



**City Council – Meeting Agenda
July 13, 2021 – 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 June 1, 2021.
 - Adopt Resolution #2021-13 Accepting Donation.
 - Adopt Resolution #2021-14 Accepting ARPA Funds.
 - Adopt Resolution #2021- 15 PSIG Application
 - Approve engineering agreement for new industrial park plat.
 - Approve purchase agreement for portion of PID 020051211.
 - Accept resignation of pool manager Amelia Winkelman effective July 24, 2021.
 - Approve payment of bills.
5. Public Hearing
 - Ordinance #457 – Amending Zoning Ordinance Related to Solar Gardens
 - Ordinance #458 – Amending Zoning Ordinance Relating to Interim Use Permits
6. Consider Ordinance #459 – Amending Code Related to Driveway Access onto Public Right-Of-Way
7. Mayor's Comments & Open Forum
8. Department Reports:
 - Police Department –Bart Kothman
 - Discussion on parking and storage ordinance
 - Update from Planning Commission Meeting
 - Provide staff direction on how to proceed with enforcement.
 - City Engineer – Jarod Griffith
 - Public Works/Fire – Mark Pappenfus
 - Highway 23 Lighting Project maintenance.
 - Administration – Sarah Brunn
 - Update on compost site clean-up costs.
 - Discussion on pool operations/staffing
 - Pool manager position
 - Staffing levels
 - Discussion on police staffing issues.
 - Full-time Officer
 - Part-time Officers



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9. Old Business

- Update on wastewater/fiber project.
 - Approve St. Cloud Wastewater Treatment User Agreement
 - Discussion on Benton County Fiber Project Agreement.

10. New Business

11. Land Use Plan Discussion – Joint Meeting with Planning Commission (To Begin @ 6:30pm)

12. Adjourn

CITY OF FOLEY, MINNESOTA
CITY COUNCIL MEETING – June 1, 2021

The Foley City Council held a special meeting on June 1, 2021, 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 Swanson, seconded by Gondeck, 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 May 4, 2021.
- Approve minutes of May 17, 2021.
- Approve hiring of seasonal, part-time office employee.
- Accept resignation of firefighter Tom Kaproth.
- Accept resignation of police officer Dylan Kleinsasser.
- Approve School Resource Officer Agreement – 7/1/21-6/30/21.
- Approve payment of bills

Gondeck expressed his thanks to Tom Kaproth for his 47 years of service on the fire department.

Motion carried, unanimous.

Public Hearing – Liquor Licenses (contingent on background)

At 5:32 p.m. Mayor Bettendorf recessed the regular council meeting for the public hearing on Liquor Licenses. No one spoke.

At 5:33 p.m. Mayor Bettendorf reconvened the regular council meeting.

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

Approve Tobacco Licenses (contingent on background)

No public hearing is required for tobacco licenses. Motion by Gondeck, seconded by Swanson, to approve the tobacco licenses. Motion carried, unanimous.

2020 Audit Report – Schlenner & Wenner

Ashley Meagher from Schlenner & Wenner gave an overview of the 2020 audit report and referred the council to the summary of the full report in their packets. The audit found no significant areas of concern. Audit went very smoothly.

She listed several items for the council including the recommendation for separation of duties. The general fund saw a \$221,000 increase, a 21% increase over 2019. The general fund also saw significant

changes in property taxes and intergovernmental revenues. There was a decrease in licenses and permits. Expenditures saw significant changes in general government and capital outlay. This was due to spending from the coronavirus and incoming/outgoing dollars. Cash for the general fund has gradually increased over the past few years. The fire service fund has decreased due to the fire truck purchase. Gear purchases for the fire department came from a FEMA grant. The EDA fund consisted of receipts. The 2018 capital improvement fund will next year be renamed as a debt service fund. There was nothing major to report in the governmental column. There was a decrease in activity in the pool fund due to the pool being closed in 2020. Water and sewer funds increased by \$217,000 from an increase in charges for services from rate increases. Sewer fund saw a slight increase of \$28,000 due to service rates and I&I study costs. The cash enterprise fund is increasing. Assets for the city increased with capital assets with the fire truck. Liabilities decreased from previous year. Changes in debt shows \$4.45 million in total city debt.

Questions from the council and discussion followed.

Consider Purchase of PIDs 020049300 & PID 020050000

Bettendorf explained that all four items connected to the land purchase could be made under one motion. Brunn explained that any motion should be made contingent on the legal descriptions being accurate and that staff makes sure they are recorded properly because we're taking a big piece and splitting it.

Motion by Gondeck, seconded by Musachio, to approve under the purchase of the land a Contract for Deed, Farm Lease, Option Agreement, and Memorandum of Purchase Agreement contingent on the staff recording the accurate legal descriptions.

Discussion and questions followed.

Motion carried, unanimous.

Mayor's Comments and Open Forum

Joshua Beutz, 420 Norway Drive, addressed the council regarding the letters about parking ordinance violations and not being allowed to park vehicles in the grass. Beutz said he put down a hard surface, but it doesn't meet requirement. He questioned the ordinance description of what is allowed. He said if the city tows his trailer he will get a lawyer.

Britney Winkleman, 268 Balsam Drive, addressed the council regarding the parking ordinance. She said she'd been approached multiple times and that other people had supposedly mentioned her property in being in violation. She said she installed a hard surface and spent time and money. She also told the council she was new to town. She was trying to keep her yard nice, but it was a work in progress. She also said it makes her mad that other properties are not being addressed. She is on a strict deadline to fix the issue.

Department Reports

Police Department

Chief Katie McMillin updated the council. May was the busiest month she'd ever seen with 397 calls including 26 calls for suspicious activity and 14 welfare checks and medical calls. Harassment calls were down, but criminal damage to property was up. The department completed background checks for tobacco and liquor licenses. TDZ hours totaled 30.75 hours.

The Bike Safety Rodeo currently has 75 pre-registrations – the most ever. An illegal dumping citation was issued for the compost site – petty misdemeanor. If the council wants to take the next step, then a civil suit could also be added to the petty misdemeanor charge. The suspect would not have to appear in court. He could pay the fine and it would be closed out. Discussion and questions from the council followed.

McMillin also said that officer Kleinsasser had resigned (resignation appeared in the consent agenda). We might need to hire another to replace, but if everyone else stays through October we should be okay. Another officer is also getting backgrounded by another agency. Part-timers are required to work two shifts per month.

Ordinance violation letters were sent out in May, including parking and storage, garbage, trailers, and tall grass. 98% are now compliant. McMillin explained to the council that she works with everyone she sends a letter to and asks what timelines work best for them. Regarding the trailer at 420 Norway Drive she spoke with the city attorney and he said that having the trailer on blocks does not meet the parking surface requirements. Discussion followed.

Bettendorf addressed the council stating that the city had been battling the issue for a long time. He asked each councilmember to state for the record their opinion of the ordinance.

McMillin asked the council to please keep in mind that many residents had already complied with the parking and storage ordinance and spent a lot of money to do so.

Gondeck reminded the council that the Planning Commission had reviewed the ordinance previously and made changes to make it feasible for everyone. 10-12 residents attended the commission's meeting and agreed with the direction we decided to go. Only two people complained tonight. The chief says we have 98% compliance. Gondeck said to keep the ordinance.

Musachio – Said to keep the ordinance. It is not out of line with other cities in Minnesota. We are not doing anything super different. Musachio asked if the ordinance could be changed so the police department could issue tickets.

Brunn reminded the council that as a statutory city we are not able to issue tickets. Letters and prosecution were our only option.

Swanson – We need an ordinance. I don't want to create a burden on these people. Maybe change the ordinance to modify to make it better.

Brosh asked why the owner at 420 Norway was not prosecuted as discussed last fall. McMillin explained that the owner became compliant by moving their trailer, but now they are no longer in compliance which starts the process over again.

Brunn also reminded the council that when the original ordinance was passed any property with gravel driveways (now disallowed by the current ordinance) were grandfathered in (legal non-conforming) and it gave the homeowner the right to maintain the existing class 5 gravel driveway, but they could not alter (expand) the driveway.

Bettendorf stated that in his opinion the city has a few residents who are not complying, but we have to enforce the ordinance. If we don't, he is concerned what could happen.

The council took an informal vote with a majority (3) voting for continued enforcement.

Gondeck asked if the Planning Commission should look at the ordinance one more time. Discussion followed with the council deciding to ask the Planning Commission to look at it one more time. Bettendorf tabled the issue until the next meeting when the council will vote on it. He asked the police department to not pursue any further until after the council decides what to do after the July meeting.

City Engineer

The city engineer gave the council a quick update. The Hwy 23 project design is done and waiting on comments from the state.

Public Works/Fire Department

Public Works Director Mark Pappenfus updated the council regarding the coping project for the pool. The project is running about a week behind and the planned pool opening date of June 9 is in jeopardy. We will keep the council informed. He is meeting with the Department of Health on water testing. No action is needed at this time. The installation of the salt shed on Broadway is moving forward. Pappenfus directed the council the bid from Graystone in their packets for and asked for their approval. Discussion followed.

Motion by Brosh, seconded by Swanson, to accept the Graystone bid as presented.
Motion carried, unanimous.

Pappenfus also presented a chip and seal maintenance program for south of town.

Motion by Gondeck, seconded by Musachio, to approve the blacktop quote.
Motion carried, unanimous.

Administration

Brunn informed the council of a garbage rate contract adjustment that will be going into effect in July. She also mentioned that staff would be looking at a housing study county wide with Benton County.

Old Business

Brunn gave an update on the wastewater project and presented a plan to purchase a parcel of land discussed at the land meeting for \$7,500 for the project.

Motion by Swanson, seconded by Gondeck, to purchase the land.
Motion carried, unanimous.

New Business

No new business.

Discussion on purchase of PID 020049300 & PID 020050000.

At 6:30 p.m. Mayor Bettendorf closed the meeting per Minn. Stat. 13D.05 Subd. 3(c) 13D.05 – for discussion on potential land price of PID 020049300 & PID 020050000.

At 6:33 p.m. the meeting reconvened. The public was invited back into the chambers.

Motion by Swanson, seconded by Brosh, to adjourn the meeting.
Motion carried, unanimous.

Meeting adjourned at 6:33 p.m.

Sarah A. Brunn, Administrator

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA

RESOLUTION 2021 - 13

A RESOLUTION ACCEPTING DONATIONS FOR THE BIKE SAFETY RODEO

WHEREAS, the City of Foley encourages public donations to help defray the costs to the general public of providing services and improve the quality of life in Foley; and

WHEREAS, various businesses and individuals have offered to donate funds to be used by the Foley Police Department community policing during Foley Fun Days bike safety rodeo; and

WHEREAS, the attached Exhibit A is a list of donations; and

WHEREAS, Minnesota Statutes 465.03 requires that all gifts and donations of real or personal property be accepted only with the adoption of a resolution approved by two-thirds of the members of the City Council;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Foley, Benton County, Minnesota, that these donations are hereby accepted for use by the City of Foley.

BE IT FURTHER RESOLVED that the City sincerely thanks the businesses and individuals for their generous donations.

PASSED AND ADOPTED by the Foley City Council, this 13th day of July, 2021.

Gerard Bettendorf, Mayor

ATTEST:

Sarah A. Brunn, City Administrator-Clerk

Bicycle Safety Rodeo Donations for 2021

Foley Lion's	\$50
Duelm Lion's	\$100
Frandsen Bank & Trust	Horns and Bike Lights
Falcon Bank	\$50
Foley Hardware Store	\$100
Scheels	\$50 Gift Card
Foley Chamber	2 – 16 in Bicycles
Blow Molded Specialities	2 – 18 in Bicycles
Kindness is my Jam - Jaci Harren	2 – 24 in Bicycles
Murphy Chev	\$300
Revolution Cycle & Ski	Time
Fairview Hospital	Time
Benton County Health	Time
Foley Community Ed	Registration
Neighborhood Plumbing	Signs
Grand Champion Meats	Hotdogs
Country Hearth / Pan-O-Gold	Hotdog buns
Henry's Embroidery	
Coborn's	\$25
State Farm Insurance	Bags
Chad & Sherry Erickson	\$40

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA

RESOLUTION 2021 - 14

A RESOLUTION TO ACCEPT THE CORONAVIRUS LOCAL FISCAL RECOVERY
FUND ESTABLISHED UNDER THE AMERICAN RESCUE PLAN ACT

WHEREAS, since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the disease has infected over 32 million and killed over 575,000 Americans (“Pandemic”). The disease has impacted every part of life: as social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs;

WHEREAS, as a result of the Pandemic cities have been called on to respond to the needs of their communities through the prevention, treatment, and vaccination of COVID-19.

WHEREAS, city revenues, businesses and nonprofits in the city have faced economic impacts due to the Pandemic.

WHEREAS, Congress adopted the American Rescue Plan Act in March 2021 (“ARPA”) which included **\$65 billion in recovery funds for cities across the country.**

WHEREAS, ARPA funds are intended to provide support to state, local, and tribal governments in responding to the impact of COVID-19 and in their efforts to contain COVID-19 in their communities, residents, and businesses.

WHEREAS, funds have been allocated to the City of Foley (“City”) pursuant to the ARPA (“Allocation”).

WHEREAS, the United States Department of Treasury has adopted guidance regarding the use of ARPA funds.

WHEREAS, the City, in response to the Pandemic, has had expenditures and anticipates future expenditures consistent with the Department of Treasury’s ARPA guidance.

WHEREAS, the State of Minnesota will distribute ARPA funds to the City because its population is less than 50,000.

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

1. The City intends to collect its share of ARPA funds from the State of Minnesota to use in a manner consistent with the Department of Treasury's guidance.
2. City staff, together with the Mayor and the City Attorney are hereby authorized to take any actions necessary to receive the City's share of ARPA funds from the State of Minnesota for expenses incurred because of the Pandemic.
3. City staff, together with the Mayor and the City Attorney are hereby authorized to make recommendations to the City Council for future expenditures that may be reimbursed with ARPA funds.

Adopted by the City Council of Foley, Minnesota this 13th day of July, 2021.

Gerard L. Bettendorf, Mayor

Attested:

Sarah A. Brunn, City Administrator-Clerk

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA

RESOLUTION 2021-15

A RESOLUTION AUTHORIZING THE CITY OF FOLEY TO SUBMIT A POINT SOURCE
IMPLEMENTATION GRANT APPLICATION TO THE MINNESOTA PUBLIC FACILITIES
AUTHORITY (PFA) AND TO AUTHORIZE CITY OFFICIALS TO EXECUTE A GRANT
AGREEMENT ON BEHALF OF THE CITY OF FOLEY
FOR THE CITY OF FOLEY WASTEWATER REGIONALIZATION PROJECT

WHEREAS, the Point Source Implementation Program, established in Minnesota Statutes 446A.073, as amended provides funds for construction projects; and

WHEREAS the City of Foley is hereby applying to the Minnesota Public Facilities Authority for a funds to be used for eligible costs for the connection of the City of Foley's wastewater collection system to that of the City of St. Cloud for eventual treatment at St. Cloud's wastewater facility, to include three new lift stations, a chemical feed building for controlling odors, and over 15 miles of new sanitary sewer forcemain.

BE IT RESOLVED that the City of Foley has the legal authority to apply for the grant, and the financial, technical, and managerial capacity to ensure proper construction, operation and maintenance of the project for its design life.

BE IT FURTHER RESOLVED, that upon approval of its application by the PFA, the City of Foley may enter into an agreement with the PFA for the above referenced project, and that the City of Foley certifies that it will comply with all applicable laws and regulations as stated in all contract agreements described in the Compliance listing of the grant application.

NOW, THEREFORE BE IT FURTHER RESOLVED, that the City Administrator and Mayor, or their successors in office, are hereby authorized to execute such agreements, and amendments thereto, as are necessary to implement the above project on behalf of the City of Foley.

PASSED AND ADOPTED by the City Council of the City of Foley, this 13th day of July 2021.

Gerard L. Bettendorf, Mayor

ATTEST:

Sarah A. Brunn, City Administrator

Supplemental Letter Agreement

In accordance with the Master Agreement for Professional Services between City of Foley, Minnesota ("Client"), and Short Elliott Hendrickson Inc. ("Consultant"), effective January 1, 2016, this Supplemental Letter Agreement dated June 24, 2021 authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: **2021 Industrial Park Expansion**.

Client's Authorized Representative: Sarah Brunn, City Administrator

Address: PO Box 709
Foley, MN 56329-0709

Telephone: 320.968.7260 **email:** sbrunn@ci.foley.mn.us

Project Manager: Jarod Griffith

Address: 1200 25th Avenue South, PO Box 1717
St. Cloud, MN 56302-1717

Telephone: 320.229.4304 **email:** jgriffith@sehinc.com

Scope: The Basic Services to be provided by Consultant:

This letter agreement has been prepared for surveying, natural resources, and conceptual layout updates related to Foley's Industrial Park Expansion. In November of 2020, City staff expressed interest in expanding the City's industrial park and asked SEH to put a conceptual layout together. The City of Foley recently purchased three properties (PID 020049300, PID 020050000, and PID 020051211) to expand their industrial park. SEH understands that the City is interested in re-platting these properties based on the attached conceptual layout with modifications after survey and wetland delineations.

Task 1: Boundary and Topo Survey

The property documents, from Beacon, of the three recently purchased properties have been attached. SEH understands that only the portion of PID 020051211 adjacent to PID 020049300 will be surveyed. The total area to be surveyed is 55+/- Acres. SEH will complete the following tasks:

- Boundary survey.
- Topographic survey for platting and engineering.

Task 2: Wetland Delineation and Report

Crop slide review is required when a site is identifying wetlands on agricultural land. Crop slide review is reviewing multiple years of aerial imagery, identifying wetland signatures, and understanding the image year hydrology. This review is completed following the US Army Corps of Engineers (USACE) *Guidance for Offsite Hydrology/Wetland Determinations* (July 2016). These boundaries will be verified during the on-site delineation.

The on-site delineation tasks include collecting vegetation and soil data, flagging the boundary, and collecting data points for mapping. The delineation will follow the methodology described in the USACE 1987 Manual, and the North Central and North East Region Supplement. A meeting with the local Wetland Conservation Act representative will occur for concurrence of the wetland boundary. The approved wetland boundary will be provided in an electronic format upon completion of the delineation.

Following completion of the field investigation and initial agency meeting, a Wetland Delineation Report will be prepared and submitted. This report will include: a description of the wetland habitat present, datasheets supporting the findings, figures, and site photographs. An "approval request" of the wetland boundaries will be officially completed at this time.

Task 3: Concept Design

The attached conceptual layout was presented to the City Staff in December 2020. The concept includes a two phased layout with lots at roughly 2 buildable acres. Water main and sanitary sewer layouts were also included. SEH will complete the following tasks:

- Prepare Concept Modification 1 - Attach boundary survey, topo survey, and wetland delineations to current conceptual layout. Draw potential building footprint with setbacks.
- Concept Meeting with City Staff and BEP.
- Prepare Concept Modification 2 - Alterations to Concept Modification 1 based on discussions at Concept Meeting.
- Prepare Final Concept - Alterations to Concept Modification 2 based on City Council and City Staff comments.
- Update the planning level estimate. Note that the estimate does not include mass site grading.
- Prepare a map for the joint planning process with Gilmanton Township.

Task 4: Property Plat

SEH will re-plot the properties as shown in the final concept sketch and complete the following tasks:

- Preliminary plat including submission requirements as stated in the City Subdivision Ordinance.
- Final plat including submission requirements as stated in the City Subdivision Ordinance.
- Working with Benton County on Final plat approval and filing. Our cost does not include mylar copies estimated to be \$1,000. This does not include plat checking fees required by the City or County.
- The proposed plat will be completed base on MN Statute 505 as it relates to subdivision plats.
- Set property irons.

Items Not Included in the Scope of Work Include:

- Feasibility study and cost estimates for street and utility improvements.
- Final Design or construction services related to street and utility improvements.
- Permitting or mitigation for any wetland impacts.
- Acquiring an up-to-date title commitment, our assumption is that this will be provided by the City.

Payment:

Task 1: Boundary & Topo Survey	\$11,000.00	Lump Sum including expenses and equipment
Task 2: Wetland Delineation & Report	\$7,000.00	Lump Sum including expenses and equipment
Task 3: Concept Plan Update	\$3,000.00	Hourly
Task 4: Plat	\$6,000.00	Lump Sum including expenses and equipment (does not include mylar copy costs, which are estimated to be \$1,000)
Total Fee	\$27,000.00	

The payment method, basis, frequency, and other special conditions are set forth in attached Exhibit A-1 and A-2.

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

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Short Elliott Hendrickson Inc.

City of Foley, Minnesota

By: _____

Jon Halter

Title: Client Service Manager

By: _____

Title: _____

Exhibit A-1
to Supplemental Letter Agreement
Between City of Foley, Minnesota (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated June 24, 2021

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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Exhibit A-2
to Supplemental Letter Agreement
Between City of Foley, Minnesota (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated June 24, 2021

Payments to Consultant for Services and Expenses
Using the Lump Sum Basis Option

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

A. Lump Sum Basis Option

The Client and Consultant select the Lump Sum Basis for Payment for services provided by Consultant. During the course of providing its services, Consultant shall be paid monthly based on Consultant's estimate of the percentage of the work completed. Necessary expenses and equipment are provided as a part of Consultant's services and are included in the initial Lump Sum amount for the agreed upon Scope of Work. Total payments to Consultant for work covered by the Lump Sum Agreement shall not exceed the Lump Sum amount without written authorization from the Client.

