



**City Council – Meeting Agenda  
April 5, 2022 – 5:30 P.M. – Foley City Hall**

1. Call the meeting to order.
2. Pledge of Allegiance.
3. Approve the agenda.
4. Consent Agenda:
  - Approve minutes of March 1, 2022.
  - Adopt Resolution #2022-10 Supporting Housing and Local Decision-Making Authority.
  - Approve indemnification agreement with Foley Vet Clinic and close 3<sup>rd</sup> Avenue for horse clinic on April 9, 2022.
  - Authorize hiring process for part-time police officer eligibility list.
  - Approve seasonal employee rates for 2022.
  - Adopt Ordinance #464 Rate Structure Changes – ordinance language cleanup – “quarterly to monthly” and referencing current rate structure.
  - Adopt Resolution #2022-09 Joint Powers Agreement.
  - Approve Court Data Services Subscriber Agreement.
  - Approve CJDN Fee Structure.
  - Approve Sanitary Sewer Extension Permit Application (Hwy 23 Project).
  - Approve Utility Accommodation Application (Hwy 23 Project).
  - Approve payment of bills.
5. Foley Wastewater Regionalization Project
  - Review Bid Results.
  - Update on state funding and financing.
  - Approve easement agreements.
  - Adopt Resolution #2022-11 Reimbursement of PFA Loan Funds/Grant Funds
  - Adopt Resolution #2022-12 Awarding Project
6. Mayor’s Comments & Open Forum
7. Department Reports:
  - Police Department –Katie McMillin
  - City Engineer – Jarod Griffith
  - Public Works/Fire – Mark Pappenfus
    - Authorize sale of 2006 1-Ton Chevrolet Pickup, Unit #0601, w/ Boss ‘V’ snow plow.
    - Approve purchase of Silversmith Utility Management System.
    - Approve purchase of snow plow for 2022 Chevrolet One-Ton Pickup – State Contract Bid.
  - Administration – Sarah Brunn
    - Ordinance #465 – Sewer Use Regulations/Connections
    - Update on pool operations.
    - Audit Fieldwork – April 11-15, 2022.



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- Update on downtown stakeholders meeting.
  
- 8. Old Business
  - Update on Highway 23 project bid opening.
  
- 9. New Business
  
- 10. Joint Session with Planning Commission on Parking & Storage Ordinance – Section 1030.
  - To begin @ 6:30pm or as soon as regular council meeting agenda items complete.
  
- 11. Adjourn

CITY OF FOLEY, MINNESOTA  
CITY COUNCIL MEETING – March 1, 2022

The Foley City Council held its regular council meeting on March 1, 2022, at 5:30 p.m. at the Foley City Hall.

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

Members Absent: None

The pledge of allegiance was recited.

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

Motion carried, unanimous.

Motion by Gondeck, seconded by Swanson, to approve the items on the consent agenda.

Consent Agenda:

- Approve minutes of February 8, 2022.
- Adopt Resolution #2022-08 Approving 2021 Transfers
- Adopt Resolution #2022-06 Reestablishing Precincts and Polling Places.
- Approve hiring of Cody Pauch, part-time police officer, contingent on background/psych.
- Approve payment of bills.

Motion carried, unanimous.

**Public Hearing – MNCEPO LLC/ Benton County Rezoning Request**

Mayor Bettendorf recessed the regular council meeting at 5:32 p.m. for the public hearing on the adoption of Resolution #2022-07 to approve the rezoning request from Benton County. Bettendorf asked if there was anyone present who wished to speak for or against the matter.

Debra Olson, 600 Dewey Street, addressed the council and asked if the county built new offices if that would increase the sewage needs for that area. She stressed that the residence have already paid their portion for the upgrades to the sewer/water system from the 2008 capital improvement project. She also asked about the additional parking needs on city streets in that area of town. She requested that the city of Foley be in compliance with state regulations regarding street parking.

Montgomery Headley, Benton County Administrator, addressed the council and gave an overview of the two parcels of land that the county is currently in negotiations with the owner. The current county building is out of space and more offices are required. The county is already leasing office space.

Purchase of the land is dependent on two conditions – the first being that the land would be rezoned from residential to business. The county's plan is to build on the parcel across the street from the current Benton County offices. There is no site plan at this time. The other contingency on the purchase is determining if the site is clean and free of contamination. During the demolition of the old Foley High School, two buried fuel tanks were found at the site. The County has given approval for

Bettendorf reconvened the regular council meeting at 5:58 p.m.

Motion by Swanson, seconded by Gondeck, to adopt Resolution #2022-07 Approving Rezoning Request.

Motion carried, unanimous.

### **Mayor's Comments & Open Forum**

Carol Duckett, 510 Grand Street, asked if the city would tell her where her property lines are. She also asked about the property on Dale Street that borders her property and asked who owns it because she would like to buy it. She also wanted to know the procedure for putting up a fence.

Pappenfus explained that the property is city right-of-way. There is a sewer line on that parcel that goes to the stop light. He doubted the council would ever sell it for those reasons.

Brunn explained the procedure required for getting a fence permit. The city does not maintain property lines. It is the property owner's responsibility. A surveyor would be able to help.

Debra Olson, 600 Dewey Street, said that the pins marking her property lines were removed during the 2008 capital improvement project by the contractor and never put back. She also expressed irritation regarding the forced removal of her tree four years ago.

Wade Muller, 121 Cottage Grove, said his pins were dug up during the same road project and were not replaced.

Carol Duckett, 510 Grand Street, said a neighbor hired a surveyor and they dug a lot of holes.

Julie Torrell, resident of St. George Township, asked how the taxes would be applied if the county built a new building.

Brunn explained that the cost to build the new county building would be shared among all county residents.

### **Department Reports**

#### **Police Department**

Chief Katie McMillin gave an overview of the crime stat report. There were 300 calls in February compared to 257 calls during the same time period last year. There have been an increase in calls at the schools and gas drive offs. It is also that time of year when residents will receive letters about their sidewalks if they need to be shoveled. Fun with Police was last week with 17 kids participating. On March 14, the department will have a Senior Fraud class that residents can sign up for through community ed.

#### **City Engineer**

Jarod Griffith gave an overview of the Hwy 23 project. The project will advertise for bids until March 25 with construction planned to begin on May 9. The Benton County broadband project is also moving forward. They have surveyed 7 miles with 7 more to go. Discussion followed.

CITY OF FOLEY  
COUNTY OF BENTON  
STATE OF MINNESOTA  
RESOLUTION 2022 - 10

A RESOLUTION SUPPORTING HOUSING AND LOCAL DECISION-MAKING  
AUTHORITY

WHEREAS, local elected decision-makers are in the best position to determine the health, safety, and welfare regulations that best serve the unique needs of their constituents; and

WHEREAS, zoning regulation is an important planning tool that benefits communities economically and socially, improves health and wellness, and helps conserve the environment; and

WHEREAS, local zoning regulation allows communities to plan for the use of land transparently, involving residents through public engagement; and

WHEREAS, cities across the state are keenly aware of the distinct housing challenges facing their communities and they target those local housing challenges with available tools; and

WHEREAS, multiple bills restricting local decision-making related to housing have been introduced in the 2021-2022 biennium.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF  
Foley that this Council supports local decision-making authority and opposes legislation that restricts the ability for local elected officials to respond to the needs of their communities.

