI	\$218.00
Engineer VII	\$233.00
Engineer VIII	\$243.00
Engineering Technician I	\$68.00
Engineering Technician II	\$87.00
Engineering Technician III	\$103.00
Engineering Technician IV	\$120.00
Engineering Technician V	\$136.00
Engineering Technician VI	\$150.00
Engineering Technician VII	\$166.00
Financial Analyst I	\$90.00
Financial Analyst II	\$105.00
Financial Analyst III	\$123.00
Financial Analyst IV	\$139.00
Financial Analyst V	\$157.00
Financial Analyst VI	\$178.00
Financial Analyst VII	\$194.00
Financial Analyst VIII	\$212.00
GIS Specialist I	\$88.00
GIS Specialist II	\$105.00
GIS Specialist III	\$126.00
GIS Specialist IV	\$141.00
GIS Specialist V	\$155.00

Operations Specialist I	\$83.00
Operations Specialist II	\$100.00
Operations Specialist III	\$126.00
Operations Specialist IV	\$142.00
Operations Specialist V	\$165.00
Project Manager I	\$168.00
Project Manager II	\$183.00
Project Manager III	\$202.00
Senior Designer	\$190.00
Senior Consultant I	\$212.00
Senior Consultant II	\$230.00
Senior Consultant III	\$248.00

**Reimbursable Expense Rates**

Transportation	\$0.65/mile
Survey Vehicle	\$0.70/mile
B&W Photocopies 8½" x11"	\$0.10/copy
B&W Laser Printouts 8½" x11"	\$0.20/page
Color Laser Printouts/Copies 8½" x11"	\$0.68/page
In-house Lodging	\$150.00/day
Legal Services Reimbursement	\$224.00/hour
Outside Services**	cost *1.15
Geotechnical Services	cost *1.30
Out of Pocket Expenses***	cost*1.15
Rental Car	cost*1.20

\* Position titles are for labor rate grade purposes only.

\*\* Includes laboratory testing, architectural and engineering consultants, surveying, etc.

\*\*\* Includes toll telephone, shipping, postage, subsistence, technical literature, equipment rental, etc.

These rates are subject to adjustment each year on January 1.



March 26, 2019

Honorable Mayor and City Council  
City of Foley  
251 Fourth Avenue North  
PO Box 709  
Foley, MN 56329-0709

Re: Proposal for Value Engineering Services  
Wastewater Treatment Facility Plan  
City of Foley, MN

Dear Honorable Mayor and City Council:

We appreciate the opportunity to submit this letter proposal to the City of Foley to provide a basic value engineering study for the Wastewater Treatment Facility Plan that was recently completed by SEH. The City is preparing to make a significant investment in its wastewater infrastructure to support growth and address future needs. Due to the significance of this investment, the City is seeking verification that the alternatives recommended in the Facility Plan provides the City with the best and lowest-cost alternative over the life of the facility.

A value engineering study offers an independent review of alternatives considered, capital construction costs, and the feasibility for a proposed project. It considers the desired goals of the project and the proposed means to meet those goals. Typically, it is best performed prior to design when a City wants to verify it is selecting the best and lowest-cost alternative.

### **SCOPE OF SERVICES**

WSB will provide professional engineering services for the value engineering study as follows:

- a) Review the facility plan and provide review comments.
- b) Review the estimated costs for each alternative and provide opinions for the accuracy of the estimated costs. We assume that SEH or the City will provide a detailed and complete breakdown of the estimated costs for each alternative to review. Our scope of services does not include preparing all new estimated costs for each alternative.
- c) Recommend further study of additional alternatives if any are identified during the Value Engineering study phase.
- d) Correspond with City of St. Cloud staff to discuss and obtain the basis for their one-time connection fee and compare it to connection fees in other parts of Minnesota.
- e) Prepare a technical memorandum that includes the study findings and recommendations.
- f) Present the technical memorandum to the City Council and City staff at a City Council workshop.



## PROJECT SCHEDULE AND FEES

### A. Project Schedule

We have estimated the time for the project to begin immediately after City authorization. The proposed schedule includes the following milestone dates:

Task	Dates
City Council Authorizes Study	April 2, 2019
Complete Draft Study Report for City Staff Review	April 26, 2019
Complete Final Study Report for City Council	May 10, 2019
Present Final Study Report to City Council at Workshop	TBD

### B. Fees

Compensation for tasks shall be on an hourly basis, based on the actual hours worked for personnel assigned to the project. We propose to perform these services for an hourly, not-to-exceed fee of \$7,500.

We will invoice the City on the basis of actual hours spent at our current billing rates (see attached current billing rates). Additional services requested by the City will be invoiced on the basis of actual hours spent at current billing rates plus the actual cost of reimbursable expenses. All services will be invoiced monthly. Tasks not shown are considered outside of the scope of services.

This letter represents our understanding of the proposed scope of services. If you are in agreement with the scope of services and proposed fee, please sign in the appropriate space below and return one copy to us.

If you have any questions about this proposal, please feel free to call us at 763.541.4800.