The Lump Sum amount includes compensation for Consultant's services and the services of Consultant's Consultants, if any for the agreed upon Scope of Work. Appropriate amounts have been incorporated in the initial Lump Sum to account for labor, overhead, profit, expenses and equipment charges. The Client agrees to pay for other additional services, equipment, and expenses that may become necessary by amendment to complete Consultant's services at their normal charge out rates as published by Consultant or as available commercially.

B. Expenses Not Included in the Lump Sum

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client and shall be paid for as described in this Agreement.

1. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
2. Other special expenses required in connection with the Project.
3. 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 not included in the Lump Sum amount.

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Overview



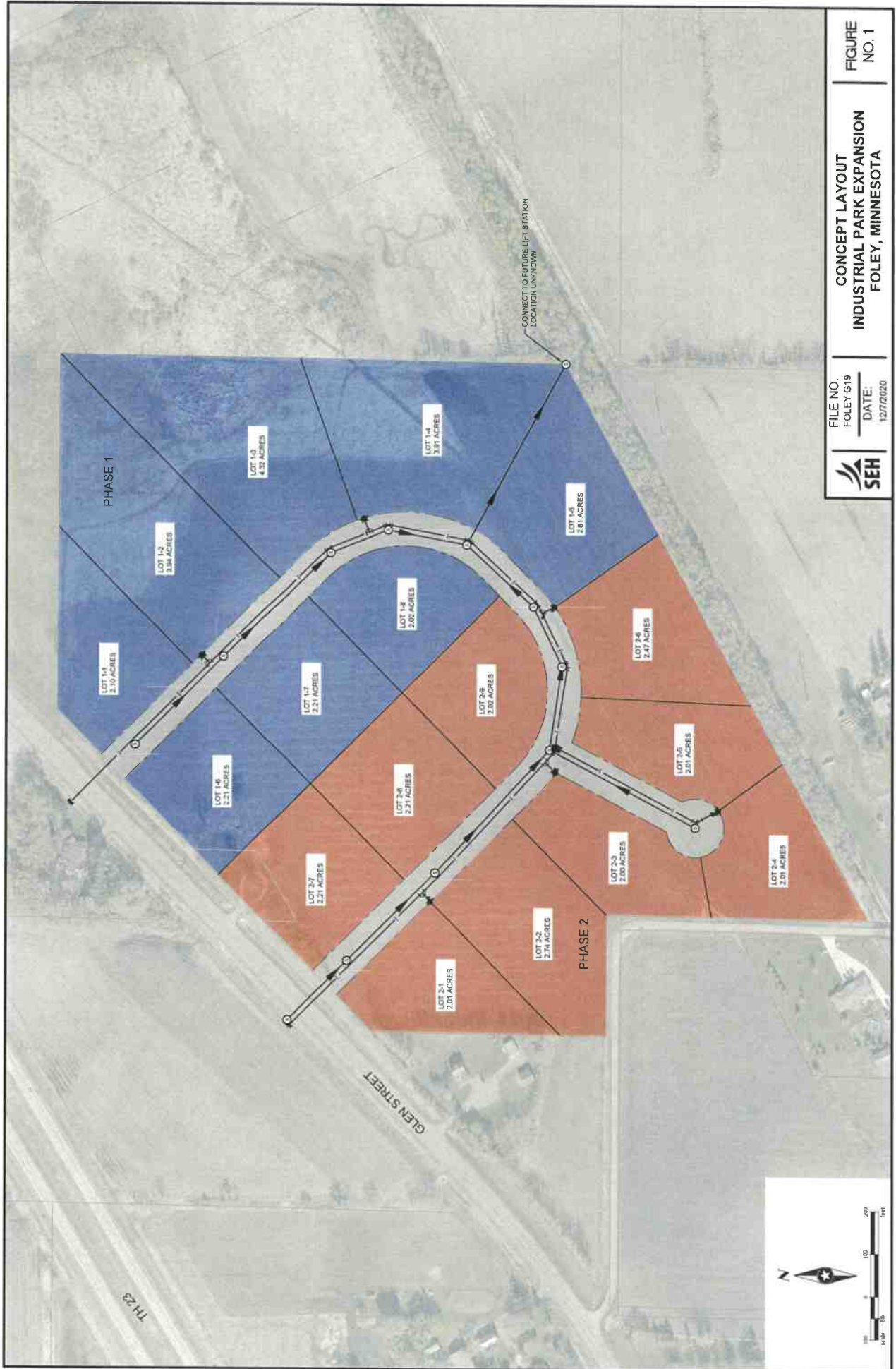
Legend

-  Parcels
-  Highways
-  County Roads
-  Roads

Parcel ID	020049300	Alternate ID	n/a	Owner Address	LEROY CHARLES HERBST REV TR &
Sec/Twp/Rng	34-037-029	Class	101 - AGRICULTURAL		CATHERINE MARIE HERBST REV TR
Property Address	10846 HWY 23 NE	Acreage	51.18		4912 105TH AVE NE
	FOLEY				FOLEY, MN 56329
District	GILMANTON TOWNSHIP				
Brief Tax Description	Sect-34 Twp-037 Range-029 51.18 AC PART OF NW1/4 SE1/4 LYING N OF GN RR ALSO PART OF SE1/4 NW1/4 & SW1/4 NE1/4 LYING S HWY 23 LESS TR W/UNDIV 1/2 INT TO LEROY CHARLES HERBST REV TR & W/UNDIV 1/2 INT TO CATHERINE MARIE HERBST REV TR				
	(Note: Not to be used on legal documents)				

Date created: 6/8/2021
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GEOSPATIAL



VACANT LAND PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made between **City of Foley, Minnesota** ("City or Buyer") and **LeRoy C. Herbst and Catherine M. Herbst, as Trustees of the LeRoy Charles Herbst Revocable Trust and LeRoy C. Herbst and Catherine M. Herbst, as Trustees of the Catherine Marie Herbst Revocable Trust** (collectively "Herbst or Seller").

In consideration of this Agreement, Seller and Buyer agree as follows:

1. **Sale of Property.** Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, the following property in Benton County, Minnesota ("Property"):

a. **Real Property.** The real property legally described as:

All that part of the abandoned former Burlington Northern Railroad company right-of-way, in the Northwest Quarter of the Southeast Quarter (NW¼ of SE¼) lying Northwesterly of the centerline of the original main track of said Railroad Company of Section Thirty-four (34), Township Thirty-seven (37), Range Twenty-nine (29), Benton County, Minnesota, EXCEPT the West 2 rods of said Northwest Quarter of Southeast Quarter (NW ¼ of SE ¼);

2. **Purchase Price and Manner of Payment.** The total purchase price ("Purchase Price") to be paid by Buyer to Seller shall be Seven Thousand Five-Hundred Dollars (\$7,500) for the Real Property. Payment shall be made by cash, check or wire transfer, on the Closing Date.

3. **Closing.** The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur no later than 60 days from Seller's acceptance of this Agreement (the "Closing Date"). Except as otherwise provided in this Agreement, Seller agrees to deliver possession of the Property to Buyer on the Closing Date.

a. **Seller's Closing Documents.** On the Closing Date, Seller shall execute and/or deliver to Buyer the following (collectively, "Seller's Closing Documents"):

(i) **Deed.** A Trustee's Deed, in form reasonably satisfactory to Buyer, conveying the Real Property to Buyer, free and clear of all encumbrances.

(ii) **Other Documents.** All other documents reasonably determined by Buyer to be necessary to transfer marketable title to the Property to Buyer free and clear of all encumbrances.

4. **Allocation of Costs.** Seller and Buyer agree to the following allocation of costs regarding this Agreement:

a. **Real Estate Taxes and Special Assessments.** Seller will pay, on or before the Closing Date, all special assessments levied, pending or constituting a lien against the Real Property as of the Closing Date and all deferred and delinquent real estate taxes or special assessments, including interest and penalties thereon, which may become payable as a result of the sale. General real estate taxes payable in the year of Closing shall be prorated by Seller and Buyer as of the Closing Date based upon a calendar year. Buyer shall pay applicable state deed tax.

- b. **Recording Costs.** Buyer will pay the recording fee for the deed. Seller will pay the cost of recording all documents necessary to place record title in the condition warranted and requested of Seller in this Agreement.
 - c. **Attorneys' Fees.** Each of the parties will pay its own attorneys' fees, except that a party defaulting under this Agreement or any closing document will pay the reasonable attorneys' fees and court costs incurred by the non-defaulting party to enforce its rights regarding such default.
5. **Representations and Warranties by Seller.** Seller represents and warrants to Buyer as follows:
- a. **Title to the Property.** Seller owns the Property, free and clear of all encumbrances other than those of public record.
 - b. **Assessments.** Seller has received no notice of actual or threatened special assessments or reassessments of Real Property.
 - c. **Environmental Laws.** To the best of Seller's knowledge, no toxic or wastes, petroleum, pollutants, contaminants or hazardous substance as defined by any law or regulation have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Property, except as disclosed to Buyer in writing. To the best of Seller's knowledge, there are no substances or conditions in or on the Property that may support a claim or cause of action under any federal, state or local environmental statutes, regulations or ordinances. No above ground or underground tanks are located in or about the Property, or have been located under, in or about the Property. There are no known wells within the meaning of Minn. Stat. §1031.005 on the Property. There are no individual sewage treatment systems located on the Property. Seller has or will prior to the Closing Date disclose to Buyer all environmental reports and studies with respect to the Real Property which are in Seller's possession. Seller is not aware of any methamphetamine production that has occurred on the Property. To the best of Seller's knowledge, the Property is free from items of archeological significance.
 - d. **Proceedings.** There is no action, litigation, investigation, condemnation or proceeding of any kind pending or threatened against Seller or any portion of the Property.
 - e. **Representations and Warranties.** The representations and warranties of Seller contained in this Agreement must be true now and on the Closing Date as if made on the Closing Date.
6. **Remedies.** If Buyer defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving written notice to Buyer. If Buyer fails to cure such default within 15 days of the date of such notice, this Agreement will terminate, and upon such termination. The termination of this Agreement will be the sole remedy available to Seller for such default by Buyer, and Buyer will not be liable for damages or specific performance. If Seller defaults under this Agreement, this provision does not preclude Buyer from seeking and recovering specific performance of this Agreement including other remedies.
7. **Notices.** Any notice required is given in accordance with this Agreement by delivering it mailed by United States mail, postage prepaid, or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Seller:

Leroy Charles Herbst Revocable Trust and
Catherine Marie Herbst Revocable Trust
4012 – 105th Avenue NE
Foley, MN 56329

If to Buyer:

City of Foley
251 Fourth Avenue
P.O. Box 709
Foley, MN 56329

cc: Rinke Noonan
c/o Adam A. Ripple
1015 W St. Germain St., Suite 300
St. Cloud, MN 56301
Aripple@RinkeNoonan.com

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit (except as to the time for acceptance of this offer which will only be effective upon receipt as provided for in paragraph 16).

8. Entire Agreement; Modification. This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.

9. Binding Effect. This Agreement binds and benefits the parties and their successors and assigns.

10. Survival. All of the terms, representations and warranties in this Agreement will survive and be enforceable after the Closing.

11. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement. Facsimile and emailed pdf signatures shall have the same effect as originals.

[Remainder of page intentionally left blank.]

Seller and Buyer have executed this Agreement as of the date first written above.

I agree to sell the property for the price and terms and conditions set forth above.

Dated: _____, 2021

LeRoy C. Herbst, as Trustee of the LeRoy Charles Herbst Revocable Trust, Seller

Catherine M. Herbst, as Trustee of the LeRoy Charles Herbst Revocable Trust, Seller

LeRoy C. Herbst, as Trustee of the Catherine Marie Herbst Revocable Trust, Seller

Catherine M. Herbst, as Trustee of the Catherine Marie Herbst Revocable Trust, Seller

I agree to purchase the property for the price and terms and conditions set forth above.

Dated: _____, 2021

CITY OF FOLEY, Buyer

By _____
Its Mayor

By _____
Its City Administrator-Clerk

June 27, 2021

Dear Sarah,

Please accept this letter as a notice of my resignation from my position as Pool Manager. My last day of employment will be July 24, 2021.

My decision to resign was made after careful consideration, as I truly am grateful the opportunities and learning experiences of this job. I have enjoyed working at the pool for the past five years, and I appreciate the professional guidance and support throughout the years. However, I need to pursue other opportunities due to personal reasons.

My last day reflects what is best for staffing, especially session two swim lessons. My efforts over the next few weeks are to turn over my responsibilities as smoothly as possible. Please let me know what you expect, so this process is completed to your satisfaction.

Thank you again for the opportunity, and I wish you and the pool all the best in the future.

Sincerely,
Amelia Winkelman

Bills List - July 13, 2021

Gross Salaries	Payroll - 6/4/21	\$	31,095.28
EFTPS	Federal Withholding	\$	5,470.63
MN Dept of Revenue	State Withholding	\$	1,108.38
State Treas. PERA	PERA	\$	6,082.62
Nationwide	Deferred Comp	\$	895.00
Pacific Life Ins	Deferred Comp/Roth IRA	\$	55.00
Further	HSA Contribution	\$	600.00

Gross Salaries	Payroll - 6/18/21	\$	33,776.29
EFTPS	Federal Withholding	\$	5,987.08
MN Dept of Revenue	State Withholding	\$	1,162.14
State Treas. PERA	PERA	\$	6,110.61
Nationwide	Deferred Comp	\$	895.00
Pacific Life Ins	Deferred Comp/Roth IRA	\$	55.00
Further	HSA Contribution	\$	600.00

Gross Salaries	Payroll - 7/2/21	\$	39,241.67
EFTPS	Federal Withholding	\$	7,271.74
MN Dept of Revenue	State Withholding	\$	1,354.97
State Treas. PERA	PERA	\$	5,908.87
Nationwide	Deferred Comp	\$	895.00
Pacific Life Ins	Deferred Comp/Roth IRA	\$	55.00
Further	HSA Contribution	\$	600.00

Gross Salaries - FIRE	Payroll - 7/2/21	\$	32,701.00
EFTPS	Federal Withholding	\$	5,503.24
MN Dept of Revenue	State Withholding	\$	300.00

Already Paid - 7/13/21

Cloudnet	Server Fee	\$	20.00
Delta Dental	Employee Dental Insurance	\$	1,092.15
East Central Energy	Utilities	\$	1,343.23
ESRI	GIS Renewal	\$	1,061.00
First National Bank of Omaha	Credit Card Purchases	\$	2,759.76
Further	Employee HSA Contribution & Admin Fee	\$	380.35
HealthPartners	July & August Health Insurance	\$	19,415.34
Marco Technologies	Copier Lease and Council Media Maint	\$	317.05
Midco	Phone and Internet Services	\$	730.29
MN Dept of Labor & Industry	Building Permit Surcharges	\$	84.40
MN Dept of Revenue	May 2021 Sales & Use Tax	\$	220.00
Postmaster	PO Box Annual Fee	\$	122.00
RevTrak	CC Processing Fees	\$	1,980.99
Sun Life Financial	Employee LTD Insurance	\$	199.51
USABLE Life	Employee Life Insurance	\$	209.00
Verizon Wireless	Cell Phone & Park Cameras	\$	498.85
Wex Bank	Credit Card Fuel Purchases	\$	2,238.20
Xcel Energy	Utilities	\$	5,130.06

To Be Paid - 7/13/21

Adam Foss	Lawn Mowing - 310 3rd Ave	\$	50.00
Advanced Graphix, Inc	PD 2021 Squad Graphics	\$	710.00
Alex Air Apparatus, Inc	FD Gear	\$	394.16
AllSpec Services	Building Official Services	\$	354.76
Benton County Abstract Company	WW Exp Property Recording	\$	85.00
Benton County Attorney	May 2021 PD Legal Fees	\$	187.00
Benton County Highway Dept	PD Fuel	\$	1,136.57
Benton County Recorders Office	Recording of Herbst Proeprty	\$	46.00
Bolton & Menk	WW Expansion	\$	107,529.43
Brock White	Pool Supplies	\$	519.20

Central McGowan	PD, FD, Public Works Cylinder & Medical Supplies	\$ 207.28
Cintas	Uniforms	\$ 401.19
Coborn's	Office Supplies	\$ 62.45
Concrete Science	Pool Coping	\$ 58,113.00
Customized Fire Rescue Training	Fire Dept Training	\$ 1,775.00
David Maybury	Utility Bill Refund	\$ 17.87
Diamond Vogel	Street & Pool Paint	\$ 4,183.21
Bond Trust Services	2015A Bond Payments	\$ 11,425.00
Emergency Automotive Technologies	FD Emergency Vehicle Maint	\$ 158.29
Ess Brothers and Sons	Sewer Supplies	\$ 661.00
Falcon National Bank	2021A Bond Payments	\$ 9,265.00
Ferguson Enterprises	Pool Supplies	\$ 81.90
Five Starr Auto	New Holland Repair	\$ 144.65
Foley Fuel & Lumber	Parks Repairs	\$ 437.10
Foley Hardware	Pool, Water, Parks, Safety, FD, Shop, Sewer Maint	\$ 999.94
Galls	PD Uniforms	\$ 1,314.91
Gilman Coop Creamery	Weed Spray	\$ 265.67
Gopher State One Call	Email Tickets	\$ 45.90
Granite Electronics	FD Radios	\$ 129.00
Handyman's Hardware	Pool Maint & Foley Fun Days	\$ 191.17
Harper Brooms	Pool, Street, & Park Brooms	\$ 112.50
Hawkins	Water & Pool Chemicals	\$ 7,463.65
Henry Embroidery & Screen Printing	Pool Apperal, PD Bike Safety	\$ 888.00
Interstate All Battery Center	PD Batteries	\$ 8.34
Jacob & Shelby Bowland	Utility Bill Refund	\$ 6.37
Kemble Inc	Compost, Parks, & Water Soil Screening	\$ 9,000.00
Locators & Supplies	Street Safety Equipment	\$ 291.34
Macqueen Emergency	FD, PW Emergency & Safety Equipment	\$ 12,396.18
MarTeck	Park, Pool & Office Supplies	\$ 1,194.00
Minnesota Fire Service Certification Board	FD Driver Training	\$ 725.00
MTI Distributing	Toro Mower Maint	\$ 209.93
Murphy Chevrolet	PD Squad Repair	\$ 475.43
Northland Trust Service	2018A Bond Payments	\$ 35,845.00
OPG-3, Inc	Scanner	\$ 885.00
Paul Ness	Compensation Study	\$ 3,823.65
Performance Pool and Spa	Pool Capacity Sign	\$ 49.98
Quality Flow Systems	Sewer Pump Repair	\$ 503.00
RecSupply	Pool Supplies	\$ 488.28
Rinke Noonan	Stevens CUP, OAA, Herbst, JBP, General Legal	\$ 2,036.00
RMB Environmental Laboratories	Water and Sewer Testing	\$ 796.00
Schlenner & Wenner	2020 Audit Fee	\$ 18,990.00
Shift Technologies	Antivirus and Antispam	\$ 75.60
Shirt Elliott Hendrickson	JPB-Stevens, Pouchtec, I&I, General Engineering	\$ 2,436.00
Staples	Office Supplies	\$ 176.45
Star Publications	Publications & Fun Days Parking Signs	\$ 1,631.76
MN Highway Safety & Research Center	PD Driver Training	\$ 445.00
Traut Companies	Pool Filters	\$ 580.00
USABlue Book	Sewer Supplies	\$ 60.68
Voss Lighting	Park Lighting	\$ 32.00
Werner Electric	Park and Pool Maint & Repairs	\$ 125.73
		\$ 528,169.22

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA

ORDINANCE NUMBER 457

AN ORDINANCE AMENDING THE CITY OF FOLEY'S ZONING ORDINANCE
RELATING TO SOLAR GARDENS

WHEREAS, the City of Foley wishes to amend its Zoning Ordinance by making revisions to Sections 4 (Definitions) of the Zoning Ordinance; and

WHEREAS, the City of Foley wishes to amend its Zoning Ordinance by making revisions to Section 11 (General Zoning District Provisions)

WHEREAS, the City of Foley issued a public hearing notice regarding this ordinance amendment and said public hearing was held on July 13, 2021.

NOW, THEREFORE, the City of Foley ordains as follows:

Section 1. The following additions shall be made to Section 4 of the City of Foley's Zoning Ordinance:

Subdivision 2: DEFINITIONS

1. **COMMUNITY SOLAR FARM:** A solar array composed of multiple solar panels on ground-mounted rack or poles which is not directly connected to or designed to serve the energy needs of the primary use but rather for the primary purpose of wholesale sales of generated electricity or a financial proxy for retail power. Community solar farms are a prohibited use in all zoning districts.
2. **PRIVATE SOLAR GARDEN:** A solar energy system greater than 5 acres which is directly connected to or designed to serve the energy needs of the primary use. Private solar gardens are a prohibited use in all zoning districts.
3. **SOLAR COLLECTOR:** A devise or combination of devices, structure, or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy and that contributes significantly to a structure's energy supply.
4. **SOLAR ENERGY:** Radiant energy (direct, diffuse, and reflected) received from the sun.
5. **SOLAR ENERGY SYSTEM:** A solar collector mounted on a building, pole or rack whose primary purpose is to harvest energy by transforming solar energy into another

form of energy or transferring heat from a collector to another medium using mechanical, electrical or chemical means.

Section 2. GENERAL ZONING DISTRICT PROVISIONS

Subdivision 4: Uses Not Provided for Within Zoning Districts

1. Any solar energy system larger than 2 feet by 2 feet in size which is not mounted on a roof of a building is strictly prohibited. Private solar gardens and community solar gardens are also strictly prohibited.