LET IT ALSO BE RESOLVED that this Council supports housing policy that advances solutions to support full housing spectrum solutions, local innovation, incentives instead of mandates, and community-specific solutions throughout Minnesota.

Passed and Adopted by the Council on this 5th day of April, 2022.

ATTEST:

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

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

## INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

The City of Foley, (the "City"), and Mille Lacs Veterinary Clinic, P.A., ("Clinic"), make this Indemnification and Hold Harmless Agreement (this "Agreement") effective as of April 9, 2022, (the "Effective Date").

### RECITALS

- A. The Clinic has requested to temporarily close a portion of Third Avenue, a City street, in front of the Clinic's property located at 310 Dewey Street on April 9, 2022, in order to conduct an equine vaccination event.
- B. The City has agreed to the temporary street closure on the condition that the Clinic indemnifies the City from any liabilities, costs and damages which may occur as a result of or arising out of the temporary closure of Dewey Street, or the Clinic's clientele bringing horses and horse trailers into the City.

In consideration of the mutual covenants, conditions and promises of the parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Indemnification.** The Clinic agrees to defend, indemnify and hold the City, its officers, agents, employees and affiliates, harmless to the fullest extent permitted by law for, from and against any and all liability, claims, damages, costs, losses and expenses (including court costs and attorneys' fees) in any way related to or arising out of: (i) any injury to or death of any person, including, but not limited to, Clinic's employees or agents; and (ii) any and all damage to or destruction of any property or loss of use of such property, including, but not limited to, damage to property of third parties, arising out of, related to or in connection with the temporary closure of the City's street, or Clinic's clientele bringing horses and horse trailers into the City, unless such injury, death, damage or destruction is caused solely by the City's negligence.
2. **Care and Coordination.** The Clinic agrees to at all times exercise reasonable precautions in accordance with all applicable governing safety regulations and will be solely responsible for the safety of its employees, agents, clients, licensees, invitees and other persons, as well as their property, while conducting the equine vaccination event. The City shall not under any circumstance be liable for the actions or omissions of the Clinic, its officers, agents, employees, clients, licensees, invitees or other persons associated with the Clinic. The Clinic agrees to at all times coordinate and cooperate with City staff on signage, traffic control, staging of trailers, controlling animals outside of trailers, and eliminating safety concerns. The Clinic agrees to notify all neighbors on the 100<sup>th</sup> block of 3<sup>rd</sup> Avenue of the equine vaccination event no later than April 2, 2022. While 3<sup>rd</sup> Avenue will be temporarily closed to through traffic during the event on April 9, 2022, the Clinic acknowledges that access to properties on the 100<sup>th</sup> block of 3<sup>rd</sup> Avenue shall not be restricted.

## Hourly Rates Seasonal

PW Seasonal	\$13.00/hr. + 0.50/hr. Return \$15.00/hr. Max
Lifeguard	\$13.00 / hr. + .50/hr .Return \$15.00/ hr. Max
WSI	\$14.00 / hr. \$15.00 / hr. Max
Pool Manager	\$19.00 / hr. + .50 / hr. return 21.00 /hr. Max
Asst. Pool Manager	\$16.00/hr + .50 / hr.return \$19.00 /hr. Max
Pool Attendent	\$11.00 /hr.

CITY OF FOLEY  
COUNTY OF BENTON  
STATE OF MINNESOTA

ORDINANCE NUMBER 464

AN ORDINANCE AMENDING THE FOLEY CITY ORDINANCES  
CHAPTER III, SECTION 305 PUBLIC SEWERS, INDUSTRIAL WASTE AND 310  
PROHIBITING STORM WATER DISPOSAL AND CHAPTER VI, SECTION 609 SEWER  
SERVICE CHARGE AND SECTION 611 SEWER USE REGULATIONS

THE COUNCIL OF THE CITY OF FOLEY HEREBY ORDAINS that the 1974 Code of Ordinances of the City of Foley CHAPTER VI, FEES, CHARGES and RATES be amended:

**SECTION 1:** The existing Section 305.14 Bill, Penalties is repealed, substituting therefore the following Section 305:14 to read as follows:

Subd. 1. Billing Practice. Industrial waste charges provided for in this ordinance shall be included as a separate item on the regular bill for water and shall be paid monthly in accordance with the existing practices. Charges shall be paid at the same time that the water charges of the person become due and payment for water services shall not be accepted without payment also of the sewer service charge.

Subd. 2. Penalty for Failure to Pay Bills. Failure to pay monthly bills for the established sewer charge for industrial waste when due or repeated discharge of prohibited waste to the sanitary sewer shall be sufficient cause to disconnect any and all services to the water and/or sanitary sewer mains of the City of Foley after notice and hearing thereon and the same penalties and charges now or hereafter provided for by the ordinances of the City of Foley for failure to pay the bill for water service when due shall be applicable in like manner in case of failure to pay the established charge for industrial waste discharged to the sanitary sewer mains as established in Section 305:12.

**SECTION 2:** The existing Section 310.34 Surcharge is repealed, substituting therefore the following Section 310.34 to read as follows:

A surcharge of seventy-five (\$75.00) dollars per month shall be added to every sewer bill mailed after August 31, 2014 to property owners who have not obtained a property inspection by that date until proper certification of inspection is provided. A surcharge of seventy-five (\$75.00) dollars per month shall be added to every sewer bill mailed after June 30, 2016 to property owners who are not in compliance with this Section 310:16 of this ordinance as of that date. This surcharge shall be added every month to be included in the monthly utility bills until compliance is met.



Subd. 1. In addition to the \$75.00 per month surcharge, a property owner or other person who is not in compliance with this Section may be mailed, by regular mail, with a notice that such violation shall cease and desist within a time limit provided by the City Council. If such violation does not cease by the established time limit, the owner of the property or other person violating this Section 310 shall be guilty of a misdemeanor. The imposition of such fine shall in no way limit the City's right to seek an injunction in District Court enjoining the continued discharge and a court order requiring the property owner to disconnect the nonconforming connection to the sanitary sewer system.

Subd. 2. Each such charge is hereby made a lien upon the premises served. All such charges which are said to be payable immediately and are not paid shall be considered past due, and when authorized by resolution of the Council, shall be certified by the City Administrator of the City of Foley to the Benton County Auditor, for collection along with taxes.

Subd. 3. Properties that are vacant due to foreclosure, rehabilitation, or other distressed situation, present unique circumstances. Vacant properties where City water service has been turned off shall be exempt from the surcharge while water service is off. Upon reactivating water service, all such properties shall be subject to all terms of this ordinance, including the imposition of a surcharge.