Sincerely,

WSB



Greg F. Johnson, PE  
Water/Wastewater Group Manager-Principal



Mike Nielson, PE  
Principal

### ACCEPTED BY:

City of Foley, Minnesota

Name \_\_\_\_\_

Title \_\_\_\_\_

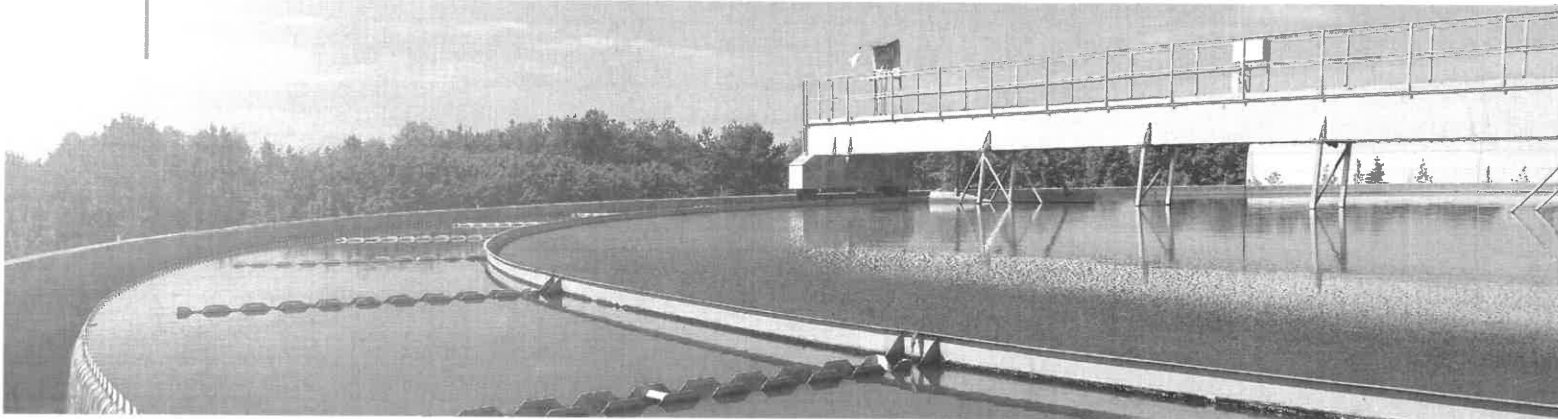
Date \_\_\_\_\_

# 2019 Rate Schedule



	Billing Rate/Hour
PRINCIPAL	\$166-\$185
ASSOCIATE   SR. PROJECT MANAGER   SR. PROJECT ENGINEER	\$150-\$185
PROJECT MANAGER	\$132-\$146
PROJECT ENGINEER	\$116-\$146
GRADUATE ENGINEER	\$88-\$109
SR. LANDSCAPE ARCHITECT   SR. PLANNER   SR. GIS SPECIALIST	\$116-\$146
LANDSCAPE ARCHITECT   PLANNER   GIS SPECIALIST	\$69-\$109
ENGINEERING SPECIALIST   SR. ENVIRONMENTAL SCIENTIST	\$99-\$143
ENGINEERING TECHNICIAN   ENVIRONMENTAL SCIENTIST	\$57-\$94
CONSTRUCTION OBSERVER	\$93-\$118
SURVEY	
One-Person Crew	\$145
Two-Person Crew	\$190
Three-Person Crew	\$205
OFFICE TECHNICIAN	\$52-\$92

Costs associated with word processing, cell phones, reproduction of common correspondence, and mailing are included in the above hourly rates. Vehicle mileage is included in our billing rates [excluding geotechnical and construction materials testing (CMT) service rates]. Mileage can be charged separately, if specifically outlined by contract. | Reimbursable expenses include costs associated with plan, specification, and report reproduction; permit fees; delivery costs, etc. | Multiple rates illustrate the varying levels of experience within each category. | Rate Schedule is adjusted annually.



Wastewater treatment and collection are critical components of your infrastructure. WSB's team evaluates the full life cycle of wastewater management including ease of maintenance, energy consumption, capital improvements, financial impact, safety and satisfaction. Our history of working with regulatory agencies keeps your project from encountering regulatory or permitting obstacles while identifying funding opportunities to help make your projects work within your budget.

With our teams of engineers, permitting and construction staff, we bring the expertise to design and implement the following services:

## WASTEWATER TREATMENT SYSTEM DESIGN AND PERFORMANCE EVALUATION

### Natural Systems

- › Facultative Lagoons
- › Aerated Ponds
- › Spray Irrigation/  
Subsurface Drip Irrigation
- › Overland Treatment

### Advanced Technologies

- › Activated Sludge
- › Fixed Film
- › Nutrient Removal
- › Tertiary Filtration
- › Innovative Technologies
- › Odor Assessment and  
Odor Control
- › Process Evaluation and  
Optimization – BioWin  
Modeling
- › Water Reuse
- › Energy/Heat Recovery

## Biosolids Management

- › Aerobic Digestion
- › Anaerobic Digestion
- › Autothermal Thermophilic  
Aerobic Digester (ATAD)
- › Dewatering
- › Heat Drying

## Regulatory Compliance Support

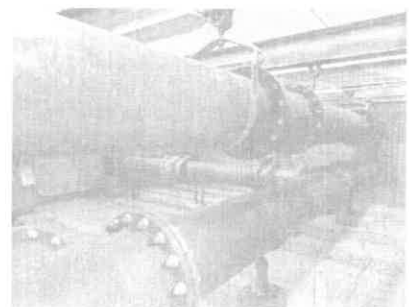
- › TMDL, watershed  
management
- › Chloride mitigation
- › Contaminants of emerging  
concerns (CEC)
- › Source Controls
- › Pretreatment Program
- › I/I reduction Program
- › Fat oil and grease Program