Section 3. Summary Publication.

At least four-fifths of the City Council's members direct the Administrator to publish only the title and a summary of this Ordinance as follows:

“ORDINANCE AMENDING SECTION 4 (DEFINITIONS) AND SECTION 11 (GENERAL ZONING DISTRICT PROVISIONS) OF THE CITY OF FOLEY’S ZONING CODE RELATED TO SOLAR GARDENS.

The ordinance amendment incorporates solar definitions and prohibits solar gardens within all zoning districts.

Approved this 13th day of July, 2021.

ATTEST:

Gerard L. Bettendorf, Mayor

Sarah A. Brunn, Administrator

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA

ORDINANCE NUMBER 458

AN ORDINANCE AMENDING THE CITY OF FOLEY'S ZONING ORDINANCE
RELATING TO INTERIM USE PERMITS

WHEREAS, the City of Foley wishes to amend its Zoning Ordinance by making revisions to Sections 22 (Conditional Use Permits) of the Zoning Ordinance; and

WHEREAS, the City of Foley issued a public hearing notice regarding this ordinance amendment and said public hearing was held on July 13, 2021.

NOW, THEREFORE, the City of Foley ordains as follows:

Section 1. The following additions shall be made to Section 22 of the City of Foley's Zoning Ordinance:

The zoning ordinance shall be revised with insertions depicted with underline:

SECTION 22: CONDITIONAL USE PERMITS AND INTERIM USE PERMITS

Subdivision 1: Purpose

The following item is added to existing Subdivision 1:

1. Conditional Use Permits and Interim Use Permits follow the same review process and are collectively referred to as Land Use Permits. The City may elect to issue an Interim Use Permit instead of a Conditional Use Permit for any listed conditional use.

Subdivisions 2-10: Reference to Land Use Permit

All references in Subdivisions 2 through 10 of "conditional use permit" is hereby replaced by "land use permit".

Subdivision 2: Procedure

10. General Conditions. If the City Council grants the Land Use Permit, it may impose conditions on it, or the Planning Commission, considers necessary to protect the public health, safety and welfare.

The following item #11 is added in between General Conditions and Written Findings:

11. Termination. An Interim Use Permit may be terminated on a date established in the permit, a change in zoning regulations, a change in ownership, or the occurrence of any condition established by the Council.

Subdivision 8: Time Limitation

1. Any land use permit may include an expiration date and the property owner will be responsible to submit the application for renewal of the permit. The City Council will review and consider all renewal applications, which must be submitted at least sixty (60) days before the expiration date. The criteria for renewal will be the same as for a new permit. The owner of the land will not be required to pay a fee for said review.

Section 3. Summary Publication.

At least four-fifths of the City Council's members direct the Administrator to publish only the title and a summary of this Ordinance as follows:

"ORDINANCE AMENDING SECTION 22 (CONDITONAL USE AND INTERIM USE PERMITS)

The ordinance amendment incorporates interim use permit language into city zoning ordinance.

Approved this 13th day of July, 2021.

ATTEST:

Gerard L. Bettendorf, Mayor

Sarah A. Brunn, Administrator

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA

ORDINANCE NUMBER 459

AN AMENDMENT TO DRIVEWAY ACCESS ONTO PUBLIC RIGHT-OF-WAY

THE COUNCIL OF THE CITY OF FOLEY HEREBY ORDAINS that the 1974 Code of Ordinances of the City of Foley, Section 801 Driveway Access Onto Public Right-of-Way, be amended to read as follows:

SECTION 1

Section 801:04. Issuance of Permit

Except as provided in Section 801:03, a permit shall be issued by the City Building Official or the Public Works Director after determining that the applicant has complied with the terms of this Chapter and paid the permit hereinafter specified.

SECTION 2

Section 801:07. General Requirements and Restrictions.

Subd. 4 Except as otherwise provided herein, all residential driveway approaches shall have a maximum width of 36 feet at the point of intersection with the traveled surface of the public road.

SECTION 3

Summary Publication.

At least four-fifths of the City Council's members direct the Administrator to publish only the title and a summary of this Ordinance as follows:

“AN AMENDMENT TO DRIVEWAY ACCESS ONTO PUBLIC RIGHT-OF-WAY. It is the intent and effect of this Ordinance to increase the maximum width of driveway approaches from 24 to 36 feet at the point of intersection with the traveled surface of the public road.”

A printed copy of the ordinance is available for inspection by any person during regular office hours at City Hall.

Adopted this 13th day of July, 2021

Gerard Bettendorf, Mayor

ATTEST:

Sarah Brunn, Administrator

Planning Commission Minutes

June 14, 2021 - 6:30 pm

Foley City Hall

Members Present: Jeff Gondeck, Bill Bronder, Deb Mathiowetz

Members Absent: Noel Lewandowski, Rosalie Musachio

Bronder called the Meeting to order @ 6:30 p.m.

Motion by Gondeck seconded by Mathiowetz to approve the agenda. Motion carried.

Motion by Mathiowetz seconded by Gondeck to approve the minutes from April 12, 2021. Motion carried.

Member Gondeck provided an update of City Council activities.

Discussion on solar moratorium

City Administrator Brunn gave an overview of the current solar moratorium and the need to make a decision on a new ordinance. The commission discussed many items including concerns of solar gardens being constructed in the city limits on valuable land, but also the need to allow for smaller solar items, such as panels on rooftops and small panels for equipment such as weather stations. Motion by Gondeck, seconded by Mathiowetz, to recommend to the city council an ordinance which prohibits a solar energy system larger than 2 feet by 2 feet, which is not mounted on a roof of a building, and also prohibiting community and private solar gardens within the city limits. Motion carried, unanimous.

Parking & Storage Ordinance

The city council again recommended the planning commission discuss the parking and storage ordinance. There was significant discussion held at the planning commission level regarding enforcement concerns, the number of people receiving letters, hard surfacing materials, and if it is being enforced equally as some residents indicated not everyone is being sent letters. Brunn had summary stats from the police department that 72 letters have been sent so far this year. There was also discussion on the city not enforcing campers in the backyard on the grass. City Administrator Brunn reminded the planning commission of a discussion on that item a number of months ago when the number of violations were high. The planning commission was also presented with long lists of violations provided by city residents. Concerns were expressed by Josh Beutz, 420 Norway Drive, and David Fradette, 476 Morgan Drive. After a lengthy discussion, the planning commission indicated the ordinance needs to remain and needs to be enforced by the city council. There was also discussion on who interprets the ordinance as some city residents disagree with the city attorney's interpretation. Gondeck indicated the council retains legal counsel for a reason and will follow the city attorney's recommendation. The planning commission expressed a desire to send it back to the council, indicating a need for enforcement and also considering a possible site plan being submitted before any improvements are done.

Discussion on Interim Use Permit Ordinance

Brunn gave an overview of the need to add interim use permit language within the conditional use permit zoning ordinance. Motion by Gondeck, seconded by Mathiowetz, to recommend changes suggested by staff to the city council. Motion carried, unanimous.

Other Business

Brunn indicated a joint meeting is being planned between the City Council and Planning Commission for Tuesday, July 13 @ 6:30pm to discuss the land use plan. Brunn also updated the commission on the industrial park expansion project.

Next meeting is July 12, 2021.

Motion to adjourn the meeting by Mathiowetz, seconded by Gondeck. Motion carried, unanimously.

Submitted by: Sarah Brunn, City Administrator

Section 1030 – Motor, Commercial Vehicle, R.V. and Trailer Storage and Parking

Section 1030:00. Purpose. The City Council finds that in order to preserve and protect the health, safety and welfare of the citizens of the City, it is desirable to reduce traffic congestion and facilitate easier and less dangerous passage of motor vehicles on city streets; to increase access for emergency services; to prevent conditions which are likely to create hazardous road conditions or impede or likely to impede the free movement of law enforcement, fire, health or other emergency traffic or citizens motor travel; and to preserve the character of the neighborhood of residential zoned districts.

The intent and purpose of this Ordinance is to establish regulations on the parking of Motor and Commercial Vehicles, Recreational Vehicles, Equipment and Utility Trailers on and within public rights-of-way.

Nothing contained herein shall be construed as exempting a Motor or Commercial Vehicle, Recreational Vehicle, Equipment or Utility Trailer from the application of federal, state, and local laws, rules, regulations and ordinances, including, but not limited to, licensing requirements, other parking and traffic regulations, laws and ordinances governing hazardous property and nuisances and Minnesota Statutes Chapter 168B – regulating junked, abandoned and unauthorized vehicles.

Section 1030:02. Application. All Motor and Commercial Vehicles, Semi-Trailers, Trailers, Trucks, Truck-Trailers, Recreational Vehicles, Equipment and Utility Trailers parked or stored, on or within a public right-of-way, or on private property, shall be subject to this Ordinance. Nothing in this Ordinance shall limit the number of or prohibit the parking and/or storage of any vehicle, equipment or trailer when fully enclosed within a garage or any other accessory storage building as allowed by Ordinance.

Section 1030:04. Definitions. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein:

- A. Commercial Vehicle. Commercial vehicle shall be defined as all motor vehicles used for the transportation of passengers for hire, goods, wares, or merchandise, weighing 15,000 pounds gross vehicle weight, or more, without load, OR being more than twenty-two (22) feet in over-all length OR having more than two (2) axles. Notwithstanding the aforementioned, the term commercial (in general) shall be defined as, but not limited to; of or relating to commerce OR engaged in commerce, OR used primarily in the conduct of a business as opposed to private family or individual use, OR for the purpose of making a profit. Commercial vehicles may also be identified by signage on the unit. Provisions of this ordinance shall apply to vehicles such as, but not limited to: semi-trailers, truck-tractors, tanker-trucks, construction vehicles including backhoes, bobcats, bucket loaders, track vehicles, buses, garbage hauling trucks and dumpsters.
- B. Crosswalk. The term Crosswalk shall mean: (1) that portion of a roadway ordinarily included with the prolongation or connection of the lateral lines of sidewalks at intersections, or (2) any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.
- C. Driveway. Driveway shall mean the improved or unimproved place on private property that a vehicle would have to travel over in a direct path in order to enter a garage or carport, or to enter an exterior or interior side yard immediately adjacent to a garage or carport, from a designated entry/exit point on a public right-of-way.

- D. Driveway Approach. Driveway approach shall mean the area, construction or facility between the roadway of a public street and private property intended to provide access for vehicles from a roadway or a public street to private property. For clarification, a driveway approach must provide access to something definite on private property such as a parking area, a driveway, or a door intended and used for the entrance of vehicles.
- E. Intersection. Intersection shall mean the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two streets which join one another, at, or approximately at, right angles, or the area within which vehicle traveling upon different highways joining at any other angle may come in conflict.
- F. Motor Vehicle. A Motor Vehicle shall mean a device or piece of mechanized equipment for the purpose of transporting passengers, goods, or apparatus' that is propelled other than by muscular power.
- G. Parking Surface. A hard surfaced driveway, or surface area constructed of concrete, blacktop (asphalt) or a similar hard, durable, and dust-free permanent surface designed to properly drain surface water and prevent water drainage onto adjacent properties or walkways as regulated in the City of Foley Zoning Ordinance #319. Crushed granite or similar dust-free aggregate are only allowed as provided in Section 1030:12, Subdivision 3; gravel is prohibited.
 - 1.) A Parking Surface for parking or storage shall be located no closer than five (5) feet to a side lot line, or the required side yard setback, whichever is less.
- H. Recreational Vehicle. Recreational Vehicle (RV) shall mean that class of vehicles that are not for commercial use, but intended for recreational use, including, but not limited to: a motor home, travel trailer, camper shell, cab-over-camper, fifth wheel, tent and camping trailers, boats (whether mounted on a trailer or not), off-highway vehicles, all-terrain vehicles (ATV's), snowmobiles, sand/dune buggies, personal watercraft, lawn/garden tractors, golf carts, and go-carts.
- I. Routine / Routinely. A period of time exceeding 24 hours.
- J. Semi-Trailer. Semi-trailer shall be defined as a vehicle of the trailer type so designed and used in conjunction with a truck-tractor that a considerable part of its own weight or that of its load rests upon and is carried by the truck-tractor and shall include a trailer drawn by a truck-tractor semi-trailer combination.
- K. Stored / Storage. Stored or Storage shall be defined as a means to put away or keep for use in the future. Any motor vehicle, equipment or trailer as defined in the Ordinance, maintained in approximately the same location, on the same site or property, for 24 hours or more shall be deemed stored.
- L. Trailer. Trailer shall be defined as any vehicle designed for carrying property or passengers in its own structure and for being drawn by a motor vehicle but shall not include a trailer drawn by a truck-tractor semi-trailer combination, or an auxiliary axle on a motor vehicle which carries a portion of the weight of the motor vehicle to which it is attached.

- M. Truck. Truck shall be defined as any motor vehicle designed and used for carrying things other than passengers, except pickup trucks and vans with a manufacturer's normal capacity of 1 ton or less and commonly known as a pickup truck.
- N. Truck-Tractor. Truck-tractor shall be defined as a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn, AND a motor vehicle designed and used primarily for drawing other vehicles used exclusively for transporting motor vehicles and capable of carrying motor vehicles on its own structure.
- O. Utility Trailer. Utility trailer shall mean a non-motorized unit not defined as a recreational vehicle that has an axle and a frame that can be used to haul any type of material or equipment for recreational, non-commercial or agricultural purposes such as, but not limited to, boat trailers, horse trailers, trailers mounted with recreational vehicles such as a water craft or off-road vehicles, or implements of husbandry.
- P. Vehicle. For the purpose of this Ordinance, Vehicle shall refer to any of the aforementioned definitions including, but not limited to motor vehicle, commercial vehicle, semi-trailers, trailers, trucks, truck-tractors, RV's, equipment or utility trailers.
- Q. Gravel. Gravel shall mean crushed limestone or other non-granite aggregate containing fine materials often referred to as "Class 5 Gravel," "Class 2 Buff Limestone," "Class 2 Red Limestone," or other typical road base materials.

Section 1030:06. Parking Regulations.

Subdivision 1. No public street, property, alley or right-of-way shall be used for the storage of Motor Vehicles, Commercial Vehicles, RV's, Equipment or Utility Trailers.

Subdivision 2. In no instance shall a Vehicle be parked or stored where any portion thereof blocks or overhangs the sidewalk, trail way, boulevard or curb within the public right-of-way.

Subdivision 3. A Vehicle shall not be parked or stored where such parking or storage constitutes a clear and demonstrable traffic hazard and/or threat to public health and safety such as obstruction of sight lines or flow of traffic.

Subdivision 4. A Vehicle shall not be parked within the vehicular travel portion, or driving lane, of any public or private street or roadway.

Subdivision 5. It is unlawful for any person to stop, stand, store or park a Vehicle in any of the following places, except when necessary to avoid conflict with other traffic, OR if in compliance with the specific directions of a traffic-control device or a person authorized under this code to direct traffic:

- a. in front of the access to a public or private driveway or trail way including the driveway apron, curb cut and/or curb return;
- b. within ten (10) feet of a fire hydrant or a mailbox;
- c. on any surface other than a Parking Surface as defined by City Ordinance;
- d. at any place where official signs prohibit or restrict stopping, parking or both;
- e. within ten (10) feet of any Intersection or Crosswalk.

Subdivision 6. All Utility Trailers must be attached to the tow vehicle if parked on a public street. Any owner of a detached Utility Trailer parked on the public street for any length of time will be subject to immediate citation and/or to the removal of the Utility Trailer at the owner's expense.

Subdivision 7. When parked or stored within the City, Commercial Vehicles, Semi-Trailers, Trucks, Truck-Trailers, Motor Vehicles, RV's, Equipment or Utility Trailers shall be kept neat and clean at all times. Debris, excessive dirt, spider webs, weed accumulation on and under such units are prohibited at all times as are broken windows and flat tires. In no case shall any Vehicle be used as a storage unit. Any Vehicle parked or stored in violation of this ordinance or which constitutes nuisance or hazardous conditions shall be declared a nuisance and subject to abatement.

Subdivision 8. All covers, tarps or any other material employed to protect a stored Vehicle from the elements must be secured and be weatherproof. Rocks/bricks or other weighted items shall not be used to secure the weatherproofing cover.

Subdivision 9. In no instances shall any Vehicle be parked or stored in driveways or unenclosed areas visible to the public, including a Parking Surface as defined above, unless it is in a fully-operational condition bearing current registration (if licensing required by MN Department of Motor Vehicle or any other State authority for use).

Subdivision 10. At no time shall any Vehicle be parked and/or stored on a residential lot that has no principal structure, however, this subsection shall not apply if:

- a. said lot is adjacent to a lot on which there is an occupied residence; AND
- b. both lots are under common ownership; AND
- c. the Vehicle parked and/or stored on the vacant lot is owned by and license and/or registered to the occupant of the resident on said adjacent lot.

Section 1030:08. Commercial Vehicle Storage.

Subdivision 1. One Commercial Vehicle having a licensed gross vehicle weight over 15,000 pounds may be parked on private property in any residential zoned district provided it meets the following requirements:

- a. the owner or operator of the vehicle must reside on the property; AND
- b. the vehicle shall be parked on a hard surface driveway in compliance with the applicable zoning district requirements; AND
- c. the permitted vehicle shall be parked at least ten (10) feet from the front property line and five (5) feet from the side property line; AND
- d. noise from idling of the engine shall not exceed regulations of the existing noise ordinance. The vehicle's engine shall not be idled for more than thirty (30) minutes in any one (1) hour period. In no circumstance may the engine idle for more than two periods, lasting thirty (30) minutes each, in one twenty-four (24) hour period. For purposes of this section, idling shall mean running the vehicle engine for more than three (3) minutes. In no instance shall the vehicle's engine idle (3 minutes) in violation of this or any other ordinance between the hours of 10:30 p.m. and 7:00 a.m.

Section 1030:10. Recreational Vehicle Storage.

Subdivision 1. At no time shall any Vehicle be used for primary living or housekeeping purpose.

- a. Exceptions may be granted for travelers or out of town guests visiting with prior notification to the City Administrator for a period not to exceed seven (7) days.

Subdivision 2. Recreational vehicles shall be mobile and shall not be permanently affixed in the ground in a manner that would prevent removal.

Subdivision 3. Unmounted slide-in pickup campers shall be stored no higher than twenty (20) inches above the ground and shall be securely supported at all four (4) corners by solid support blocks or support mechanisms.

Subdivision 4. Except for routine maintenance or during emergency conditions when power supply is disrupted, the operation of a recreation vehicle generator plant shall not be permitted in residential districts. For the purpose of this subdivision, routine maintenance periods shall not exceed sixty (60) minutes per month.

Section 1030:12. Storage On Residential Lots.

Subdivision 1. No Motor or Commercial Vehicle, RV, Equipment, or Utility Trailer shall be routinely parked on an unsurfaced area, such as dirt or vegetation, in the front yard (or within the front yard setbacks) of residential lots.

Subdivision 2. Storage of Vehicles shall be limited to a garage or other permitted accessory structure, or designated driveway areas in the front yard of residential properties.

- a. The unenclosed parking and/or storage of Vehicles shall be limited to a total number of six (6) units parked upon the hard surfaced driveway or a Parking Surface as defined above, within the front of a residential lot.
- b. Notwithstanding the provisions of this section, Vehicles may be parked temporarily on an unsurfaced area of the front yard of a residential lot overnight as is necessary to comply with winter parking regulations from November 1 to April, OR for a period not to exceed 24 hours, to load, unload, clean or repair the Vehicle year-round. At no time shall a vehicle be parked on public right-of-way as regulated by Section 1030:06.
- c. This subdivision shall not be construed to allow parking or storage of nuisance, junked or abandoned vehicles or units otherwise prohibited by any other ordinance or subdivision.

Subdivision 3. All Vehicles in the side yard shall be parked or stored on a Parking Surface as defined by this Ordinance. Parking Surfaces in the side yard may include crushed granite or similar dust-free aggregate not to exceed an aggregate size of 1 ½ inch in diameter; gravel is prohibited. If parking surface is made of crushed granite or similar dust-free aggregate, only as allowed by Section 1030:12, the area must also be contained by a barrier and underlain with a fabric or plastic barrier to prevent weed or grass growth through the aggregate area.

Subdivision 4. Vehicles parked within a back yard shall comply with rear and side yard setback requirements applicable to accessory structures and all other applicable ordinances. Parking Surfaces in the back yard may include crushed granite or similar dust-free aggregate; gravel is prohibited. If parking surface is made of crushed granite or similar dust-free aggregate, only as allowed by Section 1030:12, the area must also be contained by a barrier and underlain with a

fabric or plastic barrier to prevent weed or grass growth through the aggregate area. Utility trailers parked in the back yard may be parked on unsurfaced areas in lieu of a Parking Surface.

Subdivision 5. Vehicles stored on a property shall be subject to the height provisions of "Accessory Buildings" of the City of Foley Zoning Ordinance 319.

Section 1030:14. Exceptions.

Subdivision 1. The above provisions shall not apply to those Vehicles temporarily parked by the driver thereof, for the purpose of being loaded or unloaded while making actual deliveries of goods and merchandise; OR while engaged in construction, general repair, moving or other type of commercial work; OR parked for temporary maintenance or emergency repairs not to exceed 24 hours providing that such parking does not impair the regular flow of traffic or cause an undue safety concern.

Subdivision 2. The provisions of this Ordinance shall not apply to street construction, maintenance, and repair equipment trailers or vehicles used by the public service utility companies engaged in repairing or extending public service utilities.