**SECTION 3:** The existing Section 609.00 Article III A, Section 3 is repealed, substituting therefore the following Section 609:00 Article III A, Section 3 to read as follows:

The charges assessed residential users and those users of other classes discharging "Normal Domestic Strength Wastewater" shall be established proportionately according to billable wastewater volume. Billable wastewater volume shall be calculated as follows:

- A. Residential Users.  
Billable wastewater volume for residential users shall be calculated on the basis of metered water usage. The per monthly billable wastewater volume shall be equal to monthly metered water usage.  
The City requires residential users to install water meters.
- B. Non-Residential Users.  
Billable wastewater volume for non-residential users shall be calculated on the basis of metered water usage. The per monthly billable wastewater volume shall be equal to the monthly metered water usage.  
The City requires non-residential users to install water meters.

**SECTION 4:** The existing Section 611.00 Article VIII, Section 1 is repealed, substituting therefore the following Section 611:00 Article VIII, Section 1 to reach as follows:

Each user of sewer service shall pay the charge(s) applicable to the type of service, and in accordance with the provisions set forth in Section 610:00 – Sewer Rates and Charges.

PASSED AND ADOPTED by the City Council of the City of Foley this 5<sup>th</sup> day of April, 2022.

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Gerard L. Bettendorf, Mayor

ATTEST:

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Sarah A. Brunn, Administrator

CITY OF FOLEY  
COUNTY OF BENTON  
STATE OF MINNESOTA

RESOLUTION 2022 - 09

A RESOLUTION APPROVING STATE OF MINNESOTA JOINT POWERS AGREEMENTS WITH  
THE CITY OF FOLEY ON BEHALF OF ITS CITY ATTORNEY AND POLICE DEPARTMENT

WHEREAS, the City of Foley on behalf of its Prosecuting Attorney and Police Department desires to enter into Joint Powers Agreements with the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension to use systems and tools available over the State's criminal justice data communications network for which the City is eligible. The Joint Powers Agreements further provide the City with the ability to add, modify and delete connectivity, systems and tools over the five year life of the agreement and obligates the City to pay the costs for the network connection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Foley, Minnesota as follows:

1. That the State of Minnesota Joint Powers Agreements by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the City of Foley on behalf of its Prosecuting Attorney and Police Department, are hereby approved.
2. That the Police Chief Katie McMillin, or his or her successor, is designated the Authorized Representative for the Police Department. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.
3. That the Benton County Attorney Philip Miller, or his or her successor, is designated the Authorized Representative for the Prosecuting Attorney. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.
4. That Gerard L. Bettendorf, the Mayor for the City of Foley, and Sarah A. Brunn, the City Administrator, are authorized to sign the State of Minnesota Joint Powers Agreements.

Passed and Adopted by the Council on this 5th day of April, 2022.

ATTEST:

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

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



# State of Minnesota Joint Powers Agreement

This Agreement is between the State of Minnesota, acting through its Department of Public Safety on behalf of the Bureau of Criminal Apprehension ("BCA"), and the City of Foley of behalf of its Police Department ("Governmental Unit"). The BCA and the Governmental Unit may be referred to jointly as "Parties."

## Recitals

Under Minn. Stat. § 471.59, the BCA and the Governmental Unit are empowered to engage in agreements that are necessary to exercise their powers. Under Minn. Stat. § 299C.46, the BCA must provide a criminal justice data communications network to benefit political subdivisions as defined under Minn. Stat. § 299C.46, subd. 2 and subd. 2(a). The Governmental Unit is authorized by law to utilize the criminal justice data communications network pursuant to the terms set out in this Agreement. In addition, BCA either maintains repositories of data or has access to repositories of data that benefit authorized political subdivisions in performing their duties. The Governmental Unit wants to access data in support of its official duties.

The purpose of this Agreement is to create a method by which the Governmental Unit has access to those systems and tools for which it has eligibility, and to memorialize the requirements to obtain access and the limitations on the access.

## Agreement

### 1 Term of Agreement

- 1.1 **Effective Date.** This Agreement is effective on the date the BCA obtains all required signatures under Minn. Stat. § 16C.05, subdivision 2.
- 1.2 **Expiration Date.** This Agreement expires five years from the date it is effective.

### 2 Agreement Between the Parties

- 2.1 **General Access.** BCA agrees to provide Governmental Unit with access to the Minnesota Criminal Justice Data Communications Network (CJDN) and those systems and tools which the Governmental Unit is authorized by law to access via the CJDN for the purposes outlined in Minn. Stat. § 299C.46.

- 2.2 **Methods of Access.**

The BCA offers three (3) methods of access to its systems and tools. The methods of access are:

- A. **Direct access** occurs when individual users at the Governmental Unit use the Governmental Unit's equipment to access the BCA's systems and tools. This is generally accomplished by an individual user entering a query into one of BCA's systems or tools.
- B. **Indirect Access** occurs when individual users at the Governmental Unit go to another Governmental Unit to obtain data and information from BCA's systems and tools. This method of access generally results in the Governmental Unit with indirect access obtaining the needed data and information in a physical format like a paper report.
- C. **Computer-to-Computer System Interface** occurs when the Governmental Unit's computer exchanges data and information with BCA's computer systems and tools using an interface. Without limitation, interface types include: state message switch, web services, enterprise service bus and message queuing.

For purposes of this Agreement, Governmental Unit employees or contractors may use any of these methods to use BCA's systems and tools as described in this Agreement. Governmental Unit will select a

method of access and can change the methodology following the process in Clause 2.10.