## Asset Management

- Policy Review and Development
- Value Engineering
- Grant and Funding Support

## WASTEWATER COLLECTION SYSTEM PLANNING AND DESIGN

- › Sanitary sewer and  
interceptor sewer design  
and hydraulic modeling
- › Trenchless Technology  
sewer installation and  
rehabilitation design
- › Lift stations and  
Forcemains design
- › Pump evaluation and  
optimization
- › Flow monitoring
- › Future flow projections



## Recent example of Wastewater work:



### Monticello Wastewater Treatment Plant

**MONTICELLO, MN**

**POPULATION: 13,000**

**PLANT CAPACITY: 2.36 MGD**

The Monticello WWTP discharges into the stretch of Mississippi River designated as an Outstanding Resource Value Water and is required to meet very stringent permit conditions. WSB provided subject matter experts to perform plant wide process evaluation and address specific needs. The most recent upgrades included an enhanced chemical phosphorus removal system which resulted in the removal of additional phosphorus and reducing the risk of surface water algae blooms. Equipment replacement at the anaerobic digester and sequencing batch reactors significantly increased operational efficiencies.



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For more information on WSB's Wastewater services, please contact:  
Greg Johnson, PE | 651.286.8466 | [gjohnson@wsbeng.com](mailto:gjohnson@wsbeng.com)



3315 Roosevelt Road  
Suite 500C  
St. Cloud, MN 56301

P: 320.281.5493  
F: 320.281.5494



March 29, 2019

City of Foley  
Sarah A. Brunn, City Administrator  
251 4th Avenue North  
P.O. Box 709  
Foley, MN 56329  
sbrunn@ci.foley.mn.us

Re: ***Proposal Letter***  
Facility Plan –  
Wastewater Treatment Facility  
City of Foley, MN

City Administrator Brunn,

On behalf of the Moore Engineering, Inc. (Moore) team, we are honored to submit our approach to address your concerns with the City draft, "Facility Plan - Wastewater Treatment Facility", dated January 9, 2019. This proposal identifies Moore's team approach to addressing the City Council concerns they expressed at "The Foley City Council workshop held on January 29, 2019", to review the "Facility Plan". Therefore, what modifications to the City infrastructure system are needed to allow future growth and prosperity to flourish within our community?

#### **Background/Understanding**

On March 1<sup>st</sup>, 2019, representatives from Moore Engineering, Inc. met with Mayor Bettendorf and City Administrator Brunn to discuss the Foley City Council's request to secure the services of another engineering firm to review and comment on the City's draft "**Facility Plan - Wastewater Treatment Facility**".

In summary, our understanding is the City Council has concerns with numerous items identified in the draft report which include regionalization, I/I, future limits mandated by the MPCA, cost of the improvements, and lack of available funding alternatives.

Future wastewater discharge limits are of great concern for the city as the MPCA is always reviewing and adding items to operating permits every five years. A majority of council expressed interest in the regionalization option as it has the best potential of providing long-term stability for the city but, this alternative is the most costly according to the draft report. The City Council decided to keep the mechanical facility option and aerated pond option on the list for now and gather more information.

#### **Facility Plan Review**

Based on our understanding of available information provided by the City to date, a meeting with the city administrator and the Mayor; and a review of the "draft" facility plan; we have identified areas within the facility plan that we disagree. A few of the areas that we would approach differently, and that require additional information, include the infiltration and inflow analysis, the final recommended

design alternative, overall approach to funding and include potential liabilities such as sulfate limits and associated costs.

We feel these areas are critical, especially to a small community. It is important to define an accurate project and cost relative to the options evaluated to minimize financial surprises. A sound budget is essential to providing a solid funding and/or grant package, which ultimately affect the bottom line: monthly user rates.

#### **Moore Engineering, Inc. Approach to Facility Planning**

We feel that facility planning should encompass all areas of the facility, not just individual parts. We take an all-inclusive approach to infrastructure needs of a community and apply an affordability review to maximize any potential funding which a community may be eligible. The Moore Engineering team has successfully implemented this approach countless numbers of times for many communities.

#### **Our Proposal for Consideration**

We are recommending, based on our differences in approach and engineering philosophy, to complete the facility plan in accordance with jurisdictional agency requirements utilizing an overall infrastructure system analysis for a lump sum fee of \$22,500 (twenty-two thousand, five hundred dollars).

We would consider it a privilege and honor to work with you to solve your infrastructure challenges. We are available to discuss this information at your convenience. Thank you for your consideration!

Respectfully submitted,



Les Mateffy, PE  
Senior Project Manager

CITY OF FOLEY  
COUNTY OF BENTON  
STATE OF MINNESOTA

RESOLUTION 2019 – 04

A RESOLUTION OF THE CITY COUNCIL OF FOLEY, MINNESOTA APPROVING A  
WASTEWATER TREATMENT FACILITY PLAN.

WHEREAS, the City has had prepared a report entitled, “Facilities Plan, Foley Wastewater Treatment Facility” dated March 27, 2019.