Section 1030:16. Variance. Minor modifications or adjustments to this Ordinance may be administratively approved by the City Administrator by means of a Motor Vehicle Parking Variance where conditions such as, but not limited to, lot size, lot construction or improvements warrant a minor modification or adjustment. If the City Administrator cannot make such a determination, the matter may be appealed to the City's Planning Commission with the appropriate application for variance process and appeal fee filed. In no instance shall a modification or adjustment be made to the provisions of this Ordinance if it violates a safety concern/regulation of this or any other City Ordinance.

Section 1030:18. Enforcement and Penalty.

Subdivision 1. Notice of Violation. When a property owner permits or allows the parking and/or storage of a Vehicle to exist in violation of this Ordinance, the City Administrator, or Law Enforcement Officer, may serve notice upon said owner ordering the owner to remove the vehicle within five (5) days of the date of the notice. The notice shall state that in case of noncompliance the City shall have the vehicle removed from the premises at the expense of the owner and that if unpaid, the charge for such towing will be made a special assessment against the property concerned. The notice shall also inform the property owner that the order may be appealed by filing a written notice of appeal with the City Administrator within the five (5) days of the date of notice.

Subdivision 2. Appeal. If an owner who received notice to remove a vehicle provided for by this Ordinance believes that the order has been wrongly issued, said owner may appeal the order by filing with the City Administrator a written notice of appeal within five (5) days of the date of the notice. Upon receipt of notice of an appeal the City Administrator shall place the matter on the next regular Council Agenda, when the matter will be heard by the City Council. The owner may present testimony and information to the Council, as may the City Administrator, City staff, and other concerned citizens. After due consideration, the City Council shall decide whether the order will stand. In the event the Council determines that the order is appropriate, the owner shall have three (3) days from the date of the Council's decision to comply with the order.

Subdivision 3. Failure to Comply. If an owner who has received an order under this Ordinance fails to comply within the applicable time frame, the City may remove the vehicle in violation of

this ordinance from the premises. The City Administrator shall keep a record showing the cost of such.

Subdivision 4. Owner Responsible for Payment. In the event the City is required to take action to bring any property in compliance with this Ordinance, the owner of the property shall be responsible to pay all such costs and expenses incurred by the City (including costs and expenses associated with City Staff time). Upon determining such costs and expenses of the City, the owner of the property will be sent an invoice by regular mail (sent to the address shown on the property tax statement for the property). In the event the invoice is not paid in full within thirty (30) days of the date of mailing, the City Clerk may certify said expenses to the City Council for assessment against the property. Thereupon, said costs and expenses shall become a levied special assessment against the property to be paid in the following year together with the property taxes.

Section 1030:20. Severability. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 1030:22. Adherence To Any Other Ordinance. The parking and/or storage of any Vehicle within the City of Foley shall comply with all applicable requirements and/or provisions of this or any other existing City Ordinance including but not limited to the ordinances regulating noise, public nuisance, zoning, traffic and winter parking.

Section 1030:24. Effective Date. This Ordinance shall be effective upon its passage and publication.

Chapter X – TRAFFIC REGULATIONS of the 1974 Code of Ordinance was amended by Ordinance Number 416 adding Section 1030 Motor, Commercial Vehicle, R.V. and Trailer Storage and Parking, adopted May 6, 2014, published and effective May 13, 2014.

Chapter X – TRAFFIC REGULATIONS of the 1974 Code of Ordinance was amended by Ordinance Number 448 amending Section 1030:04 G, Parking Surfaces; Section 1030:04 added Q, Gravel; Section 1030:12 G, Subdivision 3 & 4, adopted April 7, 2020, published and effective April 14, 2020.

Sarah Brunn

From: Mark Pappenfus
Sent: Tuesday, June 15, 2021 11:11 AM
To: Sarah Brunn
Subject: RE: Compost Site Clean Up Costs
Attachments: Compost Site Garbage & TV.pdf

Sarah,

Did you ever get everything for this. The attached slips are coded wrong – Slip that says garbage is TV's and TV's is garbage slip.

Probably 4 Hrs. for Jesse, & Bryan each and 3 Hrs. for Adam. 2 trips to St. Cloud to get rid of TV's & garbage if we care to figure that expense.

Thanks, Mark

From: Sarah Brunn <sbrunn@ci.foley.mn.us>
Sent: Thursday, June 3, 2021 8:58 AM
To: Katie McMillin <KMcMillin@ci.foley.mn.us>; Mark Pappenfus <mpappenfus@ci.foley.mn.us>
Subject: Compost Site Clean Up Costs

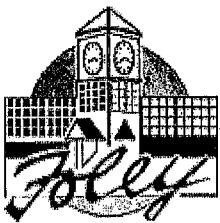
Good morning.

I am going through my meeting notes and was hoping we could use this email to collect our costs for the compost clean up. Dumpster, staff clean-up, etc.? Please reply to this email with what you have so we can take it back to the council next meeting to make a decision on moving forward.

Also, Katie, if you could find out what the fine is that they are being charged and if we get any of those fees? That might also be helpful for the council to know.

Thanks.

Sarah A. Brunn
City Administrator
sbrunn@ci.foley.mn.us



City of Foley
251 4th Avenue North
P.O. Box 709
Foley, MN 56329
www.ci.foley.mn.us
320-968-7260 Office
320-968-6325 Fax

Dumpster	—	172.91
TV's	—	90.00
Mileage	—	22.40
Staff Time	—	383.75
		<hr/>
		\$ 669.06
Total Compost Clean-up		

Invoice

Central Appliance Recyclers
3107 Hwy 10 S
320-252-3221
St. Cloud, MN 56304 USA

Page: 1
Ticket #: T21-1336
Ticket date: 5/7/21

Sold to:

Customer #: WALK-IN

Terms:

Quantity	Item #	Description	Ship from location	Price	Selling unit	Ext prc
180	BENTONVDD	Benton VDD		0.50	lbs \$	90.00

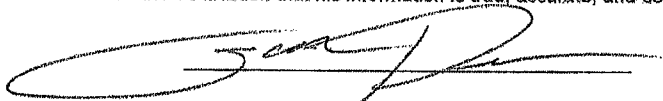
*Compost - ~~Garbage~~
Cleanup TV's*

Certificate of Recycling

The undersigned certifies to the best of his/her knowledge the above materials and/or devices have been properly recycled and disposed of in accordance with Federal, State and local Regulations.

This document also certifies that all data on storage devices has been destroyed. Certified data destruction constitutes either sanitizing the storage devices to Department of Defense standards or physically destroying the storage device.

I certify as the company official having supervisory responsibility for persons who while acting under my direct instruction, made the verification that his information is true, accurate, and complete.



Sarah B. Posa - Site Manager

User: CAROL

Total line items: 1

Sale subtotal: \$ 90.00

Tax: \$ -

Total: 90.00

Tender:

credit card # ****6424

90.00

Net tender: 90.00

MINDEN TRANSFER STATION 320-252-0711
245 35th Ave SE 245 35th Ave SE-St Cloud, MN 56304

Customer 000999

CASH ACCOUNT-PUBLIC
3490 2nd St SE
Saint Cloud, MN 56304
Contract:Public MSW 2

SITE 01	TICKET #	1029358	CELL
WEIGHMASTER		Dale M.	
DATE/TIME IN		4/27/21 11:07 am	DATE/TIME OUT 21 11:15 am
VEHICLE		PUBLIC1	CONTAINER
REFERENCE		foley public works	
BILL OF LADING			

SCALE IN GROSS WEIGHT 10,200 NET TONS 0.78
SCALE OUT TARE WEIGHT 8,640 NET WEIGHT 1,560

INBOUND
CASH

QTY	UNIT	DESCRIPTION	RATE	EXTENSION	TAX	TOTAL
0.00	YD	Tracking QTY				
1560.00	lb	MSW				
1.00		ENVIRONMENTAL FEE 1	\$0.08	\$124.80	\$21.22	\$146.02
1.00		FUEL RECOVERY FEE	\$18.00	\$18.00	\$0.00	\$18.00
			7.12%	\$8.89	\$0.00	\$8.89
		Compost Cleanup Dumpster Compost site				
		Signature _____				
			MN SWMT	REST MSW	Tax Total \$21.22	
				Payment(s)		

CREDIT CARD-SCALE

\$172.91

NET AMOUNT

\$172.91
TENDERED

\$0.00
CHANGE

CHECK#

The undersigned individual signing this document on behalf of Customer acknowledges that he or she has read and understands the terms and conditions on the reverse side and that he or she has the authority to sign this document on behalf of the customer.

3-F042UPR (04/19)

SIGNATURE _____

115A.99 LITTER; PENALTIES AND DAMAGES.

Subdivision 1. **Civil penalty.** (a) A person who unlawfully places any portion of solid waste in or on public or private lands, shorelands, roadways, or waters is subject to a civil penalty of not less than twice nor more than five times the costs incurred by a state agency or political subdivision to remove, process, and dispose of the waste.

(b) A state agency or political subdivision that incurs costs as described in this section may bring an action to recover the civil penalty, related legal, administrative, and court costs, and damages for injury to or pollution of the lands, shorelands, roadways, or waters where the waste was placed if owned or managed by the entity bringing the action.

Subd. 2. **Disposition.** Civil penalties and damages collected under subdivision 1 must be collected and distributed as required in chapter 484.

Subd. 3. **Joinder; private action for damages.** A private person may join an action by the state or a political subdivision to recover a civil penalty under subdivision 1 to allow the person to recover damages for waste unlawfully placed on the person's property.

History: *1Sp1989 c 1 art 20 s 17; 1994 c 412 s 2; 2007 c 13 art 3 s 10*

WASTEWATER TREATMENT SYSTEM USE AGREEMENT BETWEEN THE CITY OF ST. CLOUD, MINNESOTA AND CITY OF FOLEY, MINNESOTA.

This Agreement, made and entered into this _____ day of _____, 2021, by and between the City of St. Cloud, Minnesota, hereinafter referred to as the "City," acting as the provider of wastewater conveyance and treatment services and as the holder of the National Pollutant Discharge Elimination System (NPDES) Permit and State Disposal System Permit (SDS), in accordance with Section 402 of the Clean Water Act, whereas the United States Environmental Protection Agency (EPA) authorizes the Minnesota Pollution Control Agency (MPCA) to issue this permit, and City of Contract User, Minnesota, hereinafter referred to as the "Contract User."

RECITALS

- A. The City owns and operates the St. Cloud Wastewater Treatment Facility (WWTF) and the Wastewater Conveyance System (WWCS). The WWTF and WWCS together comprise the St. Cloud Wastewater Treatment System (SCWWTS or WWTS). The purpose of the WWTS is to provide for the conveyance and treatment of domestic, commercial and industrial wastewater.
- B. The existing WWTF began operation in June 1976, replacing the St. Cloud Sewage Treatment Plant that began operation in April 1956. The WWTF cost approximately \$16,000,000 to construct and was partially funded through state and federal grants made available through the 1972 Clean Water Act.
- C. The City received a construction grant for the WWTF and in compliance with that grant, the requirements of the Clean Water Act of 1972, and the regulations issued pursuant to said Act, has adopted a Sewer Use Ordinance regulating the discharge of wastewater into the City's wastewater system. The City has adopted a System of User Charges to assure that recipients of wastewater conveyance and treatment services pay the proportionate share of the cost of operation, maintenance, improvement, expansion and replacement of the WWTS.
- D. The City and the cities of St. Augusta, St. Joseph, Sartell, Sauk Rapids and Waite Park had previously entered into Cooperative Construction Agreements and Sewer Use Agreements that establish wastewater treatment charges, flow allocations and discharge limitations for the SIS and the WWTF. The flow allocations and discharge limitations for the WWTF are set forth in Article II, Section H of this Agreement. The established flow allocations and discharge limitations for the SIS are set forth in EXHIBIT A of this Agreement. The above-referenced cities collectively comprise the membership of the St. Cloud Area Wastewater Advisory Commission (SCAWAC). The goal of SCAWAC is to promote the continued equitable and efficient distribution of wastewater conveyance and treatment facility costs and services.

- E. In August 2003, the SCAWAC requested the City complete a Wastewater Treatment Facilities Plan to evaluate current and future growth needs and ensure there is adequate wastewater treatment capacity in the future. SCAWAC reviewed the Wastewater Treatment Facilities Plan and approved recommendations for the rehabilitation, upgrade and expansion of the WWTF.
- F. Subsequent to the adoption of the Wastewater Treatment Facilities Plan, the cities of St. Augusta, St. Cloud, St. Joseph, Sartell, Sauk Rapids and Waite Park entered into a Cooperative Design and Construction Agreement with the City dated May 8, 2008, setting forth the financial participation of the parties in the design, upgrade, expansion and rehabilitation of the WWTF.

ARTICLE I DEFINITIONS

Unless the context specifically indicates otherwise, the following terms used in this Agreement, shall have the meanings hereinafter designated.

“Carbonaceous Biochemical Oxygen Demand (C_{BOD5})” means the quantity of oxygen utilized in the biochemical oxidation of organic matter, in the presence of a nitrification inhibitor, under standard laboratory procedures in five (5) days at twenty degrees (20°) Centigrade expressed in terms of weight and concentration (milligrams per liter or mg/L).

“CFR” means the Code of Federal Regulations, which is the codification of general and permanent rules of departments and agencies of the federal government.

“City” means the City of St. Cloud or the City Council of St. Cloud or St. Cloud Public Utilities.

“Contract User” means the City of (Sauk Rapids, Waite Park, Sartell, St. Joseph, St. Augusta) or the City Council of Contract User.

“EPA” means the United States Environmental Protection Agency.

“Flow” means the quantity of wastewater expressed in gallons or cubic feet per twenty-four (24) hours.

“Industrial Discharge Permit or Permit” means a permit issued by the City or Contract user to an Industrial User authorizing them to use the SCWWTS as established herein.

“Industrial Waste” means solid, liquid, or gaseous wastes, excluding domestic waste, resulting from any industrial, manufacturing, commercial, institutional or business activity, or from the development, recovery, or processing of a natural resource.

“Industrial User” means any person who discharges industrial waste into the SCWWTS.

“MPCA” means the Minnesota Pollution Control Agency.

“National Pollutant Discharge Elimination System (NPDES) Permit” means any permit or requirements issued by the Minnesota Pollution Control Agency (MPCA) pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); for the purpose of regulating the discharge of wastewater, industrial wastes, or other wastes under the authority of Section 402 of the Clean Water Act.

“Permittee” means a user who is permitted through the Pretreatment Program by the City or a Contract User authorized to discharge wastewater into the SCWWTS pursuant to an Industrial Discharge Permit.

“Publicly Owned Treatment Works (POTW)” means the treatment system as defined by Section 212 of the Clean Water Act, which is owned by the municipality (as defined by Section 502(4) of the Act). This includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal solids residuals or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to the wastewater treatment facility (WWTF). The term also means the municipality as defined in Section 502(4) of the Clean Water Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment system.

“Pretreatment” means the process of reducing the amount of pollutants, eliminating pollutants, or altering the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the SCWWTS. The reduction, elimination, or alteration may be obtained by physical, chemical or biological processes, process changes or other means, except as prohibited by this Agreement or applicable Sewer Use Ordinance.

“Pretreatment Standards” means standards for industrial groups (categories) promulgated by the EPA pursuant to the Clean Water Act which regulates the quality of effluent discharge to publicly owned treatment works and must be met by all users subject to such standards.

“St. Cloud Area Wastewater Advisory Commission (SCAWAC)” is an advisory group whose objectives are to share information, improve understanding of regional wastewater issues, and improve the level of cooperation in the resolution of regional wastewater issues. Members of SCAWAC include the cities of St. Augusta, St. Cloud, St. Joseph, Sauk Rapids, Sartell, and Waite Park.

“St. Cloud Wastewater Treatment System (SCWWTS or WWTS)” means the combined Publicly Owned Treatment Works (POTW) or Wastewater Treatment Facility (WWTF) described herein, together with the Wastewater Conveyance System (WWCS) which includes the Sewer Interceptor System (SIS).

“Sewer Interceptor System (SIS)” means the structures identified in EXHIBIT A to this Agreement, including the Metro Interceptor, the Pan Interceptor, the Tri-City Interceptor, the Lincoln Avenue Interceptor, the Quebecor Trunk Sewer System, and the 38th Avenue and 54th Avenue Sewer Trunk System, and their respective components as identified in EXHIBIT A.

“Significant Industrial User (SIU)” means any and all Industrial Users subject to categorical pretreatment standards under 40 C.F.R. 403.6 and 40 C.F.R. Chapter I, Subchapter N and any other Industrial User that discharges an average of 25,000 gallons per day or more of process wastewater to the WWTF (excluding sanitary, noncontact cooling and boiler blowdown wastewater), contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the WWTF, or is designated as such by the control authority as defined in 40 C.F.R. 403.12(a) on the basis that the Industrial User has a reasonable potential for adversely affecting the

WWTF operation or for violating any pretreatment standard or requirement in accordance with 40 C.F.R. 403.8(f)(6).

“Total Suspended Solids (TSS)” means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by a standard glass fiber filter.

“Wastewater Conveyance System (WWCS)” means the Sewer Interceptor System (SIS), the Main Liftstation, the TriCity Liftstation, and related force mains and sewer mains that convey wastewater to the WWTF.

“Wastewater Treatment Facility (WWTF)” has the same meaning as “Publicly Owned Treatment Works (POTW),” defined above. The terms may be used interchangeably.

ARTICLE II SERVICE CONDITIONS

A. Purpose

The purpose of this Agreement is to set forth the conditions by which the Contract User may discharge a defined maximum amount of wastewater flow and load into the WWTS for conveyance and treatment services and to establish mutually acceptable standards and billing procedures.

B. Rights of Use

- a. The Contract User shall have the right to discharge into the WWTS domestic, commercial, and industrial wastewater as long as the Contract User complies with the provisions of this Agreement or until this Agreement is terminated as otherwise provided herein.
- b. The parties agree that if either party believes the effect of this Agreement is inequitable or unfair, such party may by ninety (90) days of written notice, or sooner if agreed in writing by both parties, request renegotiation of any part of this Agreement and the other party will in good faith participate in such negotiations.
- c. If at any time this Agreement is terminated, the Contract User is responsible for its proportionate share of any existing WWTS debt service.

C. Compliance with Applicable Laws

- a. The Contract User shall adopt, maintain and enforce the following in such a manner as to at all times comply with the Clean Water Act of 1972 and any further or supplementary amendments thereto:
 1. A system of charges to ensure the Contract User is able to pay its proportionate share of the cost of operation, maintenance, expansion, rehabilitation and improvement of the WWTS.
 2. An ordinance related to sewer use containing provisions that are, at a minimum, as stringent as the City of St. Cloud's Sewer Use Ordinance. The applicable ordinance shall ensure that new sewer mains, force mains, pump stations and service connections are properly designed and constructed.
- b. In the construction, maintenance, and operation of its sewer system, the Contract User will comply with applicable State and Federal laws.
- c. The City shall enforce its Sewer Use Ordinance at the points of discharge from the Contract User into the WWTS. If the Contract User discharges wastewater in violation of applicable permits or Sewer Use Ordinances to the WWTS, the City may utilize any of the remedies provided in Article II, Section H, paragraph (c) as relating to the unauthorized discharge.
- d. The City and Contract User shall not allow any user from outside their respective corporate limits to discharge wastewater into their respective sewer systems without the prior written approval of the City and those other Contract Users who are parties to a joint WWCS structure to which wastewater is proposed to be discharged.

D. Operation and Maintenance

- a. The City and the Contract User shall continue to control, own, operate, and maintain their respective wastewater collection systems, except for joint trunk sewer lines, forcemains and interceptors that are considered part of the WWCS and identified in EXHIBIT A.
- b. The City shall, in consultation with SCAWAC, develop a regular operation, monitoring and maintenance schedule for the WWCS that includes a corrosion minimization and control program. The schedule shall, at minimum, require a periodic rotation of testing, maintenance and inspections of the interceptors, lift stations, force mains and sewer mains that constitute the WWCS. The City shall be responsible for implementation of the schedule. A copy of the operation, monitoring and maintenance schedule and the City and Contract User responsibilities shall be provided to the Contract User. The schedule shall be reviewed by SCAWAC at a minimum of every two (2) years, and changes recommended if appropriate.
- c. The City and Contract User shall make available for review all records relating to the matters covered by this Agreement.
- d. The City and the Contract User shall work cooperatively in the enforcement of their respective Sewer Use Ordinances.
- e. Neither party shall be liable to the other for damages in case of an operational or system failure not due to its negligence or which is caused by an event beyond its control, or by flow characteristics that may be determined in the future to cause or contribute to the degradation of the WWTS.
- f. If the City determines that a characteristic of the Contract User's flow causes or contributes to the degradation of the WWTS, despite the City's and Contract User's compliance with the developed operation, monitoring and maintenance schedules, all applicable NPDES permits, Sewer Use Ordinances and pretreatment requirements, the City shall notify the Contract User in writing and allow the Contract User no less than thirty (30) days to initiate the cure, which may include investigation, testing, and inspection. If the Contract User fails to act in good faith by the initiation of a cure after 30 days, and correct the characteristic within ninety (90) days, the City may take corrective action and assess the cost of the action to the Contract User. If the Contract User disputes the determination regarding its flow, or disputes the manner or cost of correction, the Contract User may pursue any of the remedies provided in Article IV.
- g. The City shall inspect, operate and maintain the WWTS and provide the Contract User an annual report of such activities.