- 2.3 Federal Systems Access.** In addition, pursuant to 28 CFR §20.30-38 and Minn. Stat. §299C.58, BCA may provide Governmental Unit with access to the Federal Bureau of Investigation (FBI) National Crime Information Center.
- 2.4 Governmental Unit Policies.** Both the BCA and the FBI's Criminal Justice Information Systems (FBI-CJIS) have policies, regulations and laws on access, use, audit, dissemination, hit confirmation, logging, quality assurance, screening (pre-employment), security, timeliness, training, use of the system, and validation. Governmental Unit has created its own policies to ensure that Governmental Unit's employees and contractors comply with all applicable requirements. Governmental Unit ensures this compliance through appropriate enforcement. These BCA and FBI-CJIS policies and regulations, as amended and updated from time to time, are incorporated into this Agreement by reference. The policies are available at <https://bcanextest.x.state.mn.us/launchpad/>.
- 2.5 Governmental Unit Resources.** To assist Governmental Unit in complying with the federal and state requirements on access to and use of the various systems and tools, information is available at <https://sps.x.state.mn.us/sites/bcaservicecatalog/default.aspx>. Additional information on appropriate use is found in the Minnesota Bureau of Criminal Apprehension Policy on Appropriate Use of Systems and Data available at <https://bcanextest.x.state.mn.us/launchpad/cjisdocs/docs.cgi?cmd=FS&ID=795&TYPE=DOCS>.
- 2.6 Access Granted.**
- A. Governmental Unit is granted permission to use all current and future BCA systems and tools for which Governmental Unit is eligible. Eligibility is dependent on Governmental Unit (i) satisfying all applicable federal or state statutory requirements; (ii) complying with the terms of this Agreement; and (iii) acceptance by BCA of Governmental Unit's written request for use of a specific system or tool.
  - B. To facilitate changes in systems and tools, Governmental Unit grants its Authorized Representative authority to make written requests for those systems and tools provided by BCA that the Governmental Unit needs to meet its criminal justice obligations and for which Governmental Unit is eligible.
- 2.7 Future Access.** On written request from the Governmental Unit, BCA also may provide Governmental Unit with access to those systems or tools which may become available after the signing of this Agreement, to the extent that the access is authorized by applicable state and federal law. Governmental Unit agrees to be bound by the terms and conditions contained in this Agreement that when utilizing new systems or tools provided under this Agreement.
- 2.8 Limitations on Access.** BCA agrees that it will comply with applicable state and federal laws when making information accessible. Governmental Unit agrees that it will comply with applicable state and federal laws when accessing, entering, using, disseminating, and storing data. Each party is responsible for its own compliance with the most current applicable state and federal laws.
- 2.9 Supersedes Prior Agreements.** This Agreement supersedes any and all prior agreements between the BCA and the Governmental Unit regarding access to and use of systems and tools provided by BCA.
- 2.10 Requirement to Update Information.** The parties agree that if there is a change to any of the information whether required by law or this Agreement, the party will send the new information to the other party in writing within 30 days of the change. This clause does not apply to changes in systems or tools provided under this Agreement.
- This requirement to give notice additionally applies to changes in the individual or organization serving the Governmental Unit as its prosecutor. Any change in performance of the prosecutorial function must be provided to the BCA in writing by giving notice to the Service Desk, [BCA.ServiceDesk@state.mn.us](mailto:BCA.ServiceDesk@state.mn.us).
- 2.11 Transaction Record.** The BCA creates and maintains a transaction record for each exchange of data utilizing its systems and tools. In order to meet FBI-CJIS requirements and to perform the audits described in Clause 7, there must be a method of identifying which individual users at the Governmental Unit conducted a

particular transaction.

If Governmental Unit uses either direct access as described in Clause 2.2A or indirect access as described in Clause 2.2B, BCA's transaction record meets FBI-CJIS requirements.

When Governmental Unit's method of access is a computer-to-computer interface as described in Clause 2.2C, the Governmental Unit must keep a transaction record sufficient to satisfy FBI-CJIS requirements and permit the audits described in Clause 7 to occur.

If a Governmental Unit accesses data from the Driver and Vehicle Services Division in the Minnesota Department of Public Safety and keeps a copy of the data, Governmental Unit must have a transaction record of all subsequent access to the data that are kept by the Governmental Unit. The transaction record must include the individual user who requested access, and the date, time and content of the request. The transaction record must also include the date, time and content of the response along with the destination to which the data were sent. The transaction record must be maintained for a minimum of six (6) years from the date the transaction occurred and must be made available to the BCA within one (1) business day of the BCA's request.

**2.12 Court Information Access.** Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Governmental Unit if the Governmental Unit completes the Court Data Services Subscriber Amendment, which upon execution will be incorporated into this Agreement by reference. These BCA systems and tools are identified in the written request made by the Governmental Unit under Clause 2.6 above. The Court Data Services Subscriber Amendment provides important additional terms, including but not limited to privacy (see Clause 8.2, below), fees (see Clause 3 below), and transaction records or logs, that govern Governmental Unit's access to and/or submission of the Court Records delivered through the BCA systems and tools.

**2.13 Vendor Personnel Screening.** The BCA will conduct all vendor personnel screening on behalf of Governmental Unit as is required by the FBI CJIS Security Policy. The BCA will maintain records of the federal, fingerprint-based background check on each vendor employee as well as records of the completion of the security awareness training that may be relied on by the Governmental Unit.

### **3 Payment**

The Governmental Unit currently accesses the criminal justice data communications network described in Minn. Stat. §299C.46. The bills are sent quarterly for the amount of One Hundred Fifty Dollars (\$150.00) or a total annual cost of Six Hundred Dollars (\$600.00).

The Governmental Unit will identify its contact person for billing purposes, and will provide updated information to BCA's Authorized Representative within ten business days when this information changes.

If Governmental Unit chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, additional fees, if any, are addressed in that amendment.

### **4 Authorized Representatives**

The BCA's Authorized Representative is the person below, or her successor:

Name:	Dana Gotz, Deputy Superintendent
Address:	Minnesota Department of Public Safety; Bureau of Criminal Apprehension 1430 Maryland Avenue Saint Paul, MN 55106

Telephone: 651.793.2007  
Email Address: [Dana.Gotz@state.mn.us](mailto:Dana.Gotz@state.mn.us)

The Governmental Unit's Authorized Representative is the person below, or his/her successor:

Name: Katie McMillin, Chief  
Address: 251 4<sup>th</sup> Ave N  
PO Box 709  
Foley, MN 56329  
Telephone: 320.968.0800  
Email Address: [kmcmillin@ci.foley.mn.us](mailto:kmcmillin@ci.foley.mn.us)

**5 Assignment, Amendments, Waiver, and Agreement Complete**

- 5.1 Assignment.** Neither party may assign nor transfer any rights or obligations under this Agreement.
- 5.2 Amendments.** Any amendment to this Agreement, except those described in Clauses 2.6 and 2.7 above must be in writing and will not be effective until it has been signed and approved by the same parties who signed and approved the original agreement, their successors in office, or another individual duly authorized.
- 5.3 Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or the right to enforce it.
- 5.4 Agreement Complete.** This Agreement contains all negotiations and agreements between the BCA and the Governmental Unit. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

**6 Liability**

Each party will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other party's actions and consequences of those actions. The Minnesota Torts Claims Act, Minn. Stat. § 3.736 and other applicable laws govern the BCA's liability. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws, governs the Governmental Unit's liability.

**7 Audits**

- 7.1** Under Minn. Stat. § 16C.05, subd. 5, the Governmental Unit's books, records, documents, internal policies and accounting procedures and practices relevant to this Agreement are subject to examination by the BCA, the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

Under Minn. Stat. § 6.551, the State Auditor may examine the books, records, documents, and accounting procedures and practices of BCA. The examination shall be limited to the books, records, documents, and accounting procedures and practices that are relevant to this Agreement.

- 7.2** Under applicable state and federal law, the Governmental Unit's records are subject to examination by the BCA to ensure compliance with laws, regulations and policies about access, use, and dissemination of data.
- 7.3** If the Governmental Unit accesses federal databases, the Governmental Unit's records are subject to examination by the FBI and BCA; the Governmental Unit will cooperate with FBI and BCA auditors and make any requested data available for review and audit.
- 7.4** If the Governmental Unit accesses state databases, the Governmental Unit's records are subject to examination by the BCA; the Governmental Unit will cooperate with the BCA auditors and make any requested data available for review and audit.

7.5 To facilitate the audits required by state and federal law, Governmental Unit is required to have an inventory of the equipment used to access the data covered by this Agreement and the physical location of each.