WHEREAS, said report contains the design basis and cost review of wastewater treatment facility improvements for the City of Foley; and,

WHEREAS, said report was adequately and completely discussed at a public hearing held on April 2, 2019;

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

1. The Council hereby adopts and approves the wastewater treatment facility upgrades identified in the Facility Plan, which in general consist of:
  - a. Regionalization with the City of St Cloud Wastewater Treatment Facility.
  - b. Construction of two new lift stations to pump wastewater to St Cloud.
  - c. Construction of 11+ mile forcemain with cleanouts and air release valves.
  - d. Odor control system(s) to control odors caused by hydrogen sulfide release in the forcemain.
  - e. New building to house electrical systems at each new lift station.
  - f. Decommissioning of Birch Pond system.
  - g. Removal of solids in Golf Pond system.
  - h. Electrical utility, instrumentation, and control systems for new lift stations.
  - i. Existing lift station improvements.

BE IT FURTHER RESOLVED that said report is hereby authorized to be filed with the Minnesota Pollution Control Agency.

Adopted by the Council this 2<sup>nd</sup> day of April, 2019.

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Gerard L. Bettendorf, Mayor

ATTEST:

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Sarah A. Brunn, City Administrator



Minnesota Department of Natural Resources  
Ecological and Water Resources Division  
1035 S Benton Dr.  
Sauk Rapids, MN 56379

March 8, 2019

City of Foley  
Public Works Director Mark Pappenfus  
251 4<sup>th</sup> Ave  
PO Box 709  
Foley, MN 56329

**RE: Water Supply Plan Approval, City of Foley in Benton County**

Dear Mr. Pappenfus,

Our office has completed the review of your Water Supply Plan for public water supply authorized under DNR Water Appropriation Permit 1978-3348. I am pleased to advise you that in accordance with Minnesota Statutes, Section 103G.291, Subdivision 3, and on behalf of the Commissioner of the Department of Natural Resources, I hereby **approve your Water Supply Plan**. We encourage cities to complete the attached "Certification of Adoption" form. Please upload the form to MPARS-Water Supply Plan tab as soon as the city officially adopts the Plan.

The DNR, Minnesota Rural Water Association, and The Metropolitan Council encourage the city to educate its customers on how they can reduce household water use. As mentioned at the Water Supply Planning Workshops, the DNR will be contacting you periodically about progress the city has made on their water conservation goals. We encourage you to keep records of your success.

Thank you for your efforts in planning for the future of the City of Foley water supply and for conserving the water resources of the State of Minnesota. If you have any questions or need additional assistance with the city's water appropriation permit, please contact Area Hydrologist Nicola Blake-Bradley at 320-223-7844.

Sincerely,

A handwritten signature in dark ink, appearing to read 'James Bedell', written over a horizontal line.

James Bedell  
Area Hydrologist

Ec: Carmelita Nelson, DNR  
Nicola Blake-Bradley, DNR Area Hydrologist  
Gerry Maciej, Benton County SWCD  
Kevin Young, SEH Operation Specialist  
Minnesota Permitting and Reporting System (MPARS)



CITY OF FOLEY  
COUNTY OF BENTON  
STATE OF MINNESOTA

RESOLUTION 2019 - 03

A RESOLUTION ADOPTING THE CITY OF FOLEY'S WATER SUPPLY PLAN

WHEREAS, local water supply plans are required of public water suppliers serving over 1,000 people; and

WHEREAS, water supply plans must be updated and submitted every 10 years; and

WHEREAS, the City of Foley is in need of updating its water supply plan to meet state requirements; and

WHEREAS, the city council authorized the creation of an updated water supply plan; and

WHEREAS, staff has prepared such draft of a water supply plan and presented it to the city council;

NOW THEREFORE BE IT RESOLVED that the Foley City Council hereby adopts the City of Foley Water Supply Plan and directs staff to submit certification of completion of this plan.

PASSED AND ADOPTED by the City Council of the City of Foley this 2<sup>nd</sup> day of April, 2019.

\_\_\_\_\_  
Gerard L. Bettendorf, Mayor

ATTEST:

\_\_\_\_\_  
Sarah A. Brunn, City Administrator

**AMENDMENT TO CONTRACT HAULER PERMIT FOR GARBAGE,  
RUBBISH AND OTHER SOLID WASTE PICKUP AND DISPOSAL**

**THIS AMENDMENT** is made effective April 1, 2014 by and between the **CITY OF FOLEY** ("Foley") a Minnesota municipal corporation, and **ADVANCED DISPOSAL SERVICES SOLID WASTE MIDWEST, LLC**, a Wisconsin limited liability company ("Contractor").

**RECITALS**

1. **WHEREAS**, Foley and Contractor, or Contractor's predecessor, have entered into the Contract Hauler Permit for Garbage, Rubbish and Other Solid Waste Pickup and Disposal (the "Contract") dated July 1, 2009, copy of which is attached and incorporated herein by reference.

2. **WHEREAS**, the parties desire to continue said Contract on its same terms for an additional period of five (5) years beyond its termination date.

3. **WHEREAS**, the parties intend that all terms and conditions of the Contract shall remain unchanged, unaffected, and in force, except as expressly modified herein.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Except as expressly modified herein, the Contractor and City agree to continue to be bound by the Contract, which shall remain in full force and effect.
2. The Contract term is hereby amended to run for an additional five (5) years, terminating on July 1, 2019.
3. The monthly rates of the Contract shall be adjusted as shown in the Addendum.
4. The monthly rates may not be changed for a period of 1 year from July 1, 2014.
5. Contractor shall provide the City with an updated and current insurance certificate, updated performance bond, and updated service list no later than July 1, 2014.
6. Contractor renews and restates its indemnification of the City as provided in Section 18 of the Contract.
7. This Amendment may be executed in any counterparts, each of which shall constitute one and the same instrument.