E. Ordinance Amendments

- a. The parties recognize that the City and the Contract User are subject to regulations promulgated by the EPA and the MPCA.
- b. The Contract User agrees to adopt and enforce sewer use rules, local limits, categorical limits, regulations and ordinances for the regulation of

commercial, industrial and non-domestic discharges within the Contract User's service area that are at least as stringent as those set forth in the City's Sewer Use Ordinance.

- c. The City shall notify the Contract User and provide a sixty (60) day comment period when making amendments to its Sewer Use Ordinance. Once amendments to the Sewer Use Ordinance are formally approved, the Contract User shall modify its sewer use ordinance to reflect such amendments. Such amendments shall be approved by the Contract User's decision-making body within six months of the date of amendment to the Sewer Use Ordinance. An administrative penalty of One Hundred Dollars (\$100) per calendar day after the six month approval period may be charged to the Contract User if such amendments are not approved.
- d. If the Contract User believes that conforming amendments to its Sewer Use Ordinance would be detrimental to the Contract User's interests or compliance with this Agreement, the Contract User may pursue any of the remedies provided in Article IV. The assessment of administrative penalties by the City, if applicable, shall be deferred until the dispute is resolved.
- e. The Contract User agrees to provide a copy of applicable rules, local limits, regulations, and/or ordinances to the City for review prior to adoption and subsequent amendment thereto.

F. Pretreatment Program Requirements

- a. The City and Contract User shall work cooperatively on all pretreatment program requirements to ensure WWTS performance and regulatory compliance.
- b. To the extent possible, testing and reports provided to the City shall be identical or substantially similar in form and content to testing and reports provided by the Contract User to the MPCA or other applicable agencies in order to avoid unnecessary duplication. The City may also develop forms for such purposes, which the Contract User may utilize at its discretion.
- c. The Contract User agrees to provide the City a copy of testing and reports and its Annual Pretreatment Program Report by January 15 of each year.
- d. The Contract User shall identify SIUs on an annual basis and provide a final report to the City by February 15 of each year.
- e. The Contract User shall conduct confirmatory sampling and inspection of all permitted SIU's at a frequency required by the Federal Pretreatment Regulations, 40 CFR Part 403. Records shall be submitted to the City within thirty (30) days of the sampling and inspection.
- f. The City shall provide the Contract User a copy of the annual MPCA Pretreatment Program Audit/Inspection and Annual Pretreatment Report.
- g. The Contract User will enforce the requirements and conditions contained in all Pretreatment permits and/or agreements that are in effect in the Contract User's service area.

G. Infiltration and Inflow Prevention

The Contract User agrees to cooperate with all applicable regulatory agencies in matters regarding infiltration and inflow; and to demonstrate good faith efforts to eliminate infiltration and inflow in its sewer collection system.

H. Regulation of Flows

a. Wastewater Treatment Facility Discharge Limitations

The quantity of wastewater discharged by the Contract User to the WWTS is defined in Table 1, below. Discharges to the WWTS by the Contract User in excess of its assigned capacity, except in conditions acknowledged by the City as significantly abnormal, shall be considered a violation of this Agreement under Section H, paragraph (c), below.

- b. When Phase 1 construction is complete, the WWTF will have a treatment capacity of fifteen million gallons per day (15.0 MGD) as a full biological nutrient removal (BNR) facility designed for removal of both phosphorus and nitrogen and a treatment capacity of seventeen point nine million gallons per day (17.9 MGD) as a biological phosphorus (Bio-P) removal facility. When Phase 2 construction is complete, the additional hydraulic capacity will provide the WWTF the ability to treat 17.9 MGD as a full BNR facility.

Table 1. 2017 and 2030 Flow Allocations

User	2017 Flow (MGD)	2017 Flow Allocations (%)	2030 Flow (MGD)	2030 Flow Allocations (%)
St. Cloud	7.91	52.7	8.80	49.2
Sartell	2.43	16.2	3.11	17.4
Sauk Rapids	1.80	12.0	1.96	10.9
St. Joseph	1.11	7.4	1.72	9.6
Waite Park	1.28	8.5	1.43	8.0
St. Augusta	0.48	3.2	0.88	4.9
TOTAL	15.00	100.0	17.9	100.0

Source: 2007 Wastewater Treatment Facilities Plan, City of St. Cloud

c. Violations

The City shall seek reimbursement to repair damages or pay any fines assessed by a regulatory agency caused by the discharge of prohibited wastes by the Contract User. Within thirty (30) days of the determination by the City that a Contract User has discharged prohibited wastes, the City shall notify the Contract User in writing of the City's intent to seek reimbursement and an estimate of the costs of repair for damages or fines, and provide evidence supporting the determination.

In the event of a Notice of Violation (NOV) or other similar action by a regulatory agency, the City shall provide a copy of the NOV to the Contract User to which the City intends to seek reimbursement within fifteen (15) days of receipt of such NOV from the regulatory agency. The Contract User shall be provided full opportunity to participate in negotiations related to resolving the NOV and a determination by the regulatory agency of any fines or penalties that may be levied upon the City and for which the City intends to seek reimbursement from the Contract User.

In the event of a dispute regarding any of the City's determinations associated with seeking reimbursement from a Contract User, the Contract User shall notify the City thereof in writing within thirty (30) days of receipt of the City's final written determination regarding cost reimbursement. Disputes shall be resolved in accordance with Article IV of this Agreement.

In the event a Contract User disputes the City's determination of cost reimbursement, no payment shall be required as provided in this Article until determination has been made in accordance with Article IV of this Agreement and any related appeals.

J. Flow Monitoring Devices

- a. The Contract User agrees to provide, install and maintain at its cost and expense, at points of discharge agreed upon by the City and Contract User into the City's WWTS, an automatic flow monitoring and recording device with an integrator-totalizer for the purpose of accurately measuring the Contract User's flow.
- b. The records and reports from such monitoring devices shall be maintained by the Contract User and made available to the City for auditing and billing procedures.
- c. In the event of failure of the Contract User's monitoring device(s) for the purpose of determining billing amounts pursuant to this Agreement, it will be assumed that during any period of inoperation of the measuring device, the flow was at the average daily volume as during the same time period during the three preceding years. If the most recent three-year flow record is unavailable, or if flows have changed significantly over the preceding three years, then an alternate method as mutually agreed by the parties will be used to determine the flow during periods of inoperation of the monitoring device.
- d. The City shall coordinate the inspection, testing and calibration of flow measuring devices. The coordination shall include either the City retaining the services of an independent testing agency certified in wastewater flow measurement calibration services to inspect and calibrate the flow-metering device to maintain the accuracy of that device or allowing the Contract User to retain such services and provide

documentation to the City. Inspection of the flow monitoring devices shall occur at least twice per year and be calibrated at least annually or at a frequency required to maintain regulatory compliance. The cost of the inspection and calibration initiated by the City shall be billed to the Contract User and paid within thirty (30) days of receipt.

- f. A certified copy of the inspection and test results shall be provided to the City and Contract User promptly after completion. The Contract User will not make adjustments to the certified calibration of the flow metering device without prior written notice to the City. Permission from the City is not required to perform prescribed or routine maintenance of the flow monitoring system.
- g. The City may inspect such metering devices at any reasonable time and in the event such a device fails and is not repaired within ten (10) days by the Contract User, the City may repair the same. When the City performs such repairs, the City shall provide the Contract User with an itemized invoice of its reasonable costs and expenses prior to reimbursement by the Contract User. If the invoice is undisputed, the Contract User shall pay the invoice within thirty (30) days of receipt. If the invoice is disputed, the parties may pursue any of the remedies provided in Article IV of this Agreement.

K. Wastewater Sampling

- a. The Contract User shall sample and analyze all required parameters and flows at its cost at each entry point into the City's WWTS on a frequency based upon the sampling schedule included in EXHIBIT B or as otherwise requested by the City. Additional samples may be collected by the City for the purpose of verifying the accuracy of the information reported by the Contract User. The analysis results from any sample collected by either party shall be shared with the other party. The City may issue or approve variances or exemptions for specific entry points and/or testing parameters in situations where there is limited value of previous data collected to minimize collection and testing costs.
- b. The Contract User shall collect and record the continuous flow data from the flow monitoring devices owned by the Contract User. The flow data collected shall be reported to the City on a monthly basis for the purpose of verifying compliance and for preparation of monthly billing information.
- c. Samples collected for carbonaceous biochemical oxygen demand (cBOD₅), total suspended solids (TSS), and total phosphorus (TP) analysis shall be twenty-four (24) hours flow composite. Samples collected for fats, oil and grease (FOG) or pH analysis shall be a grab sample. Time composite samples may be used in lieu of flow composite samples in the event of maintenance, operational, or laboratory difficulties. Grab samples may be used in lieu of time composites for similar cause.
- d. The Contract User or the City shall have the opportunity to split samples collected by the other party.

- e. Samples found to be not representative of the actual flow by mutual agreement shall not be used in calculations of charges. Split samples varying by more than twenty percent (20%) for cBOD₅ and TSS will not be used in the calculations for determining loadings or charges.
- f. Both parties will cooperate in performing additional analysis and sampling required for regulatory compliance.
- g. Required sampling shall be conducted in accordance with EXHIBIT B at the expense of the Contract User.
- h. In addition, the City shall have the right at any time to inspect, examine and/or sample the Contract User's collection system or wastewater.

L. Laboratories

All samples, unless otherwise mutually agreed upon, shall be collected using procedures as found in the most current edition of Standard Methods for the Examination of Water and Wastewater. Laboratories performing analyses must be certificated by the Minnesota Department of Health's Environmental Certification Program.

ARTICLE III REPORTS AND PAYMENTS

A. Scope

The Contract User agrees to pay Operation, Maintenance, Capital and Debt Service Charges, as set forth herein. It is understood and agreed by the Contract User that the charges do not include unanticipated or emergency capital repairs to the WWTS and the charges set forth herein are subject to annual adjustment by the City as provided herein. The Contract User will be provided sufficient budgetary information necessary to understand the WWTS revenues and expenditures, what each fee, rate or user charge is paying for, and how the charges were developed. The Contract User shall have an opportunity to review, provide comment and recommendations on budgetary information used to develop the charges.

B. Measurement of Flow, cBOD₅ and TSS

For the purposes of reporting and for calculating charges as described in this Agreement, the flow shall be the totalized measurement from the flow meter at the Contract User's Point of Discharge into the City's WWTS, in accordance with Article II, Section J of this Agreement.

C. Charges and Payments

- a. The Contract User shall pay the City for its proportionate share of the operation, maintenance, upgrade and rehabilitation cost of the WWTS as provided in the 2007 St. Cloud Area Wastewater Treatment Facilities Plan and the 2008 Cooperative Design and Construction Agreement. The unit cost for the Contract User's proportionate share shall be:

Category A1 (Operation and Maintenance: WWTF)	Unit Costs
Flow: $\frac{(\text{Annual Budget OM\&R Dollars}) \times 1/3}{Q}$	= \$/1,000 gallons

cBOD ₅ : $\frac{(\text{Annual Budget OM\&R Dollars}) \times 1/3}{B}$	= \$/100 lb. units
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TSS: $\frac{(\text{Annual Budget OM\&R Dollars}) \times 1/3}{SS}$	= \$/100 lb. units
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Category A2 (Operation and Maintenance: WWCS)	Unit Costs
Flow: $\frac{(\text{Annual Budget OM\&R Dollars})}{Q}$	= \$/1,000 gallons

Category B1 (Rehabilitation and Replacement Costs: WWTF) Unit Costs

$$\text{Flow: } \frac{\text{Annual Budget R\&R Dollars}}{\text{Q-A}} = \text{\$/year}$$

Category B2 (Rehabilitation and Replacement Costs: WWCS) Unit Costs

$$\text{Flow: } \frac{\text{Annual Budget R\&R Dollars}}{\text{Q-A}} = \text{\$/year}$$

Category C1 (Contract User's Share of Debt Service Costs: WWTF) Unit Costs

$$\text{Flow: } \frac{\text{Annual Debt Service Dollars}}{\text{Q-A}} = \text{\$/year}$$

$$\text{cBOD}_5: \frac{\text{Annual Debt Service Dollars}}{\text{Q-A}} = \text{\$/year}$$

$$\text{TSS: } \frac{\text{Annual Debt Service Dollars}}{\text{Q-A}} = \text{\$/year}$$

Category C2 (Contract User's Share of Debt Service Costs: WWCS) Unit Costs

$$\text{Flow: } \frac{\text{Annual Debt Service Dollars}}{\text{Q-A}} = \text{\$/year}$$

Category D (Existing Debt Service Payments; prior to year 2000) Unit Costs

$$\text{Flow: } \frac{\text{Annual Debt Service Dollars}}{\text{Q-A}} = \text{\$/year}$$

$$\text{cBOD}_5: \frac{\text{Annual Debt Service Dollars}}{\text{Q-A}} = \text{\$/year}$$

$$\text{TSS: } \frac{\text{Annual Debt Service Dollars}}{\text{Q-A}} = \text{\$/year}$$

Terms used in the above unit cost formulas are defined as follows:

Q = Total annual flow, in 1,000 gallon units measured at the City WWTF during the preceding July through June twelve (12) month period.

B = Total annual pounds of cBOD₅, in 100 pound units, measured at the City WWTF during the preceding July through June twelve (12) month period.

SS = Total annual pounds of suspended solids, in 100 pound units measure at the City WWTF during the preceding July through June twelve (12) month period.

Q-A = Percentage allocation of flow (Q) for the Contract User as set forth in Article II, Section H of this Agreement.

The parties agree that if additional cost of service studies are conducted during the term of the Agreement, the 1/3, 1/3, 1/3 flow and loading allocations presented in the above Charges and Payments shall not be changed over the term of the Agreement, except by mutual written agreement of the parties.

- b. The charges for the Contract User shall be calculated using the units costs defined above, multiplied by the actual flow, cBOD₅ and TSS loadings of wastewater discharged from the Contract User into the City's WWTS, as measured in accordance with this Agreement for any given billing period. If the concentrations of the cBOD₅ or TSS are less than the concentrations used to determine the annual unit charges, then the monthly billing charges period will be based on the cBOD₅ and TSS used to calculate the unit charges in Article III, Section C, paragraph (a) of this Agreement.
- c. The charges computed shall be billed to the Contract User following the last day of each month and shall be payable within thirty (30) days.
- d. All rate adjustments under the terms of this Agreement shall become effective on January 1 of the following year.

D. Annual Review of Unit Costs

The City shall conduct an annual review and shall assemble, tabulate and distribute data in accordance with the following steps:

- a. Step 1: The City will tabulate the projected annual revenue requirements in a table format that clearly demonstrates which budget amounts are to be shared in proportion to flow and loading by the City and each Contract User.
- b. Step 2: The City will tabulate annual wastewater flow and loading for the WWTF for the immediately preceding July through June twelve (12) month period. The data shall contain the following information:

Total Flow – in units of billions of gallons per year.

Average Daily Flow – in millions of gallons per day or MGD.

Total cBOD₅ – in units of mg/L and pounds/year.

Total Suspended Solids – in units of mg/L and pounds/year.

Flow from each Contract User – in units of millions of gallons per year.

cBOD₅ from each Contract User – in units of mg/L and pounds/year.

Total Suspended Solids from each Contract User – in units of mg/L and pounds/year.

- c. Step 3: Annual budget costs shall be distributed to three elements of treatment, in accordance with the following criteria:

Flow – 1/3 (one-third)
cBOD₅ – 1/3 (one-third)
TSS – 1/3 (one-third)
- d. Step 4: Unit costs shall be computed by applying the data assembled in Steps 1 through 3.
- e. Step 5: The City will provide copies of the above data to the Contract User by October 1 of each year or when the City approves the following year's budget. The Contract User shall have reasonable access to the books and records of the WWTS.
- f. Step 6: With respect to the Contract User, the City will use the rates derived by the preceding steps for the following calendar year.
- g. Step 7: The Contract User shall have thirty (30) days from receipt of the data identified in Step 5 to review and provide written comments to the City on the proposed rates for the following year and their calculation. The parties shall utilize the remedies provided in Article IV to address any disputes as to the proposed rates or their calculation.
- h. Step 8: If a dispute regarding the proposed rates cannot be resolved by January 1 of the following year, the current year's rates shall continue in effect until the dispute has been resolved in accordance with Article IV of this Agreement. If the resolved rates for the following year differ from the current year's rates, the party that overpaid according to the resolved rates is entitled to reimbursement from the party that underpaid within sixty (60) days after a final determination on the rates has been made.

E. Financial Reporting

The City shall provide an annual financial report that summarizes the overall financial operation of the WWTS. The purpose of the report is to assist the Contract User in planning for capital budget expenditures, anticipated major repairs and review the budget to actual expenditures and revenues for the prior year. The City and the Contract User will work cooperatively to ensure a clear and transparent financial reporting process. The Annual report shall include, but is not limited to:

- a. Sewer Fund Financial Statement and any related funds (including debt service and Sewer Access Charge accounts) as reported in the annual audit, including the detailed General Ledger accounts that make up the statements.
- b. Summary of the prior year budget and actual expenditures/revenues showing the correlation to the amount paid by each Contract User.
- c. Summary of the proposed or approved Capital Improvement Program.

F. Reporting Requirements

If the Contract User fails to collect and/or submit data as required by this Agreement or fails to act in good faith by correcting short term problems, the City may apply a fifteen percent (15%) surcharge to all flow and strength parameters for the most recent month for which data is available for the purposes of billing the Contract User. If the Contract User disputes the surcharge, the Contract User may pursue the remedies provided in Article IV.

G. Billing and Payment

On or before the fifteenth (15th) day of the month next succeeding completion of the first full month following the effective date of this Agreement, and on or before the fifteenth (15th) day of each month thereafter, the Contract User agrees to provide the City with requisite flow data and sampling results monitored as part of EXHIBIT B for the prior month's usage. Upon receipt of such data, the City shall calculate the charges to the Contract User and shall issue a bill to the Contract User. Such bill shall become due and payable within thirty (30) days from the billing date. Any balance remaining unpaid thirty (30) days from the date issued shall be considered delinquent and accrue a delinquent surcharge of eight percent (8%). If the Contract User disputes a bill from the City, the Contract User may pursue the remedies provided in Article IV.

H. Lease Payments

Lease agreements contained in previous agreements shall cease when Phase 1 construction is complete and the WWTF has the ability to treat 17.9 MGD of wastewater as described in the 2007 St. Cloud Area Wastewater Treatment Facilities Plan.

ARTICLE IV DISPUTES AND REMEDIES

A. Dispute Resolution

The parties acknowledge that disputes regarding the interpretation or application of this Agreement may arise from time to time, and agree that, subject to the other provisions of this Agreement, each shall attempt to resolve such disputes according to the provisions of this Article, unless otherwise provided in this Agreement. The parties do not intend to limit the kind of disputes or disagreements arising under this Agreement, which may be submitted to the Dispute Resolution procedures set forth herein.

B. Request for Clarification

In the event of an issue or question by either party regarding any aspect of this Agreement, both parties shall attempt to resolve that issue or answer that question amicably before proceeding to the remedies set forth in this Article. Such resolution efforts shall include communications between the parties outlining the particular issues, proposed solutions, any other items necessary to resolve the dispute. The parties agree that the request for clarification and any responses thereto should be completed no later than thirty (30) calendar days after the request for clarification is made. The parties may also seek consideration and advice through SCAWAC as appropriate.

C. Negotiation

When a disagreement or dispute shall arise over interpretation or application of any provision of this Agreement and such dispute does not constitute an event of default, the Parties will each direct staff members as they deem appropriate to meet at a mutually convenient time and place to attempt to resolve the disagreement or dispute through negotiation.

D. Mediation/Arbitration

When the parties to this Agreement are unable to resolve disputes, claims or counterclaims, or are unable to negotiate an interpretation or application of any provision of this Agreement, the parties may mutually agree in writing to seek relief by submitting their respective grievances to mediation and/or binding arbitration. If both parties agree to submit the dispute to binding arbitration, the following arbitration provisions shall apply: (1) arbitration shall be conducted by a single arbitrator engaged in the practice of law; (2) Minnesota's Uniform Arbitration Act, Minnesota Statutes, Sections 572.08 to 572.30, shall govern the arbitrability of all disputes; (3) the arbitrator shall not have authority to award punitive damages; (4) the arbitrator's award may be entered in any court having jurisdiction thereof; and (5) each party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator.

E. Adjudication

When the parties to this Agreement are unable to resolve disputes, claims or counterclaims, are unable to negotiate an interpretation or application of any provision of this Agreement, or are unable to agree to submit their respective grievances to mediation or binding arbitration, or such action has not otherwise resolved the matter in dispute, either party may seek relief through initiation of an action in a court of competent jurisdiction. Notwithstanding the provisions of this Article, upon a breach, violation, or default of any provision of this Agreement by either party or a dispute hereunder, the non-breaching, non-violating, or non-defaulting party shall be entitled to pursue any additional remedies it may have at law or in equity including, but not limited to, injunctive relief and specific performance of this Agreement in accordance with its terms.

F. Waiver

The exercise of any of the remedies set forth in this Article shall not limit or constitute a waiver of the parties' rights to pursue additional remedies set forth herein, except where otherwise agreed to in writing by the parties.

ARTICLE V
ADDITIONAL CONDITIONS

A. Governing Law

This Agreement is made pursuant to, and shall be construed in accordance with the laws of the State of Minnesota.