## 8 Government Data Practices

8.1 **BCA and Governmental Unit.** The Governmental Unit and BCA must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data accessible under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this Agreement. The remedies of Minn. Stat. §§ 13.08 and 13.09 apply to the release of the data referred to in this clause by either the Governmental Unit or the BCA.

8.2 **Court Records.** If Governmental Unit chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, the following provisions regarding data practices also apply. The Court is not subject to Minn. Stat. Ch. 13 but is subject to the *Rules of Public Access to Records of the Judicial Branch* promulgated by the Minnesota Supreme Court. All parties acknowledge and agree that Minn. Stat. § 13.03, subdivision 4(e) requires that the BCA and the Governmental Unit comply with the *Rules of Public Access* for those data received from Court under the Court Data Services Subscriber Amendment. All parties also acknowledge and agree that the use of, access to or submission of Court Records, as that term is defined in the Court Data Services Subscriber Amendment, may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law. All parties acknowledge and agree that these applicable restrictions must be followed in the appropriate circumstances.

## 9 Investigation of Alleged Violations; Sanctions

For purposes of this clause, "Individual User" means an employee or contractor of Governmental Unit.

9.1 **Investigation.** The Governmental Unit and BCA agree to cooperate in the investigation and possible prosecution of suspected violations of federal and state law referenced in this Agreement. Governmental Unit and BCA agree to cooperate in the investigation of suspected violations of the policies and procedures referenced in this Agreement. When BCA becomes aware that a violation may have occurred, BCA will inform Governmental Unit of the suspected violation, subject to any restrictions in applicable law. When Governmental Unit becomes aware that a violation has occurred, Governmental Unit will inform BCA subject to any restrictions in applicable law.

### 9.2 Sanctions Involving Only BCA Systems and Tools.

The following provisions apply to BCA systems and tools not covered by the Court Data Services Subscriber Amendment. None of these provisions alter the Governmental Unit internal discipline processes, including those governed by a collective bargaining agreement.

9.2.1 For BCA systems and tools that are not covered by the Court Data Services Subscriber Amendment, Governmental Unit must determine if and when an involved Individual User's access to systems or tools is to be temporarily or permanently eliminated. The decision to suspend or terminate access may be made as soon as alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. Governmental Unit must report the status of the Individual User's access to BCA without delay. BCA reserves the right to make a different determination concerning an Individual User's access to systems or tools than that made by Governmental Unit and BCA's determination controls.

9.2.2 If BCA determines that Governmental Unit has jeopardized the integrity of the systems or tools covered in this Clause 9.2, BCA may temporarily stop providing some or all the systems or tools under this Agreement until the failure is remedied to the BCA's satisfaction. If Governmental Unit's failure is continuing or repeated, Clause 11.1 does not apply and BCA may terminate this Agreement immediately.



**9.3 Sanctions Involving Only Court Data Services**

The following provisions apply to those systems and tools covered by the Court Data Services Subscriber Amendment, if it has been signed by Governmental Unit. As part of the agreement between the Court and the BCA for the delivery of the systems and tools that are covered by the Court Data Services Subscriber Amendment, BCA is required to suspend or terminate access to or use of the systems and tools either on its own initiative or when directed by the Court. The decision to suspend or terminate access may be made as soon as an alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. The decision to suspend or terminate may also be made based on a request from the Authorized Representative of Governmental Unit. The agreement further provides that only the Court has the authority to reinstate access and use.

**9.3.1** Governmental Unit understands that if it has signed the Court Data Services Subscriber Amendment and if Governmental Unit's Individual Users violate the provisions of that Amendment, access and use will be suspended by BCA or Court. Governmental Unit also understands that reinstatement is only at the direction of the Court.

**9.3.2** Governmental Unit further agrees that if Governmental Unit believes that one or more of its Individual Users have violated the terms of the Amendment, it will notify BCA and Court so that an investigation as described in Clause 9.1 may occur.

**10 Venue**

Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**11 Termination**

**11.1 Termination.** The BCA or the Governmental Unit may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party's Authorized Representative.

**11.2 Termination for Insufficient Funding.** Either party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the other party's authorized representative. The Governmental Unit is not obligated to pay for any services that are provided after notice and effective date of termination. However, the BCA will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. Neither party will be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. Notice of the lack of funding must be provided within a reasonable time of the affected party receiving that notice.

**12 Continuing Obligations**

The following clauses survive the expiration or cancellation of this Agreement: Liability; Audits; Government Data Practices; 9. Investigation of Alleged Violations; Sanctions; and Venue.

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**The Parties indicate their agreement and authority to execute this Agreement by signing below.**

**1. GOVERNMENTAL UNIT**

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

**2. DEPARTMENT OF PUBLIC SAFETY, BUREAU OF CRIMINAL APPREHENSION**

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

**3. COMMISSIONER OF ADMINISTRATION**  
As delegated to the Office of State Procurement

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

Date: \_\_\_\_\_

## **CJDN Fee Structure**

Effective July 2018

### **Statements:**

All agencies receiving data from the BCA or through the BCA will be charged at least \$50 per-month. (Regardless if they are connected directly to us or not)

**Current paying** agencies will continue to pay their current monthly fee regardless of the method of connection. (Exception: See VPN agency charges below)

**New** agencies will pay \$50 per-month.

**Agencies** that are currently not paying any fees will be charged \$50 per-month.

**VPN** agencies will pay \$50 per-month plus \$15.00 per-fob p/m (for CJA & Private Law Firm ) or \$35 per-fob p/m (for NCJA).

\$100 one-time charge plus \$100.00 fob replacement charge (fobs have a 4-5 year renewal cycle).

\* BCA Master Agreement with Agency will have language added to reflect Agency/PLF arrangement. Agreement will also allow PLF to support multiple agencies with single connection.

### **Connection types:**

- 1. VPN – Site-Site Connection directly to BCA**
- 2. Direct (CJDN connection)**  
(Additional MN-IT billing is direct to agency upon BCA approving MN-IT CJDN WAN Agreement  
Agency shall have an appropriate agreement (Management Control Agreement with MN.IT))
- 3. Shared – Agency shares connection with another BCA connected agency**  
(Agencies are advised to put in place an interagency Agreement (sometimes referred to as downstream agency or agency sitting behind another agency agreement).)
- 4. Extended – Extending a network connection from a BCA connected agency to an existing agency.**  
(Agencies are advised to put in place an interagency Agreement (sometimes referred to as downstream agency or agency sitting behind another agency agreement).)

# COURT DATA SERVICES SUBSCRIBER AMENDMENT TO CJDN SUBSCRIBER AGREEMENT

This Court Data Services Subscriber Amendment (“Subscriber Amendment”) is entered into by the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension, (“BCA”) and the City of Foley on behalf of its Police Department (“Agency”), and by and for the benefit of the State of Minnesota acting through its State Court Administrator’s Office (“Court”) who shall be entitled to enforce any provisions hereof through any legal action against any party.