CITY OF FOLEY, MINNESOTA

By

  
Its Mayor

CONTRACTOR

By

  
Its PRESIDENT & COO

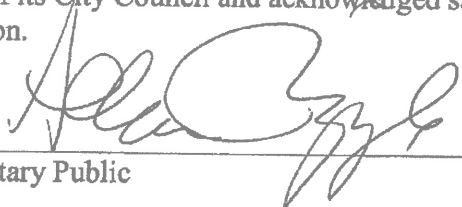
ATTEST:

By

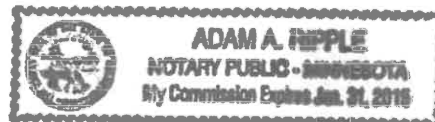
  
Administrator-Clerk

STATE OF MINNESOTA )  
 ) SS  
COUNTY OF STEARNS )

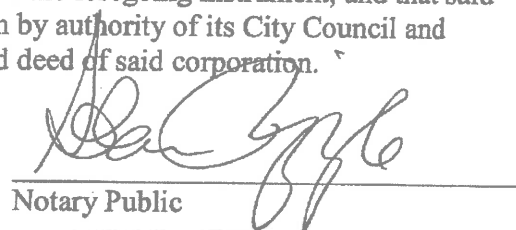
Before me, a Notary Public for this County, personally appeared Gary Gruba, to me personally known, who, being by me duly sworn did say that he is the Mayor of the City of Foley, a Minnesota Municipal Corporation named in the foregoing instrument, and that said instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

  
Notary Public

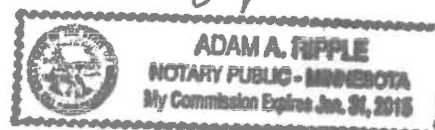
STATE OF MINNESOTA )  
 ) SS  
COUNTY OF STEARNS )



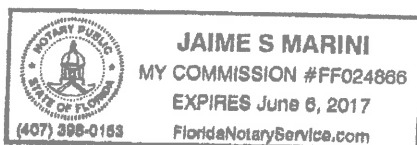
Before me, a Notary Public for this County, personally appeared Sarah Brunn, to me personally known, who, being by me duly sworn did say that she is the City Administrator of the City of Foley, a Minnesota Municipal Corporation named in the foregoing instrument, and that said instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

  
Notary Public

~~STATE OF MINNESOTA~~ )  
 ) SS  
COUNTY OF ST. JOHNS )



On this 1<sup>st</sup> day of MAY 2014 before me, a Notary Public for this County, personally appeared RICHARD BURKE, to me personally known, who, being by me duly sworn did say that he/she is the PRESIDENT & COO of ADVANCED DISPOSAL SERVICES, and that said instrument was signed on behalf of said company by authority of its Managers and acknowledged said instrument to be the free act and deed of said corporation. SOLID WASTE MIDWEST, LLC



  
Notary Public

**CONTRACT HAULER PERMIT FOR GARBAGE, RUBBISH  
AND OTHER SOLID WASTE PICKUP AND DISPOSAL**

Agreement made on JULY 1, 2009, by and between the City of Foley,  
Minnesota; a municipal corporation ("Foley") and ADVANCED DISPOSAL of VEOLIA ES SOLID WASTE *RW*  
ST. CLOUD, MINNESOTA ("Contractor"); *SB*

WHEREAS, Foley wishes to contract with and issue a permit to (hereinafter referred to as "Contract") a single hauler for garbage and rubbish removal services for all residents and businesses within the City of Foley; and

WHEREAS, the Contractor, for and in consideration of this Contract, hereby agrees to furnish and provide the equipment and labor necessary for garbage, rubbish and solid waste removal or pickup services for all residents (including multiple residences) and businesses (including government facilities) located within the City of Foley; the scope of said work being generally described as follows:

1. The Contractor shall pick up garbage at businesses and residences at least once per week during the term of this Contract, and properly dispose of all garbage in accordance with the current Benton County Solid Waste Management Plan, or in a properly lined and Minnesota Pollution Control Agency approved landfill. Contractor will provide all necessary containers for both garbage and recycling collection without separate charge.

2. For the purpose of this Contract, garbage includes all garbage, rubbish and solid waste of any and all kinds.

3. All containers are to be readily accessible to the Contractor at the curb or alley of each residence or at an accessible place at the business on the specified collection date.

4. The Contractor will comply with all federal, state and local laws, rules, and regulations, and the ordinances relating to the collection, transportation and disposal of garbage. As a condition of this Permit, Contractor represents and warrants that it will cooperate in good faith with Benton County and the Tri-County Solid Waste Commission to insure that an equitable amount of garbage from Foley is delivered to any facility as directed under the current Benton County Solid Waste Management Plan, in order to meet the County's obligations to ship waste to waste-to-energy facilities.

5. The Contractor shall, during the term of this Contract, keep in full force and effect general liability insurance of at least \$1,000,000.00 for each person injured, \$2,000,000.00 for each accident for personal injury; and \$1,000,000.00 for loss or damage to property. A current insurance certificate shall continuously be maintained during the term of this Contract, and provided to the Foley City Administrator, with a thirty (30) day prior notice to Foley of the termination or cancellation of said policy to be given by said insurance company.