B. Term and Termination

- a. This Agreement shall take effect upon execution by the parties and shall be without specific limitation as to term, except that it shall not expire or terminate sooner than the end of the useful life of the upgraded, expanded, and rehabilitated WWTS described herein, unless amended or modified as provided in this Agreement.
- b. The City acknowledges that the improved function and capacity of the WWTS created by its upgrade, expansion and rehabilitation is the result, in part, of the capital investment in the upgrade, expansion and rehabilitation by the Contract User. Therefore the City agrees to protect the Contract User's capital investment by limiting rights to terminate this Agreement as follows:
 - i. The Contract User may terminate this Agreement upon eighteen (18) months written notice thereof to the City. Upon receipt of such written notice, the City shall in writing inform all other contract users of the Contract User's notice of termination within fourteen (14) days. The terminating Contract User shall remain liable for any bonds, loans, or other instruments used to finance the upgrade, expansion and rehabilitation of the WWTS until such instruments are satisfied. The terminating Contract User's capacity allocation shall remain reserved. The City shall work cooperatively with SCAWAC to clarify the financial considerations the termination will create, to develop the depreciated value of the terminating Contract Users capacity allocation, any potential compensation to the terminating Contract User and the conveyance of the terminating Contract User's capacity allocation.
- c. If the City sells or conveys the WWTS or any part of the WWTS capacity to any other entity or third party, then such conveyance shall be subject to this Agreement.
- d. Either party, in its sole discretion, may request renegotiation of this Agreement pursuant to Article II, Section B of this Agreement.

C. Modification/Amendment of this Agreement

Except as otherwise provided herein, this Agreement shall not be modified, amended, or altered except upon the written agreement of the City and the Contract User, duly executed and adopted by the city council of each municipality. In the event that a party hereto requests to meet regarding a proposed modification or amendment of this Agreement, the request shall be made to the other party in writing and the parties shall thereafter meet at least one

time at a mutually agreed upon time and place to discuss the proposed modification or amendment within sixty (60) days of the date of receipt by the non-requesting party of the written request. The written request shall state the reason for the meeting. The Contract User and the City agree to continue to work cooperatively in development and review of Sewer Use Agreements and Wastewater Services Master Plans as well as the procedures, methods or systems used to administer the provisions of this Agreement, including all exhibits attached hereto, at the request of either party.

D. Modification/Amendment of Ordinances and/or Rules

Whenever either party intends to amend its Sewer Use Ordinance and/or any rules or regulations related to the operation of its wastewater treatment system that may affect the other party, except where otherwise provided in Article II of this Agreement, it shall notify the other party in writing and provide a sixty (60) day review and comment period.

E. No Rights to Third Parties

This Agreement is between the City and Contract User only, and creates no rights in third parties as beneficiaries of this Agreement.

F. Exhibits

The exhibits attached to this Agreement are intended as supplements to the Agreement. In the event of a conflict in terms or interpretation, the provisions of this Agreement shall govern.

G. Severability

In the event that any provision of this Agreement is determined and adjudged to be unconstitutional, invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the parties hereto shall negotiate in good faith and agree to such amendments or modifications of or to this Agreement or other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties hereto.

H. Headings and Captions

Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement.

I. Entire Agreement

The terms, covenants, conditions and provisions of this Agreement, including the present and all future attachments, shall constitute the entire Agreement between the parties hereto, superseding all prior agreements and negotiations. This Agreement shall supersede and replace the existing Sewer Use Agreements between the participating communities. Upon execution and implementation of this Agreement, said existing agreement(s) shall be null and void. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

J. Notice

Any notices required under the provisions of this Agreement shall be in writing and sufficiently given if delivered in person or sent by U.S. mail, postage prepaid, as follows:

If to St. Cloud:
City Administrator
St. Cloud City Hall
400 – 2nd Street South
St. Cloud, MN 56301-3622

If to Foley:
City Administrator
Foley City Hall
251 – 4th Avenue North
Foley, MN 56329

EXHIBIT A – Wastewater Conveyance System (WWCS)
EXHIBIT B – Sampling and Testing Schedule
EXHIBIT C – Pool Capacity Agreement
EXHIBIT D – Cooperative Design and Construction Agreement

IN WITNESS WHEREOF, the Council of the City of Contract User by appropriate resolution duly adopted, has caused this Agreement to be executed in its corporate name by its Mayor and City Clerk and its corporate seal affixed hereto; and the Council of the City of St. Cloud by appropriate resolution duly adopted, has caused this Agreement to be executed in its corporate name by its Mayor and City Clerk and its corporate seal affixed hereto, the date and year first written above.

CITY COUNCIL OF THE
CITY OF ST. CLOUD, MINNESOTA

CITY COUNCIL OF THE
CITY OF FOLEY, MINNESOTA

Dave Kleis, Mayor

Gerard Bettendorf, Mayor

ATTEST:

ATTEST:

Seth Kauffman, City Clerk

Sarah Brunn, City Administrator/City Clerk

CORPORATE SEAL FOR
THE CITY OF ST. CLOUD

CORPORATE SEAL FOR
THE CITY OF CONTRACT USER

MEMORANDUM

To: City of Foley Council Members and Planning Commissioners
From: Lance Bernard, Planning Consultant, HKGi
Date: July 13, 2021
RE: **FUTURE Land Use Plan - DRAFT ELEMENTS FOR DISCUSSION PURPOSES**

The following memorandum will be used at the July 13, 2021 City Council and Planning Commission workshop to help facilitate a discussion regarding the development of the City's Future Land Use Plan. The workshop will include a presentation by HKGi.

Future Land Use Plan

The Land Use Plan gives people a visual representation (see Figure 1) of what the community is expected to look like in the future. The text, maps and images contained in this Plan identify a framework for the future of land in Foley. The Plan helps guide the form of development and redevelopment of land in the City for the next 20 years. In doing so, it establishes how areas where people live, shop and work are anticipated to look and function in the future.

Using this Plan the City will determine how best to balance and link all the necessary land uses including housing, commerce, industry, parks, public uses, and open spaces. It should also be used to help facilitate development projects and to ensure that resources will be available to provide a consistent level of public services (roads, utilities, and parks) to the community.

Land Use Plan Designations

The Future Land Use Plan designations (see Figure 1) are the product of both past, present and anticipated future influences. These designations articulate the City's expectations for future land use patterns and uses throughout the community. The Future Land Use Plan is summarized in Table 1 by using two geographical areas:

- City Boundary – Land uses are summarized by using the City's 2021 municipal boundary.
- Growth Area – Land uses area summarized by using the Orderly Annexation Agreement (OAA) between the City of Foley and the Town of Gilmanton, which includes approximately 880 gross acres.

Table 1 – Future Land Use Plan Gross Acres

Future Land Use Plan Designation	City Boundary	Growth Area (OAA)
Low Density Residential	395.12	244.95
Low-Medium Density Residential	146.80	18.20
Medium-High Density Residential	108.04	17.05
Downtown	32.21	-
Commercial	89.72	172.36
Business Park	67.76	108.07
Public / Institutional	134.63	-
Park & Open Space	318.70	-
ROW	31.23	51.13
Utility	141.12	-
Urban Reserve	-	274.62
Total	1,465.33	886.38

Urban Reserve (UR)

The Urban Reserve (UR) land use designation is intended to maintain existing rural and agricultural uses on land not served by urban services (water, sewer, etc.). Rural residential uses are also permitted to continue, but new rural residential neighborhoods, with lots averaging larger than 1 acre and not serviced by city services are discouraged. The Urban Reserve areas act as an agricultural preserve, until such a time that the city and land owners decide to extend city services to pursue development. Maximum density for these areas are **1 unit per 10 acres**.

Low Density Residential (LDR)

The Low Density Residential (LDR) designation captures the traditional forms of single family housing found in Foley and most rural cities. The average density ranges from **2.0 to 6.0 units per acre**. The LDR typology includes predominantly single family detached homes with limited opportunities for two- to four-unit dwellings, as well as attached housing types such as duplexes or townhomes. Existing neighborhoods within the city-center have potential for conversion of individual lots from one-unit dwellings to two-unit, three-unit, and four-unit dwellings, while new neighborhoods are encouraged to provide various options of low density housing beyond single family detached.

Low-Medium Density Residential (LMDR)

The Low-Medium Density Residential (LMDR) designation represents greater density residential development than LDR, consisting of more attached housing products. This land use pattern would include small-lot single family detached housing, typically clustered together, as well as some more moderate density housing consisting of attached side-by-side products such as townhomes or condos. Density in this land use pattern would fall in the **4.0 to 10.0 units per acre** range.

Medium-High Density Residential (MHDR)

The Medium-High Density Residential (MHDR) designation includes a variety of unit types including townhomes, patio homes, apartments, condominiums, and various forms of senior

housing. The predominant form of housing is attached side-by-side products, as well as vertical stacked orientation (e.g., two to four stories). Generally, this land use category would not include single family detached homes and would exceed **8.0+ units per acre**.

This land use designation also allows for some flexibility to integrate commercial/office uses as part of an MHDR development, as long as it is not the predominant use. This approach helps create “live-work” housing and “placing making” features and provides added patronage to maintain economic vitality. Commercial uses should be complementary to the residential uses. Potential uses may include a restaurant, coffee shop, office space, pharmacy, or medical.

Downtown (D)

The Downtown (D) designation encompass the existing Downtown Foley district. This designation envisions a continuation of walkable, mixed-use development in the district, including smaller scale retail or office buildings, vertical mixed use buildings with retail or office uses on the ground floor and other uses (including office or residential) on upper floors of buildings. Residential developments in the Downtown district should achieve a minimum of 24 units per acre. The community’s vision for the downtown has been documented in the City’s *Community Vision Plan for Downtown Redevelopment and Pedestrian Connections (2015)*.

Commercial (C)

Areas designated as Commercial (C) are typically located along collectors or arterial road corridors, or near key intersections. They are intended to serve the retail and service needs of Foley residents and employees, as well as the needs of the community in the surrounding townships. Many of these areas will primarily be oriented toward vehicle access, but connections to pedestrian and trail networks are encouraged and highly desired.

This land use designation will also allow for some flexibility to integrate residential uses (attached or detached) as part of a commercial development, as long as it is not the predominate use. This approach helps create “live-work” housing and “placing making” features and provides added patronage to maintain economic vitality.

Business Park (BP)

The primary intent of the Business Park (BP) designation is to enable and promote development of high paying and high quality jobs within Foley. This designation primarily includes office or light industrial uses, focusing primarily on the Foley Industrial Park, or as individual uses such as a variety of showroom, flex space, data center, and manufacturing space, of varying square footages. Proximity to major road corridors is an important locational factor. Site amenities such as trails, open space, and architectural detail are supportive of higher level employment and business opportunities.

Public/Institutional (P/I)

The Public/Institutional (P/I) designation includes uses such as government facilities, public and private schools, fire stations, libraries, water-system facilities, religious institutions, and cemeteries.

Park and Open Space (POS)

Foley intends the Parks and Open Space (POS) designation to represent active or passive recreation areas. Some uses are informal recreation areas, while others are more formal with groomed fields. This designation includes Community Parks, Neighborhood Parks, Private

Parks, and Golf Courses as well as trails, habitat restoration, or preserves. Areas unsuitable for development due to floodplain, steep slopes, or significant ecological impact may also fit within this designation.

Utilities (U)

The Utility (U) designation may include uses such as, but not limited to, electrical substations, telecommunication towers, and wastewater facilities.

Right-of-Way (ROW)

ROW or "Right-of-Way" represents the areas of Foley that are dedicated to roads, sidewalks, trails, and the preservation of land for future unbuilt transportation infrastructure. Linear utilities such as power lines and data lines may be collocated in this area.

Future Growth

The City of Foley is expected to add 300 to 800 new residents and 120 to 325 new households by the year 2040 (see Table 2). Most of this growth will likely occur after investments are made to the City's Wastewater Treatment Facility. This includes a pipe that will run from Foley to the regional treatment facility in St. Cloud.

Predicting when development will occur over the next twenty years is difficult. Development (phasing) will depend on when the market supports new uses and a property-owners willingness to sell. Regardless of these factors, the potential areas of change have been largely guided for residential and commercial uses that offer flexibility for a mix of uses. These areas of change are depicted in Figure 2 as areas "Suitable for Development" or areas that present "Infill/Redevelopment" opportunities. Figure 2 also depicts potential development constraints (e.g., wetlands, topography, and natural areas) that may be unstable for development.

Table 2 – Population and Household Projections

Year	Low Growth		Medium Growth		High Growth	
	Population	Households	Population	Households	Population	Households
2019 est.	2,647	1,000	2,647	1,000	2,647	1,000
2040	2,944	1,104	3,098	1,166	3,451	1,309
Difference	+297	+104	+451	+166	+804	+309

Source: *Foley Wastewater Treatment Facility Plan (2019)*

Future Land Demand

Based on population and household projections (see Table 2) documented in the Foley Wastewater Treatment Facility Plan (2019), land requirements for future land development can be calculated. As seen in Table 3 and 4, from 2020 through 2040, Foley has capacity to add as few as 1,500 households and as many as 5,00 new households. These households will be accommodated in a number of types of residential dwellings at varying densities according to the Future Land Use Plan designations. The actual types of units that will be built and the corresponding land that is required will be determined by the needs of the new residents and general market conditions.

Table 3 – Future Land Use Plan Development Capacity (Full Build Out) – Minimum # of Units

City Boundary					
Future Land Use Plan Designation	Min. Units Per Acre	Suitable for Development (net acres)	Infill Opportunities (net acres)	Number of Units	
Low Density Residential	2	110.43	7.66	236	
Low-Medium Density Residential	4	74.70	12.23	348	
Medium-High Density Residential	8	31.23	27.39	469	
Downtown	12	0.00	8.60	103	
Sub Total		216.36	55.88	1,053	
Growth Boundary					
Future Land Use Plan Designation	Min. Units Per Acre	Suitable for Development (net acres)	Infill Opportunities (net acres)	Number of Units	
Low Density Residential	2	167.82	0.00	336	
Medium Density Residential	4	12.20	0.00	49	
High Density Residential	8	11.13	0.00	89	
Sub Total		191.15	0.00	473	
Total		407.51	55.88	1,526	

Table 4 – Future Land Use Plan Development Capacity (Full Build Out) – Maximum # of Units

City Boundary					
Future Land Use Plan Designation	Max. Units Per Acre	Suitable for Development (net acres)	Infill Opportunities (net acres)	Number of Units	
Low Density Residential	6	110.43	7.66	709	
Medium Density Residential	10	74.70	12.23	869	
High Density Residential	40	31.23	27.39	2,345	
Downtown	40	0.00	8.60	344	
Sub Total		216.36	55.88	3,923	
Growth Boundary					
Future Land Use Plan Designation	Max. Units Per Acre	Suitable for Development (net acres)	Infill Opportunities (net acres)	Number of Units	
Low Density Residential	6	167.82	0.00	1,007	
Medium Density Residential	10	12.20	0.00	122	
High Density Residential	40	11.13	0.00	445	
Sub Total		191.15	0.00	1,574	
Total		407.51	55.88	5,497	

* Net acres were determined by subtracting site's development constraints (e.g., wetlands, natural areas, and steep slopes) and 30% of the land's area for future roads and parks from the overall gross area.

Findings & Opportunities

The land capacity analysis shows there is plenty of space to grow. The following strategies have been suggested by the consultant team to ensure orderly growth:

- A.) An Urban Reserve has been recommended for areas at the edges of the city's growth boundaries. This encourages growth to happen closer to the city before it extends outwards. Outward expansion requires the expansion of city services (roads, utilities, etc.), which can be financially unsustainable if facilities are extended in a "leapfrog" manner. The narrative on page 9 provides more detail on when a property with an Urban Reserve designation should be changed to another land use designation.
- B.) Allow for some flexibility to integrate residential uses (attached or detached) as part of a commercial development, as long as it is not the predominant use. The land use category for "Commercial" allows for this flexibility.
- C.) Allow for some flexibility to integrate commercial uses as part of a residential development, as long as it is not the predominant use. The land use category for "Medium-High Density Residential" allows for this flexibility.
- D.) Allow medium to high density development along major transportation corridors. The narrative on page 11 provides more detail on areas that may be appropriate for an increase in density.

Draft Goals and Policies

The Future Land Use Plan is guided by a set of goals and policies that have their origins from past planning efforts and the 1993 Comprehensive Plan. The goals and policies are focused on reflecting historical development patterns in Foley, while helping position the City for future growth. They represent the community's vision for future development, redevelopment and change.

The following goals and policies are not in any particular order of priority, but instead are meant to cover the full spectrum of land use related topics.

Growth

1. New development and redevelopment projects will incorporate creative site design.

Policy

- a. Preserve and incorporate outstanding natural (such as woodlands, steep slopes, wetlands), cultural, historical and unique features as part of development projects.
 - b. Ensure that a connected and contiguous network of open space corridors are preserved within new developments in growth areas.
 - c. Provide pedestrian and bike connectivity to parks, employment areas, businesses/services, and neighborhood institutional uses such as schools and churches.
 - d. Create neighborhood identity and/or unique features that are representative of Foley.
 - e. Provide sufficient open space for new developments for the recreational benefit and enjoyment of the residents.
 - f. Provide for flexibility in land use and design within Planned Unit Developments.
2. Ensure adequate land is planned to manage a sustainable and responsible growth pattern.

Policy

- a. Preserve areas suitable for residential development from encroachment by commercial and industrial developments.
- b. The extension of service to properties outside the corporate limits without an agreement as to the annexation of that property shall not be allowed.
- c. All development shall be in accordance with the orderly expansion of City services (e.g., sewer and water, streets, and other municipal services)(see page 9 for more information).
- d. Appropriate areas be designated for residential growth based on utility extension plans and land suitability for development.

3. Ensure high-quality utilities are available to meet all the needs of residents and employees.

Policy

- a. Provide residents and businesses with affordable potable water that is safe and of high quality.
- b. Extension of utilities should be phased accordingly to accommodate growth areas.

POLICY FOCUS: Urban Reserve

The Urban Reserve land use category helps support orderly and smart growth by concentrating growth within the city limits before city services are extended.

Purpose of Urban Reserve

- Encourage existing agricultural and rural residential uses to continue until such a time that there is demand and desire to develop.
- Prevent pre-mature subdivision of land that would be difficult to bring into city services in the future.
- Ensure the expansion of city services is thoughtful and deliberate to avoid “leap-frog” development, which can be costly.

When will Urban Reserve Develop?

The following should be considered before a property with an Urban Reserve designation is developed or reguided for higher intensity use:

- The property owner is willing to develop.
- Adjacent parcels or properties within 400 feet are already served by City sewer and water or can extend city services in a cost effective manner.
- The developer is responsible for the cost of the extension of services to the property
- The Planning Commission and City Council find the proposed land use meets the goals of the Comprehensive Plan and does not negatively impact the developability of other urban reserve areas.

Housing

4. Maintain and enhance Foley's physical character and identity through property maintenance, rehabilitation, and redevelopment.

Policy

- a. Support the rehabilitation and upgrading of the existing housing stock.
 - b. Support ongoing maintenance and upkeep of residential properties.
 - c. Ensure that redevelopment and infill projects maintain the integrity of existing neighborhoods.
 - d. Encourage the use of quality, durable building and landscaping materials to maintain a high-quality standard in residential development.
5. Provide a full range of housing choices that are affordable, so members of the community can "age-in-place" at every stage of their lives.

Policy

- a. Individual neighborhoods/developments are encouraged to contain a variety of housing types.
 - b. Promote the development of a balanced housing stock that is available to a range of income levels.
 - c. Support the development of multi-family housing in a dispersed pattern throughout the community as opposed to creating large concentrations of such housing.
6. Provide housing that incorporates appropriate levels of density and design standards that supports long-term neighborhood sustainability.

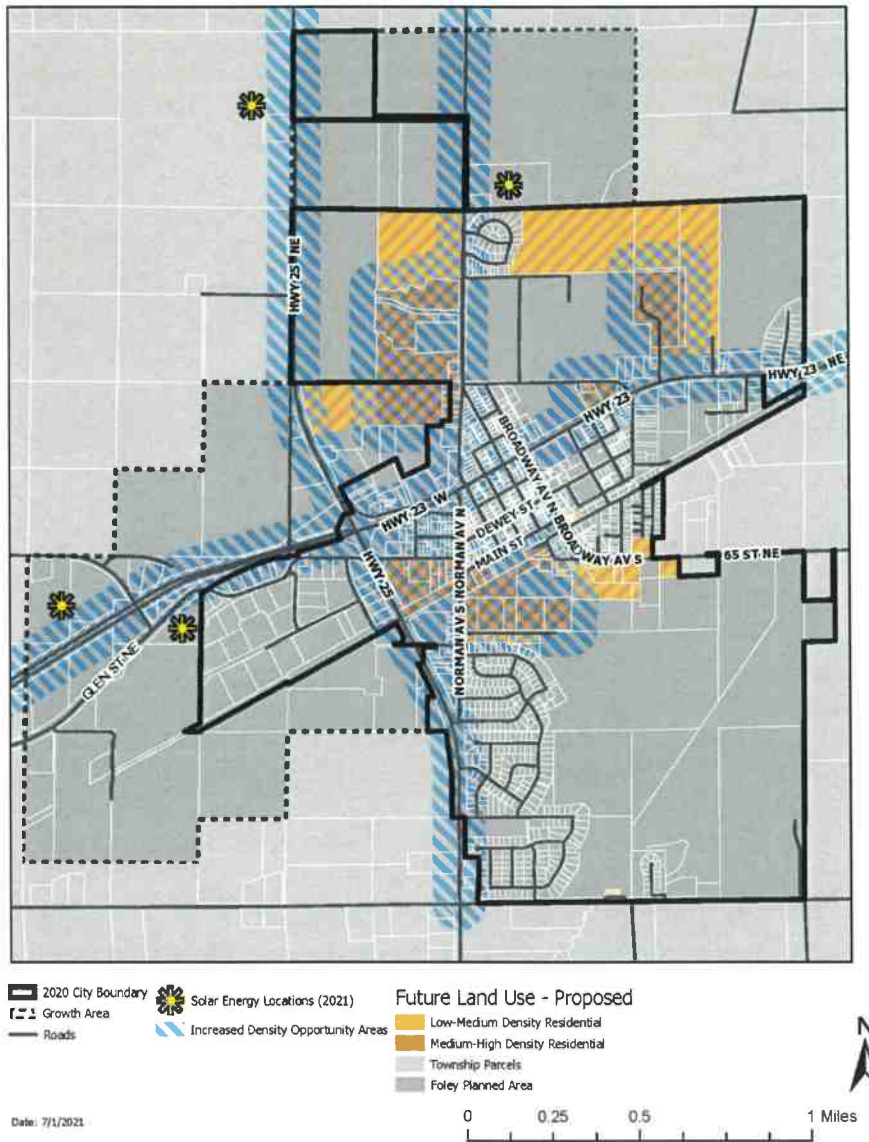
Policy

- a. Ensure that the density and intensity of development will be compatible with the general characteristics of the surrounding area.
- b. Support the development of multi-family housing on high amenity sites such as adjacent to woodlands, parks, lakes and ponds; dispersal on amenity sites will help ensure quality developments which will be compatible with single-family neighborhoods, and which will maintain their value over the long term.
- c. Allow for an increase in housing density along major transportation corridors (see callout box on page 11 for more information).
- d. Encourage a diversity of housing types and forms by ensuring larger developments are not dominated by a single form or pattern of product type. This limitation will help provide the community with a variety of housing styles and prices and make neighborhoods less vulnerable to downturns in any one product line due to changes in consumer preferences and trends.