## Recitals

This Subscriber Amendment modifies and supplements the Agreement between the BCA and Agency, SWIFT Contract number 207206, of even or prior date, for Agency use of BCA systems and tools (referred to herein as “the CJDN Subscriber Agreement”). Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes this Subscriber Amendment. The Agency desires to use one or more BCA systems and tools to access and/or submit Court Records to assist the Agency in the efficient performance of its duties as required or authorized by law or court rule. Court desires to permit such access and/or submission. This Subscriber Amendment is intended to add Court as a party to the CJDN Subscriber Agreement and to create obligations by the Agency to the Court that can be enforced by the Court. It is also understood that, pursuant to the Master Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA, the BCA is authorized to sign this Subscriber Amendment on behalf of Court. Upon execution the Subscriber Amendment will be incorporated into the CJDN Subscriber Agreement by reference. The BCA, the Agency and the Court desire to amend the CJDN Subscriber Agreement as stated below.

The CJDN Subscriber Agreement is amended by the addition of the following provisions:

1. **TERM; TERMINATION; ONGOING OBLIGATIONS.** This Subscriber Amendment shall be effective on the date finally executed by all parties and shall remain in effect until expiration or termination of the CJDN Subscriber Agreement unless terminated earlier as provided in this Subscriber Amendment. Any party may terminate this Subscriber Amendment with or without cause by giving written notice to all other parties. The effective date of the termination shall be thirty days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. The provisions of sections 5 through 9, 12.b., 12.c., and 15 through 24 shall survive any termination of this Subscriber Amendment as shall any other provisions which by their nature are intended or expected to survive such termination. Upon termination, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

2. **Definitions.** Unless otherwise specifically defined, each term used herein shall have the meaning assigned to such term in the CJDN Subscriber Agreement.

**a. “Authorized Court Data Services”** means Court Data Services that have been authorized for delivery to CJDN Subscribers via BCA systems and tools pursuant to an Authorization Amendment to the Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA.

**b. “Court Data Services”** means one or more of the services set forth on the Justice Agency Resource webpage of the Minnesota Judicial Branch website (for which the current address is [www.courts.state.mn.us](http://www.courts.state.mn.us)) or other location designated by the Court, as the same may be amended from time to time by the Court.

**c. “Court Records”** means all information in any form made available by the Court to Subscriber through the BCA for the purposes of carrying out this Subscriber Amendment, including:

- i. **“Court Case Information”** means any information in the Court Records that conveys information about a particular case or controversy, including without limitation Court Confidential Case Information, as defined herein.
- ii. **“Court Confidential Case Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that conveys information about a particular case or controversy.
- iii. **“Court Confidential Security and Activation Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that explains how to use or gain access to Court Data Services, including but not limited to login account names, passwords, TCP/IP addresses, Court Data Services user manuals, Court Data Services Programs, Court Data Services Databases, and other technical information.
- iv. **“Court Confidential Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access, including without limitation both i) Court Confidential Case Information; and ii) Court Confidential Security and Activation Information.

**d. “DCA”** shall mean the district courts of the state of Minnesota and their respective staff.

**e. “Policies & Notices”** means the policies and notices published by the Court in connection with each of its Court Data Services, on a website or other location designated by the Court, as the same may be amended from time to time by the Court. Policies & Notices for each Authorized Court Data Service identified in an approved request form under section 3, below, are hereby made part of this Subscriber Amendment by this reference and provide additional terms and conditions that govern Subscriber’s use of Court Records accessed through such services, including but not limited to provisions on access and use limitations.

f. **“Rules of Public Access”** means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables published from time to time by the Court entitled *Limits on Public Access to Case Records or Limits on Public Access to Administrative Records*, all of which by this reference are made a part of this Subscriber Amendment. It is the obligation of Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the Minnesota Judicial Branch website, for which the current address is [www.courts.state.mn.us](http://www.courts.state.mn.us).

g. **“Court”** shall mean the State of Minnesota, State Court Administrator's Office.

h. **“Subscriber”** shall mean the Agency.

i. **“Subscriber Records”** means any information in any form made available by the Subscriber to the Court for the purposes of carrying out this Subscriber Amendment.

3. **REQUESTS FOR AUTHORIZED COURT DATA SERVICES.** Following execution of this Subscriber Amendment by all parties, Subscriber may submit to the BCA one or more separate requests for Authorized Court Data Services. The BCA is authorized in the Master Authorization Agreement to process, credential and approve such requests on behalf of Court and all such requests approved by the BCA are adopted and incorporated herein by this reference the same as if set forth verbatim herein.

a. **Activation.** Activation of the requested Authorized Court Data Service(s) shall occur promptly following approval.

b. **Rejection.** Requests may be rejected for any reason, at the discretion of the BCA and/or the Court.

c. **Requests for Termination of One or More Authorized Court Data Services.** The Subscriber may request the termination of an Authorized Court Data Services previously requested by submitting a notice to Court with a copy to the BCA. Promptly upon receipt of a request for termination of an Authorized Court Data Service, the BCA will deactivate the service requested. The termination of one or more Authorized Court Data Services does not terminate this Subscriber Amendment. Provisions for termination of this Subscriber Amendment are set forth in section 1. Upon termination of Authorized Court Data Services, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

4. **SCOPE OF ACCESS TO COURT RECORDS LIMITED.** Subscriber's access to and/or submission of the Court Records shall be limited to Authorized Court Data Services identified in an approved request form under section 3, above, and other Court Records necessary for Subscriber to use Authorized Court Data Services. Authorized Court Data Services shall only be used according to the instructions provided in corresponding Policies & Notices or other materials and only as necessary to assist Subscriber in the efficient performance of Subscriber's duties

required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body. Subscriber's access to the Court Records for personal or non-official use is prohibited. Subscriber will not use or attempt to use Authorized Court Data Services in any manner not set forth in this Subscriber Amendment, Policies & Notices, or other Authorized Court Data Services documentation, and upon any such unauthorized use or attempted use the Court may immediately terminate this Subscriber Amendment without prior notice to Subscriber.

**5. GUARANTEES OF CONFIDENTIALITY.** Subscriber agrees:

**a.** To not disclose Court Confidential Information to any third party except where necessary to carry out the Subscriber's duties as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body.

**b.** To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of Court Confidential Information and to satisfy Subscriber's obligations under this Subscriber Amendment.

**c.** To limit the use of and access to Court Confidential Information to Subscriber's bona fide personnel whose use or access is necessary to effect the purposes of this Subscriber Amendment, and to advise each individual who is permitted use of and/or access to any Court Confidential Information of the restrictions upon disclosure and use contained in this Subscriber Amendment, requiring each individual who is permitted use of and/or access to Court Confidential Information to acknowledge in writing that the individual has read and understands such restrictions. Subscriber shall keep such acknowledgements on file for one year following termination of the Subscriber Amendment and/or CJDN Subscriber Agreement, whichever is longer, and shall provide the Court with access to, and copies of, such acknowledgements upon request. For purposes of this Subscriber Amendment, Subscriber's bona fide personnel shall mean individuals who are employees of Subscriber or provide services to Subscriber either on a voluntary basis or as independent contractors with Subscriber.

**d.** That, without limiting section 1 of this Subscriber Amendment, the obligations of Subscriber and its bona fide personnel with respect to the confidentiality and security of Court Confidential Information shall survive the termination of this Subscriber Amendment and the CJDN Subscriber Agreement and the termination of their relationship with Subscriber.