6. The Contractor shall be responsible for all costs or charges incurred in the disposal of said garbage, rubbish and solid waste.

7. At the time this Contract is signed, the Contractor shall furnish the Foley City Administrator with a written schedule of the day of each week that pickups will be made. Any changes to the schedule shall be delivered to the Foley City Administrator at least fifteen (15) days prior to the making of such changes. In case of adverse weather conditions, collections shall be made as soon as possible.

8. In the event that the Contractor shall fail to make a garbage pickup at any residence or business, as required by this Contract, the Contractor shall do so within 24 hours

after notification from the Foley City Administrator of the location of the residence or business where the pickup was not made. In the event the Contractor fails to pick up the garbage within 24 hours after the receipt of notice, the Contractor shall pay to Foley, as liquidated damages, the sum of \$25.00 per resident or business whose garbage has not been properly and/or timely picked up for each day the Contractor fails to pick up the garbage after the 24 hour notice. For purposes of this provision, the Contractor shall not be deemed to be in default where its failure to perform any or all of this Contract results from conditions beyond its control, including, but not limited to, acts of God, inclement weather or collection that is excused in writing by the Owner. In all cases, the Contractor shall exhaust every possible remedy to correct the conditions resulting in its nonperformance.

9. Collections will not be required on recognized holidays, but the contractor must provide Foley and the residents and businesses at least fifteen (15) days prior notice of any date collection will not be made and of the alternative date for collection. Notice may be given by placing an ad in the Benton County News newspaper.

10. It is expressly understood and agreed that the Contractor is an independent Contractor and nothing contained in this Contract shall be construed to create a relationship of employer and employee between Foley and Contractor or his agents or employees. The Contractor shall pay any and all necessary State and Federal taxes, carry any and all required Worker's Compensation and other such insurances as required by State and Federal laws. This Contract shall not be assigned or sublet by the Contractor without the expressed written consent of the Owner.

11. This Contract shall be for a term of five (5) years beginning July 1, 2009 and continuing until it is terminated on June 30, 2014.

12. Should the Contractor fail to perform the services as set forth in this Contract, Foley shall give written notice to the Contractor of the default or failure to perform the Contract and the Contractor shall have seven (7) days in which to correct the default or failure to perform. Should the Contractor fail to perform the Contract as specified or cure the defects, Foley may contract with another hauler to complete this Contract, and the Contractor shall be responsible for any and all costs in addition to the regular hauler payments under this Contract. In that case, the Contractor shall continue to be liable to Foley for all other claims and damages under this Contract. This paragraph does not alter the more strict requirements of Paragraph 8.

13. If it shall at any time appear that the Contractor has unlawfully, fraudulently or through collusion performed inferior work or has departed from the terms of this Contract, Foley shall have the right to cause the work to be properly performed to such an extent as it may be necessary and at the expense of the Contractor or its sureties. Foley shall have the right to recover against the Contractor and his sureties such damages as may be incurred by Foley due to any default of this Contract

14. The payment schedule is as follows:

**Residential Rates:**

Residential pickup shall be once a week.

Residential bag or tag system, price per bag: \$3.00

Residential can system, price per two 30 gal cans or a single can with a capacity of at least 60 gals: \$10.75

Residential can system, price per extra can: \$2.00



**Commercial Rates:**

<u>Container Size</u>	<u>One Pickup/Week</u>	<u>Two Pickups/Week</u>	<u>Three Pickups/Week</u>
1 Cubic Yard	<u>45.10</u>	<u>83.75</u>	<u>123.65</u>
1.5 Cubic Yard	<u>57.95</u>	<u>96.60</u>	<u>144.90</u>
2 Cubic Yard	<u>64.40</u>	<u>115.95</u>	<u>170.05</u>
4 Cubic Yard	<u>87.60</u>	<u>164.90</u>	<u>247.30</u>
6 Cubic Yard	<u>115.95</u>	<u>216.40</u>	<u>324.60</u>

Payment shall be made by the residential customer or commercial/business customer.

The Contractor is responsible for collection of all payments. In no case shall Foley be liable to the Contractor for any payments, costs or other expenses in any way connected with this Contract.

These prices may not be changed for a period of one year from July 1, 2009. After the oneyear period, the Contractor may increase its prices only for reasonable cost of living and any increases for disposal costs. The Contractor must give Foley at least 90 days prior written notice of any price increase, along with any documents or records requested by Foley to justify the increased price. Foley shall then have the right during the 90-day period to terminate this Contract and request bids for a new contract.

15. The Contractor agrees that it will pay all persons doing work or furnishing skill, tools, machinery, materials, insurance premiums, equipment or supplies; and all just claims for such work, material, equipment, insurance and supplies in and about the performance of this Contract.

16. The Contractor shall provide Foley with a Performance Bond (in a form and issued by a company acceptable to Foley) in the sum of \$25,000.00 which shall be renewed each year, so that the bond for \$25,000.00 will be effective for each year

between July 1st and June 30th, and said bond shall be for the faithful performance of all of the Contractor's requirements, obligations, duties, the terms and/or conditions under this Contract. Further, that during the term of this Contract, the Contractor shall comply with all laws, rules, ordinances and regulations now existing, or hereinafter amended or adopted, as relates to the collection, transportation and disposal of garbage, rubbish and waste materials.