POLICY FOCUS: Opportunity Areas for Increased Density

The Future Land Use Plan provides guidance for the density of future development in Foley. In addition to those designations, the City recognizes that certain areas may be appropriate to allow an increase in density, as those areas are served by major road corridors or buffer between higher density areas and single family neighborhoods.

Map of Opportunity Areas



These areas are appropriate for development of medium-high density residential uses as long as the following are considered:

- Access and circulation is managed to keep vehicle traffic of developments off of local roads with individual driveway access.
- Meets City, County and State access management guidelines.
- High quality site design (landscaping) is utilized to buffer the development between lower density residential uses.
- Pedestrian and bicycle circulation and connections are prioritized.

Downtown

7. Maintain and establish Downtown Foley as a unique, historic, vibrant, and attractive local and regional destination.

Policy

- a. Promote the redevelopment of properties in Downtown as mixed use, in order to strengthen retail and commercial uses in the district and to integrate new households and employment into the district.
- b. Seek redevelopment and investment opportunities for vacant sites in and surrounding Downtown, as well as encouraging re-investment in existing properties.
- c. Create an aesthetically appealing and social streetscapes in Downtown for pedestrians.
- d. Embrace any current and future opportunities to expand public open space within and adjacent to Downtown.
- e. Encourages the development and location of specialty commercial uses, such as unique restaurants and shops in the downtown, to be a regional draw for the city.
- f. Allow existing non-traditional downtown uses (e.g., light manufacturing and landscaping businesses) to continue, but over time encourage those uses to relocate to more appropriate places in the City.

Economic Development

8. Maintain a thriving Business Park that provides employment and a secure tax base for the community.

Policy

- a. Work with business leasers and workers to ensure a variety of high-quality employment opportunities are available in the city.
- b. Promote and attract new industries that foster innovation and sustainability practices.

9. Develop identifiable commercial and industrial nodes, districts, and neighborhoods.

Policy

- a. Focus commercial development along major thoroughfares.
- b. Focus industrial and manufacturing development in business parks.
- c. Ensure that the density/intensity of development will be compatible with the general characteristics of the surrounding area.
- d. Strip commercial development is restricted.
- e. Regulate the use of land in order to ensure the orderly expansion of industry.

10. Encourage and support the development of strong commercial and industrial districts that respect the values and standards of the residents.

Policy

- a. Promote high quality industrial, commercial, and office development and redevelopment to build the tax base and generate revenues sufficient to support residential development.

- b. Guide development to achieve appropriate transitions between different types of land uses and different levels of densities to ensure that new development is compatible with existing areas.
- c. Require that the location, size, number, and appearance of signage throughout the community is appropriately regulated.

Parks & Recreation

11. Maintain and establish a robust park system for today and tomorrow's residents.

Policy

- b. Make park improvements and "lifecycle" replacements based on demonstrated need.
- c. Preserve crucial public places like parks, recreation areas, wetlands, and open spaces.
- d. Existing and future neighborhoods should have access to a park within a ¼ mile.
- e. Acquire park land on a willing seller basis.

12. Provide all members of the community convenient access to parks and opportunities to recreate.

Policy

- a. Work closely with the school district to maintain parks and facilities that complement the district's recreational investments, rather than duplicating them.
- b. Regarding growth, the City should Plan ahead to ensure that land given in the form of park dedication is useful and necessary for new parks, trail connections, or preserved open space.
- c. Future park locations are fronted by public right-of-way and not relegated to backyards, ensuring good access from surrounding neighborhoods, safe park space with increased visibility, and good access for maintenance.
- d. Construct trails as opportunities arise and in coordination with roadway construction projects or part of a new development.

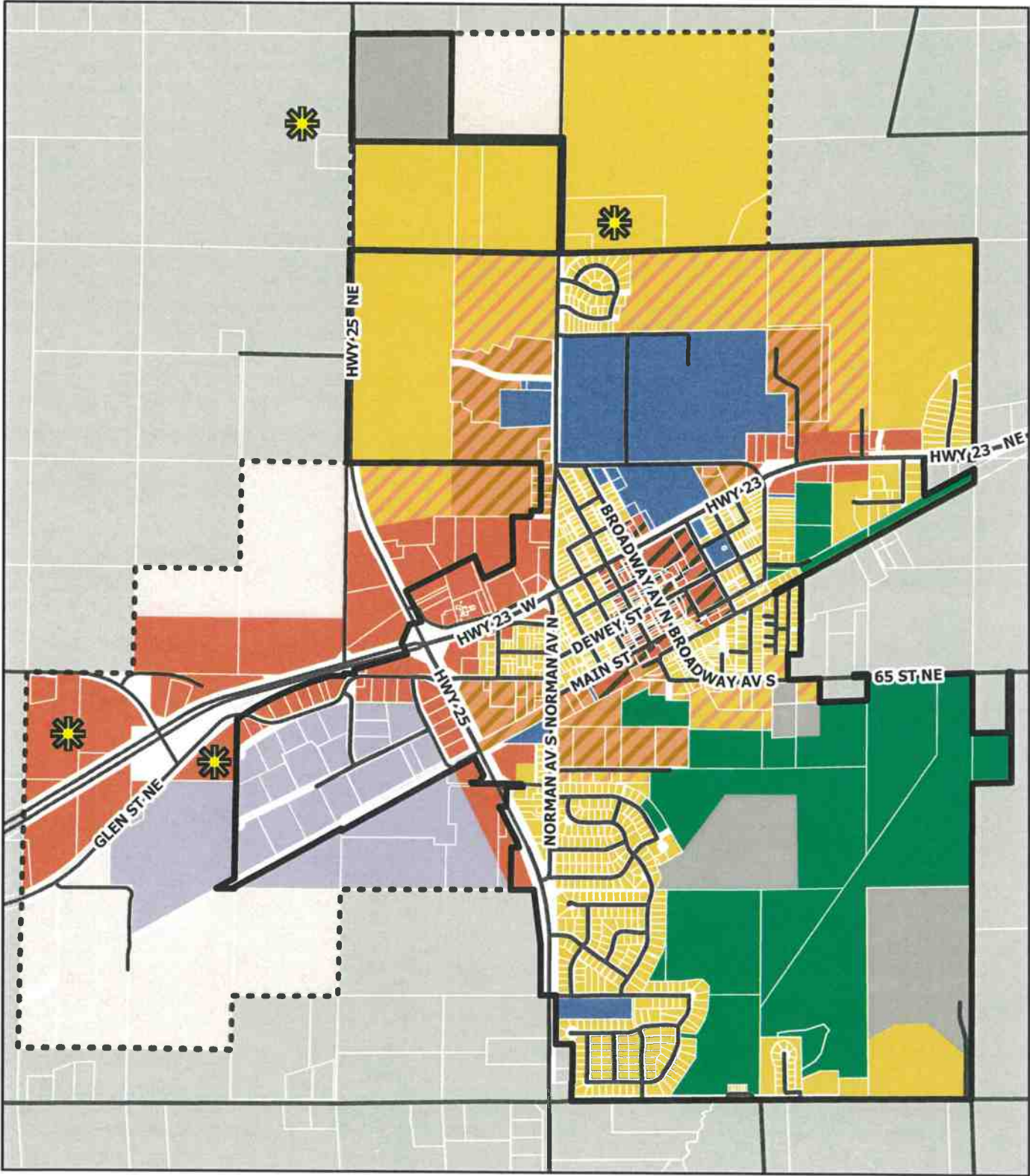
Natural Resources

13. Protect and manage natural areas within the city for environmental benefits and scenic beauty.

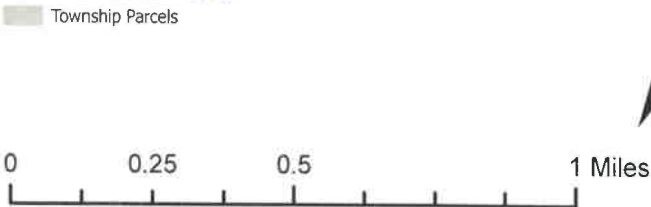
Policy

- a. As opportunities arise, partner with private land owners and public agencies to protect high quality natural areas within the city.
- b. Preserve and restore native landscapes, steep slopes, wetlands, and woodlands within and adjacent to parks, open spaces, and trail corridors.

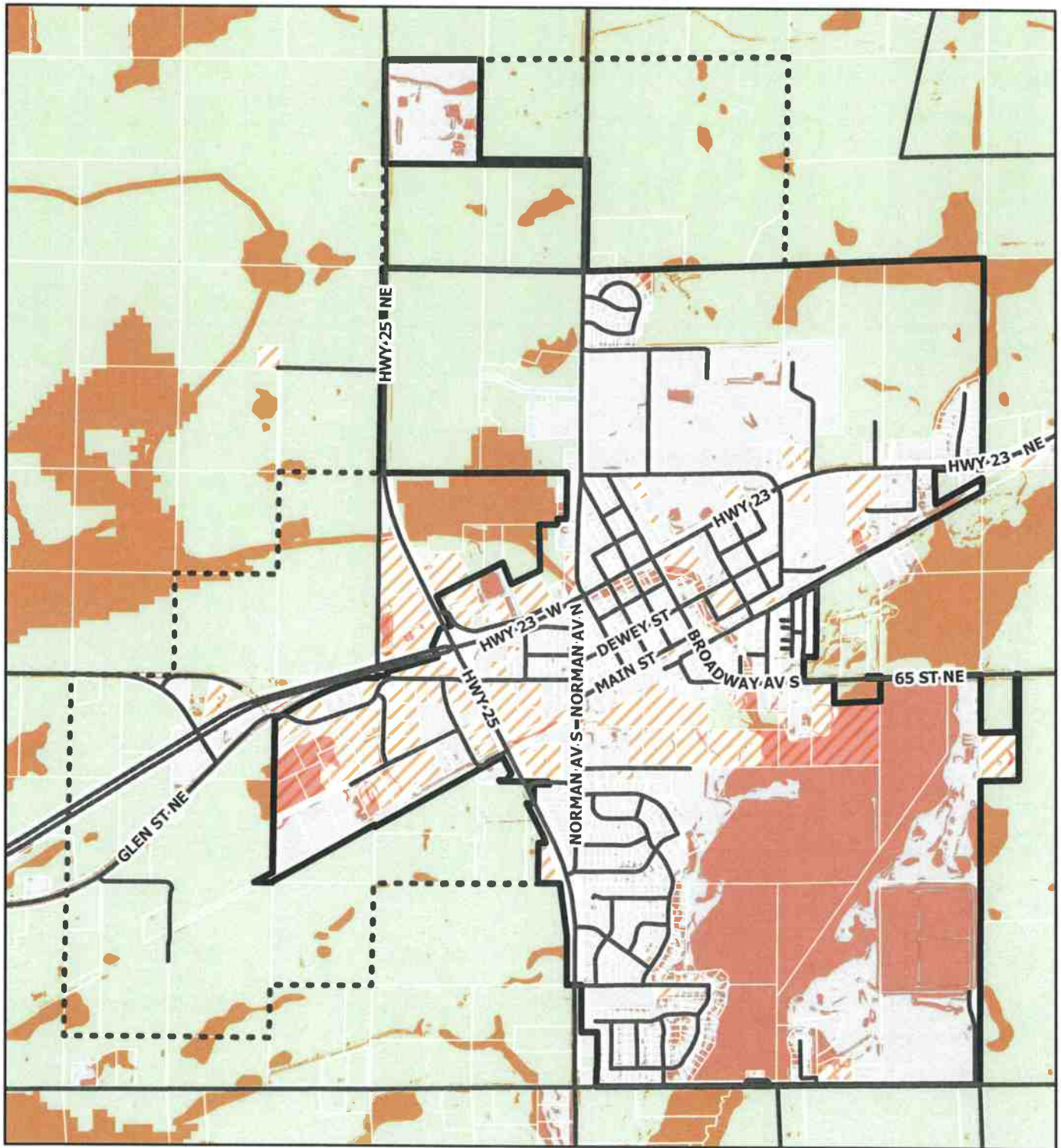
City of Foley - Future Land Use Plan (Proposed)



- | | | | | |
|-------------------------|---------------------------------|------------------------|------------------|-------------------------------|
| 2020 City Boundary | Low-Medium Density Residential | Business Park | ROW | Solar Energy Locations (2021) |
| Growth Area | Medium-High Density Residential | Public / Institutional | Urban Reserve | |
| Roads | Downtown | Park & Open Space | Township Parcels | |
| Low Density Residential | Commercial | Utility | | |



Development Constraints & Considerations



2020 City Boundary

Growth Area

Roads

Developed

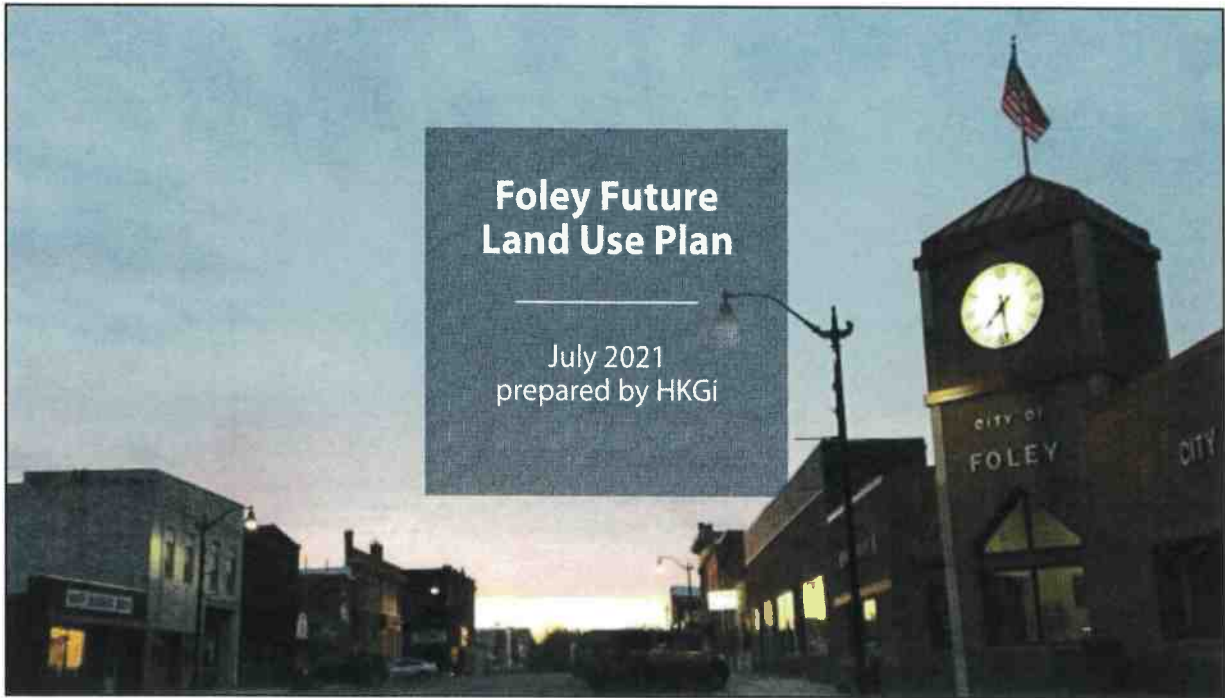
Suitable for Development

Infill/Redevelopment Potential

Unsuitable for Development
Parcels

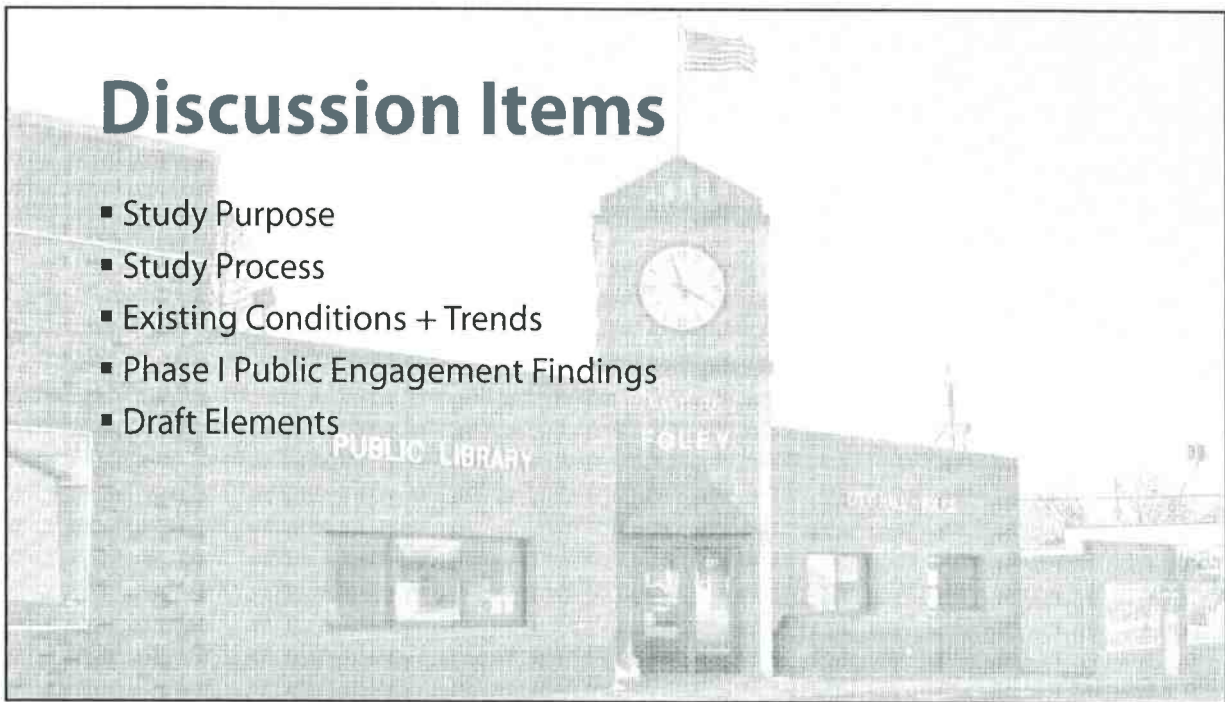


0 0.25 0.5 1 Miles



Foley Future Land Use Plan

July 2021
prepared by HKGi

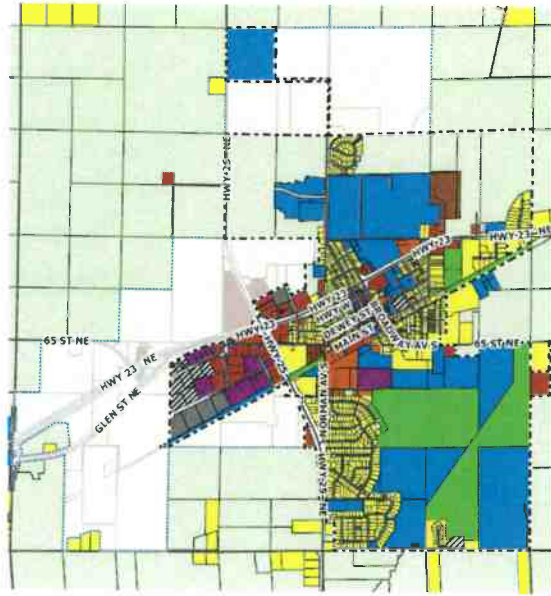


Discussion Items

- Study Purpose
- Study Process
- Existing Conditions + Trends
- Phase I Public Engagement Findings
- Draft Elements

Study Purpose

To help guide the form of development and redevelopment of land in the City and within the Orderly Annexation areas over the next 20 years.