**e.** That, notwithstanding any federal or state law applicable to the nondisclosure obligations of Subscriber and Subscriber's bona fide personnel under this Subscriber Amendment, such obligations of Subscriber and Subscriber's bona fide personnel are founded independently on the provisions of this Subscriber Amendment.

**6. APPLICABILITY TO PREVIOUSLY DISCLOSED COURT RECORDS.** Subscriber acknowledges and agrees that all Authorized Court Data Services and related Court Records disclosed to Subscriber prior to the effective date of this Subscriber Amendment shall be subject to the provisions of this Subscriber Amendment.

**7. LICENSE AND PROTECTION OF PROPRIETARY RIGHTS.** During the term of this Subscriber Amendment, subject to the terms and conditions hereof, the Court hereby grants to Subscriber a nonexclusive, nontransferable, limited license to use Court Data Services Programs and Court Data Services Databases to access or receive the Authorized Court Data Services identified in an approved request form under section 3, above, and related Court Records. Court reserves the right to make modifications to the Authorized Court Data Services, Court Data Services Programs, and Court Data Services Databases, and related materials without notice to Subscriber. These modifications shall be treated in all respects as their previous counterparts.

**a. Court Data Services Programs.** Court is the copyright owner and licensor of the Court Data Services Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the Court Data Services Programs, and all information contained in documentation pertaining to the Court Data Services Programs, including but not limited to manuals, user documentation, and passwords, are trade secret information of Court and its licensors.

**b. Court Data Services Databases.** Court is the copyright owner and licensor of the Court Data Services Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the Court Data Services Databases and their structure, sequence and organization, including without limitation data schemas such as the Court XML Schema, are trade secret information of Court and its licensors.

**c. Marks.** Subscriber shall neither have nor claim any right, title, or interest in or use of any trademark used in connection with Authorized Court Data Services, including but not limited to the marks "MNCIS" and "Odyssey."

**d. Restrictions on Duplication, Disclosure, and Use.** Trade secret information of Court and its licensors will be treated by Subscriber in the same manner as Court Confidential Information. In addition, Subscriber will not copy any part of the Court Data Services Programs or Court Data Services Databases, or reverse engineer or otherwise attempt to discern the source code of the Court Data Services Programs or Court Data Services Databases, or use any trademark of Court or its licensors, in any way or for any purpose not specifically and expressly authorized by this Subscriber Amendment. As used herein, "trade secret information of Court and its licensors" means any information possessed by Court which derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of Court and its licensors" does not, however, include information which was known to Subscriber prior to Subscriber's receipt thereof, either directly or indirectly, from Court or its licensors, information which is independently developed by Subscriber without reference to or use of information received from Court or its licensors, or information which would not qualify as a trade secret under Minnesota law. It will not be a violation of this section 7, sub-section d, for Subscriber to make up to one copy of training materials and configuration documentation, if any, for each individual authorized to access, use, or configure Authorized Court Data Services, solely for its own use in connection with this Subscriber Amendment. Subscriber will take all steps reasonably necessary to protect the copyright, trade secret, and trademark rights of Court and its licensors and Subscriber will advise its bona fide personnel who are permitted access to any of the Court Data Services Programs and Court Data Services Databases, and trade secret information of Court and its licensors, of the restrictions upon duplication, disclosure and use contained in this Subscriber Amendment.



**e. Proprietary Notices.** Subscriber will not remove any copyright or proprietary notices included in and/or on the Court Data Services Programs or Court Data Services Databases, related documentation, or trade secret information of Court and its licensors, or any part thereof, made available by Court directly or through the BCA, if any, and Subscriber will include in and/or on any copy of the Court Data Services Programs or Court Data Services Databases, or trade secret information of Court and its licensors and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to Subscriber by Court directly or through the BCA, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

**f. Title; Return.** The Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration material, if any, and logon account information and passwords, if any, made available by the Court to Subscriber directly or through the BCA and all copies, including partial copies, thereof are and remain the property of the respective licensor. Except as expressly provided in section 12.b., within ten days of the effective date of termination of this Subscriber Amendment or the CJDN Subscriber Agreement or within ten days of a request for termination of Authorized Court Data Service as described in section 4, Subscriber shall either: (i) uninstall and return any and all copies of the applicable Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration materials, if any, and logon account information, if any; or (2) destroy the same and certify in writing to the Court that the same have been destroyed.

**8. INJUNCTIVE RELIEF.** Subscriber acknowledges that the Court, Court's licensors, and DCA will be irreparably harmed if Subscriber's obligations under this Subscriber Amendment are not specifically enforced and that the Court, Court's licensors, and DCA would not have an adequate remedy at law in the event of an actual or threatened violation by Subscriber of its obligations. Therefore, Subscriber agrees that the Court, Court's licensors, and DCA shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Subscriber or its bona fide personnel without the necessity of the Court, Court's licensors, or DCA showing actual damages or that monetary damages would not afford an adequate remedy. Unless Subscriber is an office, officer, agency, department, division, or bureau of the state of Minnesota, Subscriber shall be liable to the Court, Court's licensors, and DCA for reasonable attorneys fees incurred by the Court, Court's licensors, and DCA in obtaining any relief pursuant to this Subscriber Amendment.

**9. LIABILITY.** Subscriber and the Court agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Liability shall be governed by applicable law. Without limiting the foregoing, liability of the Court and any Subscriber that is an office, officer, agency, department, division, or bureau of the state of Minnesota shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. Without limiting the foregoing, if Subscriber is a political subdivision of the state of Minnesota, liability of the Subscriber shall be governed by the provisions of Minn. Stat. Ch. 466 (Tort Liability, Political Subdivisions) or other applicable law. Subscriber and Court further acknowledge that the liability, if any, of the BCA is governed by a separate agreement between the Court and the BCA dated December 13, 2010 with DPS-M -0958.

**10. AVAILABILITY.** Specific terms of availability shall be established by the Court and communicated to Subscriber by the Court and/or the BCA. The Court reserves the right to terminate this Subscriber Amendment immediately and/or temporarily suspend Subscriber's Authorized Court Data Services in the event the capacity of any host computer system or legislative appropriation of funds is determined solely by the Court to be insufficient to meet the computer needs of the courts served by the host computer system.

**11.** [reserved]

**12. ADDITIONAL USER OBLIGATIONS.** The obligations of the Subscriber set forth in this section are in addition to the other obligations of the Subscriber set forth elsewhere in this Subscriber Amendment.

**a. Judicial Policy Statement.** Subscriber agrees to comply with all policies identified in Policies & Notices applicable to Court Records accessed by Subscriber using Authorized Court Data Services. Upon failure of the Subscriber to comply with such policies, the Court shall have the option of immediately suspending the Subscriber's Authorized Court Data Services on a temporary basis and/or immediately terminating this Subscriber Amendment.