17. In the event that Benton County, the State of Minnesota, or the United States Government, enact rules, regulations or statutes that impose substantially new restrictions upon the City and/or the Contractor or changes the cost structure in regard to garbage hauling and/or disposal that imposes an undue burden upon either Foley or the Contractor in such a manner that was not anticipated by either of them, then this Contract shall upon the written notice of Foley to the Contractor be terminated and Foley may then submit or request for other bids in order to meet the new regulations, rules, or statutes.

18. Indemnification. The Contractor agrees to indemnify and hold harmless Foley, its agents, officers and employees from any and all claims, causes of action, liabilities, losses, damages, costs, expenses including reasonable attorneys' fees, suits, demands and judgments of any nature, because of bodily injury to, or death of, any person or persons and/or because of damages to property of the Contractor or others, including loss of use from any cause whatsoever, which may be asserted against Foley on account of any act or omission, including negligence, of the Contractor, or the Contractor's employees or agents in connection with the Contractor's performance of this Contract. The Contractor agrees to defend any action brought against Foley on any such matters, and to pay and satisfy any judgment entered thereon together with all costs and expenses incurred in connection therewith. Foley shall in no way be liable for any claims or charges incurred by the Contractor in the performance of this Contract. This

indemnity specifically relates to claims of any nature that may be brought against Foley arising from the disposal of any garbage.

19. Guaranty of Non-Discrimination. The Contractor agrees that during the term of the Contract, the Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, national origin or ancestry, or sex, whether or not the person is a U.S. citizen or resident alien, and will include a similar provision in all subcontracts entered into for the performance thereof. Violation of this provision is a misdemeanor. The Contract may be canceled or terminated by Foley, and all money due or to become due may be forfeited for a second or subsequent violation of the terms or conditions of this paragraph. This paragraph is inserted in the Contract to comply with the provisions of Minnesota Statutes § 181.59.

20. This Contract is exclusively for the benefit of the Contractor and Foley. No part of this Contract may be changed or modified except by written consent of both parties. This Contract contains the entire agreement between the parties concerning garbage pickup and disposal. This Contract does not create a cause of action in favor of any third parties for any reason whatsoever against Foley.

21. As a condition of this Contract, and at no additional charge, the Contractor agrees to conduct a spring and fall cleanup day. The spring cleanup day will be on a designated date, determined by the Contractor and Foley, at a specific drop off site within the City of Foley. Fall cleanup day will be held as part of a regular trash pickup date, at a date agreed to by the Contractor and Foley. The fall cleanup date will be curb side at each residence or business. All City residents should be given at least three weeks prior notice of the dates for the spring and fall cleanup.

22. The Contractor agrees to provide curbside recycling collection services for Foley residents, free of charge. The Contractor, if requested by a business, may provide recycling service to the business under terms and conditions negotiated between the Contractor and the specific business. Business recycling costs and agreements are not a part of this Contract. Businesses may negotiate with the Contractor or any other party only for recycling services.

23. The Contractor is required to provide Foley with a list of equipment to be used in Foley, the Contractor's references and experience. At any time, upon 30 days prior, written request, the Contractor shall provide Foley with updated information on these items.

24. The Contractor, within thirty (30) days of starting service, shall provide the City a list of all properties within the City to which the Contractor is providing service. The Contractor will provide an updated list every six (6) months. The list must include the name of the responsible party, and the address of the service. In addition, when any property discontinues service, the Contractor will notify the City of the discontinued service, in order to allow the City to be prepared for potential issues relating to accumulated garbage.

25. The Foley City Council reserves the right, under a finding of special needs and extra ordinary circumstances, to allow a business to contract directly with a hauler that is different than the Contractor for garbage hauling and disposal. Cost factors alone, will not constitute a special need or extra ordinary circumstance.

26. The annual fee for this permit is \$250.00 due on July 1 of each year the permit is in effect.

27. This permit does not include disposal construction debris by dumpster. Each resident and business may contract directly or through their contractor/remodeler for a construction debris dumpster.

IN TESTIMONY WHEREOF, the undersigned has set their hands and  
seals the day and year first above written.

**CITY OF FOLEY, MINNESOTA**

By Dean T. Weber  
Its Mayor  
By Sarah B. Brown  
Its Clerk

**CONTRACTOR**

Name UFOLTA

By Robert Holzer  
Printed Name ROBERT HOLZER  
Its GENERAL MANAGER

March 22, 2019  
Council Members, City of Foley

Re: Use of Side x Side All Terrain utility vehicles (UTVs)

As an owner of a UTV, I ask the City Council to permit the use of my UTV on city streets. Typically the UTV is a legal street vehicle, probably as legal as a Harley Motor cycle. I take issue with the fact that the city adopted a special ordinance to permit a non-street legal golf cart on the street for personal use and adopted a special ordinance to prohibit a street legal vehicle on city streets. Why should some citizens get to drive their toys on the streets and others not?

I can understand prohibiting regular sporting atv's that typically are ridden fast and challenging. I'm not advocating to prohibit golf carts; as a matter of fact, it would be sad to prohibit golf carts since they can be used to drive directly to the Golf Course.