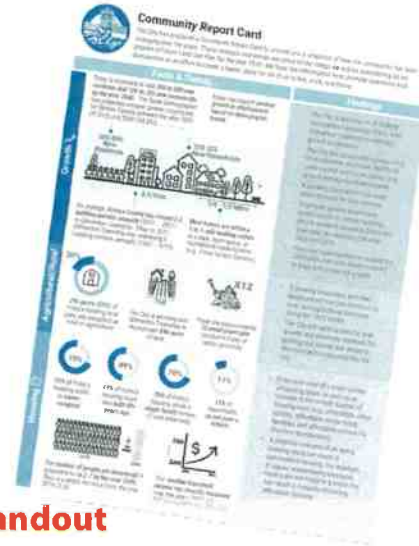
Study Process



Existing Conditions + Trends

The City of Foley is expected to **add 300 to 800 new residents and 120 to 325 new households by the year 2040.**

Most of this growth will likely occur after investments are made to the City's Wastewater Treatment Facility. This includes a pipe that will run from Foley to the regional treatment facility in St. Cloud.



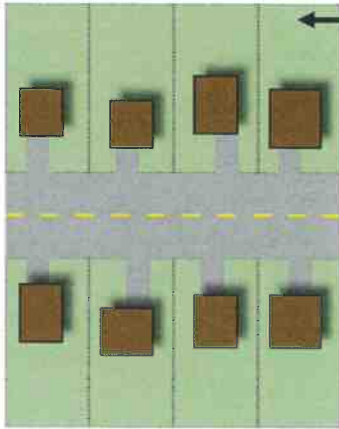
See Handout

Housing Trends

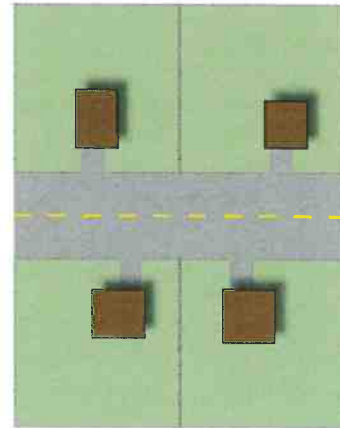
- Many in the Baby Boom generation are looking for smaller homes, as kids move out, and smaller lots with less maintenance as they age.
- As housing prices continue to rise, options outside of a traditional subdivision are more attainable for young families (Duplexes, Townhomes, Twinhomes, Villas, Detached Townhomes).
- High housing costs are hurting greater Minnesota communities' ability to attract and retain workers, because there are a lack of options in their price range.
- Home builders are trending towards smaller lots (50' to 75') rather than larger lots (80' to 120'+), as a way to meet demand and keep costs reasonable (especially as labor and material costs continue to rise).
- Decreasing household sizes are increasing the demand for housing products that support 1 or 2 person households (Apartments, townhomes).

Housing Trends

~ 0.12 acre lots (8 units per acre)
Infrastructure: Low Cost/Higher Benefit



~ 0.25 acres lots (4 units per acre)
Infrastructure: Low Cost/Higher Benefit



Items of Note:

- Cities must consider the long-term cost associated with infrastructure (roads and utilities)
- There is a stronger demand and market for smaller lots compared to traditional large lot developments

Emerging Trends

- **Growth:** From 2019 to 2021, the US had the lowest growth in 120 years (0.35%) due to low birth rates and much higher death rate due to COVID-19.
- **Housing:** There is a need for 7.2 million more affordable housing units and a 15.6% development growth for apartments.
- **Parks & Trails:** Although park programs (youth and general) were paused in most communities, greenway paths and trails were used 61% more than previous years.
- **Transportation:** In July 2020, public transportation saw a reduction of over 58% from previous years.

Emerging Trends

- **Small Businesses:** More than 130,000 small businesses closed permanently due to the pandemic and a majority were service industry business like barbershops and nail salons.
- **Jobs:** Projections assume 1 in 4 Americans (26%) will be working from home in 2021.
- **Manufacturing:** 97.4% of manufacturers in the Upper Midwest intend to hire this year. 1 in 6 businesses in the region said their biggest challenge is labor availability.
- **Technology:** Over the first 3 months of the Covid-19 pandemic, digital purchasing, learning, telehealth, and entertainment became the #1 use of technology.

Phase I Engagement Findings

- People would like to see **single-family housing as the primary housing type**, but would also like to see other housing options throughout the city.
- Infill and redevelopment in **downtown remains a priority** for the community – they especially want to invest in those things that contribute to the “small-town feel” of Foley.
- **Preserving natural areas** and providing a variety of park and recreation opportunities throughout the city is a priority for residents.
- Respondents view **trail and sidewalk connections as a priority**.
- Respondents want economic development to **focus on high-quality jobs**, as well as downtown infill, and greater commercial options along highways

76 Survey Respondents + Property Owner Interviews

- 40% of respondents are between the ages of 19 and 35 years old
- 32% of respondents are between 36 and 50 years old

Draft Land Use Plan Goals

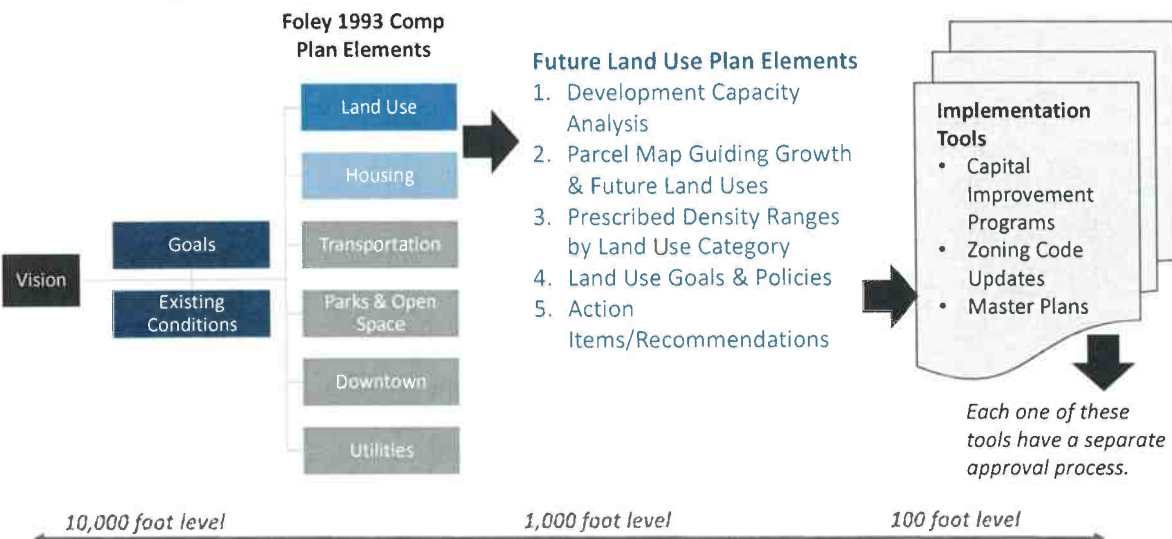
Examples

- **Housing:** Provide a full range of housing choices that are affordable, so members of the community can "age-in-place" at every stage of their lives.
- **Jobs:** Develop identifiable commercial and industrial nodes, districts, and neighborhoods.
- **Downtown:** Maintain and establish Downtown Foley as a unique, historic, vibrant, and attractive local and regional destination.
- **Growth:** Ensure adequate land is planned to manage a sustainable and responsible growth pattern.
- **Parks:** Provide all members of the community convenient access to parks and opportunities to recreate.
- **Natural Resources:** Protect and manage natural areas within the city for environmental benefits and scenic beauty.

Framework for Drafting Goals

- Past Plans
- Existing Conditions
- Trends
- Public Engagement Findings

Comprehensive Plan Structure



Land Use Plan Purpose

- The Plan gives people a visual representation of what the community is expected to look like in the future.
- The Plan helps guide the form of development and redevelopment of land in the City for the next 20 years. In doing so, it establishes how areas where people live, shop and work are anticipated to look and function in the future.
- Using this Plan the City will determine how best to balance and link all the necessary land uses including housing, commerce, industry, parks, public uses, and open spaces.
- It should also be used to help facilitate development projects and to ensure that resources will be available to provide a consistent level of public services (roads, utilities, and parks) to the community.

Precedent

Norwood Young America, MN (pop. 3,735)



Precedent
Jordan, MN (pop. 6,230)



Precedent
Chaska, MN (pop. 26,370)



Precedents

St. Joseph, MN (pop. 7,030)

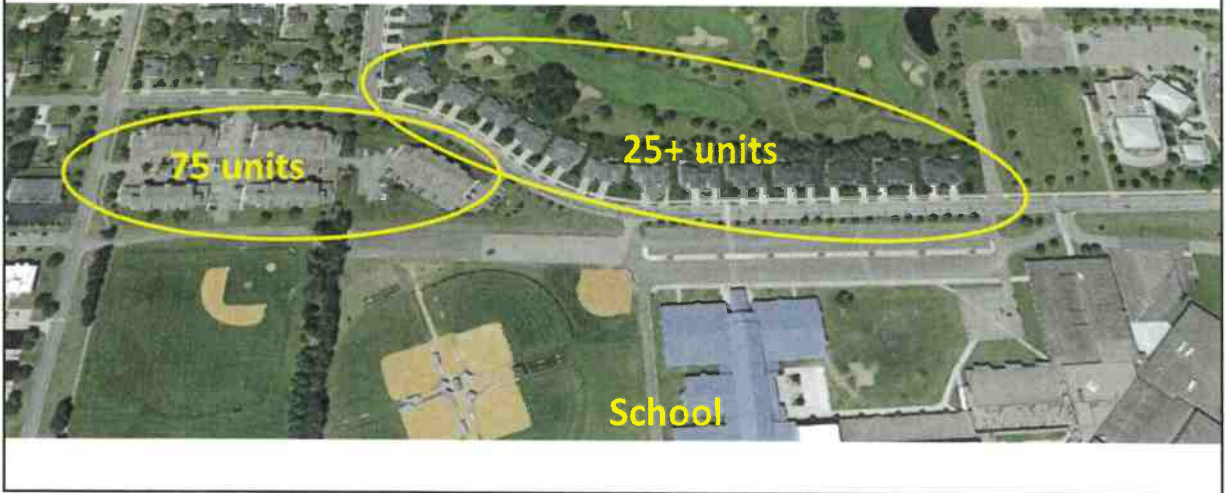


Precedents for Flexibility

Richfield/Minneapolis, MN (VFW examples)



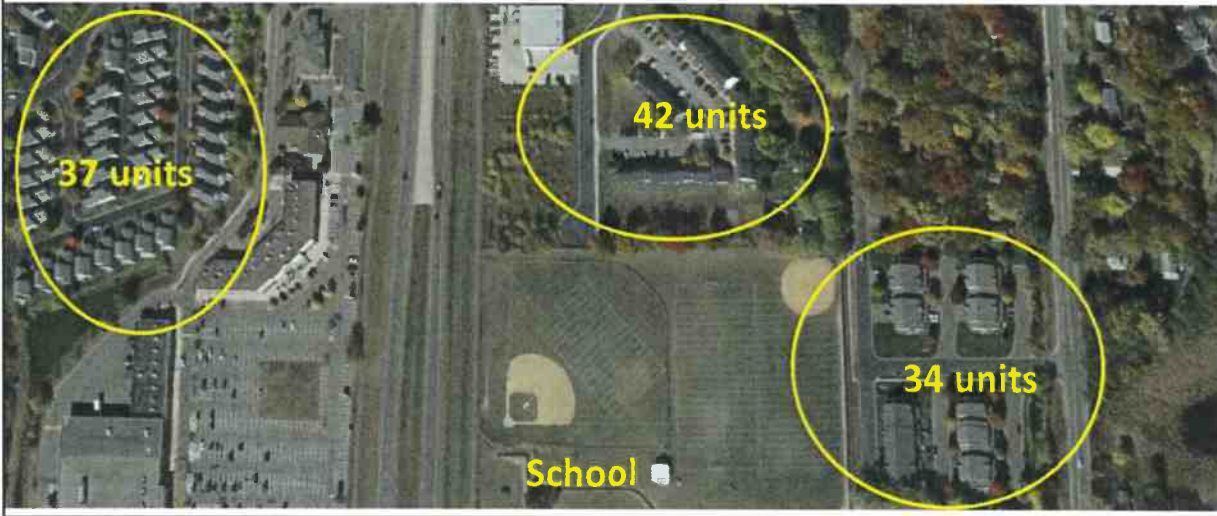
Precedents
Becker, MN (pop. 4,850)



Precedent
Big Lake, MN (pop. 10,850)



Precedent
St. Francis, MN (pop. 7,650)



Precedent
Princeton, MN (pop. 4,700)



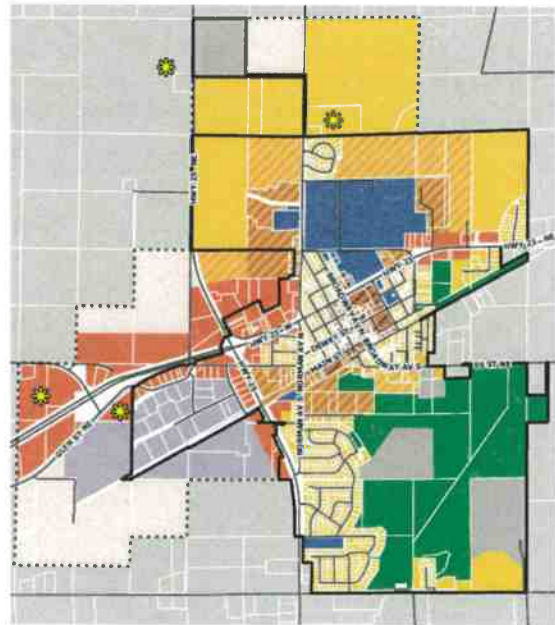
Precedent Paynesville, MN (pop. 2,500)



Land Use Plan

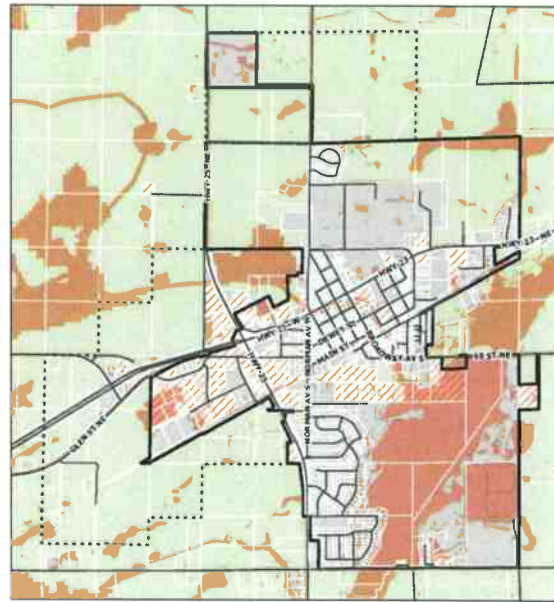
- Urban Reserve
- Low Density Residential
- Low to Medium Density Residential
- Medium to High Density Residential
- Downtown
- Commercial
- Business Park
- Public/Institution
- Parks/Open Space

See Handout for Definitions



Development Capacity Analysis

- Helps determine the amount of buildable land needed for the next twenty years.
- Takes into consideration development constraints such as wetlands, streams, woodlands, and topography.
- Takes into consideration undeveloped/infill opportunities.



Draft Land Use Plan

Future Land Use Plan Designation	City Boundary	Growth Area (OAA)
Low Density Residential	395.12	244.95
Low-Medium Density Residential	146.80	18.20
Medium-High Density Residential	108.04	17.05
Downtown	32.21	-
Commercial	89.72	172.36
Business Park	67.76	108.07
Public / Institutional	134.63	-
Park & Open Space	318.70	-
ROW	31.23	51.13
Utility	141.12	-
Urban Reserve	-	274.62
Total	1,465.33	886.38

Draft Land Use Plans

City Boundary				
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Total		407.51	55.88	1,526

Draft Land Use Plan Policies

Bigger Moves

- Allow for some flexibility to integrate residential uses (attached or detached) as part of a commercial development, as long as it is not the predominant use.
- Allow for some flexibility to integrate commercial uses as part of a residential development, as long as it is not the predominant use.
- Allow medium to high density development along major transportation corridors.
- Reserve areas for future growth until utilities and infrastructure are available.

Discussion

TO: FOLEY CITY COUNCIL
FROM: SARAH BRUNN, CITY ADMINISTRATOR
SUBJECT: 07-13-21 -COUNCIL MEETING
DATE: JULY 9, 2021

Consent Agenda

In your agenda is a resolution accepting the ARPA funds. I have still not received confirmation of our city amount but my best guess is it will be just under 200k. I will update you once I have that final figure. We have a lot of time to spend this money and also a lot of eligible projects so I think it's best for us to just take some time to figure out the best options.

A PSIG application resolution is in your packet. We are rolling into the next funding cycle so we need to re-apply. We are still very close to the fundable range but need to complete this process to stay on the list.

An engineering agreement for the new industrial park land is in your packet. This survey and split are necessary based on the contract for deed and option agreement we passed last month. The City Engineer can explain more on the process during his department report.

The official purchase agreement for the purchase of the small Herbst piece is in your packet. This will be utilized for the wastewater project.

Zoning Ordinances – Public Hearing

The planning commission is recommending two zoning ordinance amendments. The first will prohibit all solar gardens in the city limits. We must make action on this ordinance as the moratorium is expiring. The second is to establish an interim use permit process. The interim use permit process is not used often but will be used more frequently with the joint planning board and with regulation of solar. It's helpful for the city to have it in ordinance as we do have an existing interim use permit with an existing business in town. After the public hearing, the council can address and authorize summary publication.

Code of Ordinance – Driveway Width

Staff is also recommending a change in the driveway width ordinance. We have been allowing larger driveways for quite some time but haven't proceeded with the official change of ordinances. The main driver of this change in size is people putting in three stall garages where the smaller width of driveway approach is difficult to have. The recommended change is to increase width from 24 feet to 36 feet. Hard-surfacing requirements as outlined in the ordinance would still apply.

Parking & Storage Ordinance

The minutes of the planning commission meeting are included in your packet. They are recommending no change to the ordinance. They do recommend a site plan be provided and the council proceed with enforcement if necessary. I'd like the council to discuss the recommended change and how enforcement will proceed. I also think a discussion on the site plan process would also be helpful so if we move forward staff is clear on what is expected.

2022 Highway 23 Project– Lighting

There has been a question on how to proceed with proposed street lights located outside the city limits on Highway 23 (east side). The state would like to see them stay but indicated the city or township would need to maintain once they are put in. Staff can provide more detail on this item at the meeting.

Compost Clean Up Costs

I've provided updated costs on the compost site as requested at the last meeting. I also obtained the state statue from the police department. The council can discuss how to proceed at the meeting.

Discussion on Pool Operations and Staffing

The pool manager is resigning and we need to discuss a couple items related to that position and overall staffing at the pool. The assistant manager is interested in taking over and that should have council approval. We've also been discussing various options on how we can maintain operations through the end of the year since weekends are getting harder to staff. I will have more information to provide at the council meeting.

Police Staffing

We have been informed that a full-time officer of ours may be leaving for another position. Since nothing is final yet, we are withholding the name of the officer at this time. Since we already have another FT officer out on leave this would put us in a very difficult position covering shifts. We are already running short on part-time officers. The personnel committee met and we are recommending that the council authorize staff to proceed with a promotion of a part-time officer to a full-time position if a notice of resignation is received. We do have interest from existing part-time officers and this would allow us to move quickly. We would bring back the final name to the August council meeting for final approval. The committee also decided to move ahead immediately at advertising for additional part-time officers. We discussed this at a prior council meeting and the council did agree to proceed when necessary.

Wastewater Treatment User Agreement

A copy of the wastewater treatment use agreement is in your packet. We need to sign this agreement in order to move forward with certification of project which is necessary to move forward with bidding. St. Cloud will be addressing this agreement at their meeting on Monday. The attorney has reviewed and is fine with moving forward. Staff is still working on the logistics and timing of paying of the connection fee (\$6.371 million) as it is tied into our state funding and we will provide more detail when it becomes available. Staff also wants to ensure the project moves ahead (with an acceptable bid and contractor) before making that connection fee payment.

County Fiber Agreement

I will be providing an update at the meeting regarding our discussions on the county fiber agreement. There has also been a request to appoint a councilmember to the standing broadband committee that the council can discuss.

Land Use Plan – Joint Planning/Council Meeting

Materials are in your packet for this joint meeting of the planning and council. I also sent the information to the Gilmanton Township Board since it also impacts the OAA. If the council meeting is not completed, we will recess to conduct the land use plan meeting and then reconvene after to finish the council meeting.

Bid for PID 020049900

The City submitted but was not the high bidder for the MnDOT property.

Joint Planning Board

We have worked through a few ordinance revisions and also one CUP so far. Staff is also anticipating a plat and annexation request to be coming in soon. Following annexation, a re-zoning and site plan at the city level is expected.

Comp Study

The personnel committee is working through some preliminary results of the compensation study. Once we have reviewed it and received all the detail it will come forward to council (expected on August 3rd) for consideration. We will also discuss budget impact and how we move forward in 2022. Job descriptions are also being revised in order to ensure compliance but that process may take a bit longer to come forward to the council for approval.

2022 Budget

Work has started on the budget and there are a lot of items to be considered in this upcoming budget cycle. Staff aims to have preliminary figures to council the first week of August that can be discussed at the August 17th workshop.

Upcoming Reminders:

August 3, 2021 – Council Meeting

August 17, 2021 – Budget Workshop

September 7, 2021 – Council Meeting – Preliminary Budget