I suggest that the UTV is probably a safer vehicle on the street than a golf cart.  
Consider that:

- State wide UTVs are street legal on many rural roads and city streets by state statute.
- UTVs is a recreational business to the state of Minnesota and generates revenue.
- UTVs are licensed for street and road use and generates monies to the state by the licensing and by paying gas tax for fuel used. Golf carts are not.
- UTVs are more capable of keeping up to the legal and typical speed driven on the streets. Golf carts are not.
- UTVs are generally insured by the Auto Insurance Industry. Golf carts are probably not as I don't believe an auto insurance company would insure a golf cart. I have my UTV insured for Bodily injury and Property Damage (\$100,000/300,000), Uninsured Motorist bodily injury (\$100,000), Underinsured Motorist bodily injury (\$100,000/300,000), insurance for Guest Passenger and I pay a MN Auto Theft Prevention Program Surcharge. All the above about the same as an automobile.

I believe the prohibition of UTVs is discriminatory against certain citizens. I've heard some comments about setting restrictions on UTV use in the city, such as certain streets, additional licenses or whatever. I submit that a UTV is as street legal as a Harley motorcycle and I don't think the city could get by with prohibiting them on the street. I don't feel additional restrictions are appropriate. I believe an operator of a UTV driven on the street would probably have to be 16 years old and have a valid drivers license.

Please consider my request.

Thank you,  
Gerald Hovde  
265 Elm Drive  
Foley, MN 56329 Telephone 320 968-6732

**TO:** FOLEY CITY COUNCIL  
**FROM:** SARAH BRUNN, CITY ADMINISTRATOR  
**SUBJECT:** 04-02-19 COUNCIL MEETING  
**DATE:** MARCH 29, 2019

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**Foley Fun Days – Nancy Kampa**

Nancy Kampa will be at the meeting requesting use of the streets again for this year's Fun Days celebration. Foley Fun Days is scheduled for June 17-19, 2019. Staff has no concerns regarding this item and as reminder does have language in the carnival contract regarding no drilling of holes into the streets.

**Public Hearing – Wastewater Facility Plan**

As directed by the council at the last meeting staff has noticed a public hearing regarding the facility plan for Tuesday's meeting. The following items have occurred regarding the facility plan in the past month.

- We require at least a 10-day notification so a public hearing notice was published in the paper on March 19<sup>th</sup>.
- In order to prepare for the public hearing, I directed Wastewater Engineer Jessica Hedin to make some revisions to the facility plan regarding the regionalization option.
- We obtained funding estimates from the Public Facilities Authority (PFA) and Rural Development. I have included emails of these responses in your packets. The bottom line is right now they are considering Foley able to finance the entire project cost whether aerated ponds or regionalization. The figures provided from PFA are what is expected to be paid by an average household for SEWER only.
- I have had numerous conversations with Representative Mekeland who was confident we would be eligible for grant funding from state agencies such as the PFA. I sent him the results of our analysis showing no grant eligibility. Based on those estimates he has arranged for a meeting with the executive director of the PFA, Jeff Freeman. If there is nothing that can be obtained from PFA he indicated he will proceed with a separate bonding request for Foley wastewater. The only issue with this is because of other items going on in the district Foley's request will likely not be heard until session next year.
- We have obtained quotes on value engineering of the facility plan. These proposals are provided in your packet.
- I have been working with St. Cloud Public Services Director Pat Shea on a connection fee. They have analysts from AE2S still working on making the final costs determination but it is a top priority and will be relayed as soon as it is available.

### **Wastewater Action Items on Tuesday**

We had to make a decision on setting the public hearing prior to getting all the information back from our state agencies and officials. Staff is recommending the council proceed with the public hearing on Tuesday to obtain feedback from the community. Based on the feedback the council can choose to adopt a resolution approving the facility plan or wait to do that at a later date. The risk with waiting could mean if something changes with our state funding eligibility, we could miss appropriations this year.

The council should also discuss the value engineering proposals that have been provided in your packets. These proposals would provide another look at the facility plan and the cost estimates laid out in the plan. The council could still proceed with this type of analysis but staff strongly recommends this be completed before authorizing any design work. Design work would be something the council would address after adopting the facility plan and before bidding.

### **Water Supply Plan**

The council had received a copy of the final water supply plan approved by the DNR earlier this week. This plan is required to be completed every 10 years to meet state requirements. Staff is recommending approval of this plan by adopting the resolution provided in your packet. This resolution will authorize certification to the state. The council should be aware of some activities staff has undertaken to comply with conservation requirements, including joining the Central MN Water Education Alliance. More conservation activities are also listed as part of the plan.

### **Advanced Disposal – Garbage Contract**

Representatives from Advanced Disposal have requested to be placed on the agenda to discuss the garbage contract. The current contract is expected to expire July 1, 2019. Staff has placed the action on what to do with the contract under New Business on the agenda and asks the council to wait for any action until that period and after the regular open forum. The council can consider a contract extension with Advanced Disposal or re-bidding the contract. The contract has not been re-bid for 10 years.

### **Dewey Project – Trees**

City Engineer Jon Halter will be updating the council on the tentative tree locations and maps of these locations will be available at the meeting.

### **Discussion on Side-By-Sides (UTV's)**

In your packet is a request for a change in ordinance allowing side-by-sides. The council can discuss how they wish to proceed but an ordinance revision would be required. Staff can prepare language if directed by the council for consideration at a future meeting.

### **Upcoming Reminders:**

- **April 16-17** – Audit Fieldwork – Council is not required to attend but is always welcome to stop in if they would like.
- **April 27** – Spring Clean Up – Foley Boy Scouts