**b. Access and Use; Log.** Subscriber shall be responsible for all access to and use of Authorized Court Data Services and Court Records by Subscriber's bona fide personnel or by means of Subscriber's equipment or passwords, whether or not Subscriber has knowledge of or authorizes such access and use. Subscriber shall also maintain a log identifying all persons to whom Subscriber has disclosed its Court Confidential Security and Activation Information, such as user ID(s) and password(s), including the date of such disclosure. Subscriber shall maintain such logs for a minimum period of six years from the date of disclosure, and shall provide the Court with access to, and copies of, such logs upon request. The Court may conduct audits of Subscriber's logs and use of Authorized Court Data Services and Court Records from time to time. Upon Subscriber's failure to maintain such logs, to maintain accurate logs, or to promptly provide access by the Court to such logs, the Court may terminate this Subscriber Amendment without prior notice to Subscriber.

**c. Personnel.** Subscriber agrees to investigate, at the request of the Court and/or the BCA, allegations of misconduct pertaining to Subscriber's bona fide personnel having access to or use of Authorized Court Data Services, Court Confidential Information, or trade secret information of the Court and its licensors where such persons are alleged to have violated the provisions of this Subscriber Amendment, Policies & Notices, Judicial Branch policies, or other security requirements or laws regulating access to the Court Records.

**d. Minnesota Data Practices Act Applicability.** If Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided via the

BCA systems and tools under this Subscriber Amendment; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

**13. FEES; INVOICES.** Unless the Subscriber is an office, officer, department, division, agency, or bureau of the state of Minnesota, Subscriber shall pay the fees, if any, set forth in applicable Policies & Notices, together with applicable sales, use or other taxes. Applicable monthly fees commence ten (10) days after notice of approval of the request pursuant to section 3 of this Subscriber Amendment or upon the initial Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the Court shall invoice Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within 30 days of the date of the invoice, the Court may immediately cancel this Subscriber Amendment without notice to Subscriber and pursue all available legal remedies. Subscriber certifies that funds have been appropriated for the payment of charges under this Subscriber Amendment for the current fiscal year, if applicable.

**14. MODIFICATION OF FEES.** Court may modify the fees by amending the Policies & Notices as provided herein, and the modified fees shall be effective on the date specified in the Policies & Notices, which shall not be less than thirty days from the publication of the Policies & Notices. Subscriber shall have the option of accepting such changes or terminating this Subscriber Amendment as provided in section 1 hereof.

**15. WARRANTY DISCLAIMERS.**

**a. WARRANTY EXCLUSIONS.** EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, COURT, COURT'S LICENSORS, AND DCA MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE INFORMATION, SERVICES OR COMPUTER PROGRAMS MADE AVAILABLE UNDER THIS AGREEMENT.

**b. ACCURACY AND COMPLETENESS OF INFORMATION.** WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH, COURT, COURT'S LICENSORS, AND DCA MAKE NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE COURT RECORDS.

**16. RELATIONSHIP OF THE PARTIES.** Subscriber is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of the Court, Court's licensors, or DCA. Neither Subscriber nor the Court, Court's licensors, or DCA shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

**17. NOTICE.** Except as provided in section 2 regarding notices of or modifications to Authorized Court Data Services and Policies & Notices, any notice to Court or Subscriber

hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.

**18. NON-WAIVER.** The failure by any party at any time to enforce any of the provisions of this Subscriber Amendment or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Subscriber Amendment. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

**19. FORCE MAJEURE.** Neither Subscriber nor Court shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.

**20. SEVERABILITY.** Every provision of this Subscriber Amendment shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Subscriber Amendment so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Subscriber Amendment, and all other provisions shall remain in full force and effect.

**21. ASSIGNMENT AND BINDING EFFECT.** Except as otherwise expressly permitted herein, neither Subscriber nor Court may assign, delegate and/or otherwise transfer this Subscriber Amendment or any of its rights or obligations hereunder without the prior written consent of the other. This Subscriber Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any other legal entity into, by or with which Subscriber may be merged, acquired or consolidated.

**22. GOVERNING LAW.** This Subscriber Amendment shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota.

**23. VENUE AND JURISDICTION.** Any action arising out of or relating to this Subscriber Amendment, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Subscriber hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.

**24. INTEGRATION.** This Subscriber Amendment contains all negotiations and agreements between the parties. No other understanding regarding this Subscriber Amendment, whether written or oral, may be used to bind either party, provided that all terms and conditions of the CJDN Subscriber Agreement and all previous amendments remain in full force and effect except as supplemented or modified by this Subscriber Amendment.

IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Subscriber Amendment in duplicate, intending to be bound thereby.

**1. SUBSCRIBER (AGENCY)**

Subscriber must attach written verification of authority to sign on behalf of and bind the entity, such as an opinion of counsel or resolution.

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

**2. DEPARTMENT OF PUBLIC SAFETY,  
BUREAU OF CRIMINAL APPREHENSION**

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

Date: \_\_\_\_\_

**3. COMMISSIONER OF ADMINISTRATION**  
delegated to Materials Management Division

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

Date: \_\_\_\_\_

**4. COURTS**

Authority granted to Bureau of Criminal Apprehension

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with authorized authority)

Date: \_\_\_\_\_

# Sanitary Sewer Extension Permit Application

## NPDES/SDS Permit Program

National Pollutant Discharge Elimination System (NPDES)/  
State Disposal System (SDS) Permit Program

Doc Type: Permit Application

### Information required for a complete application

**Project information packet must include the following:** To be considered a complete application, all of the following items must be included, or it will be deemed incomplete and returned. (Check the boxes to indicate that the information has been included.)

- Completed and properly signed *Application Form*. All questions must be answered and all necessary signatures included.
- Completed and executed *Design Certification for Sanitary Sewer Extension Plans and Specifications*.
- A location map or project site plan showing the area in which project construction will occur. The map shall be on 8½ x 11" paper. Please list the city of project location.
- [Environmental Review Pre-Screening Form](http://www.pca.state.mn.us/xqgx692) (p-ear1-08) found on the Minnesota Pollution Control Agency (MPCA) website at <http://www.pca.state.mn.us/xqgx692>.

MPCA Use Only	
AI ID #:	
SI ID#	
Date received:	
Check number:	
Facility name:	
SWX #:	
City:	
Fee:	<input type="checkbox"/> \$310 <input type="checkbox"/> \$620 <input type="checkbox"/> \$930

**Required application fee** (See below for fee calculation). Please make checks payable to: Minnesota Pollution Control Agency. Please check the box corresponding to the flow increase due to this project and include the applicable application fee. This value should correspond with the answer to question 1e.

- 0-0.1 MGD (1 point = \$310)    >0.1-1.0 MGD (2 points = \$620)    >1.0 MGD (3 points = \$930)

### The following information may be required for your project:

Check the appropriate boxes if the information is required and included with your project information packet.

- Project is served by a Sanitary Sewer District or another city's wastewater treatment facility (WWTF).

**Note:** For projects connecting to a Metropolitan Council Environmental Services (MCES) facility, go to MCES website: [http://www.metrocouncil.org/Wastewater-Water/Services/Wastewater-Treatment-\(1\)/Sanitary-Sewer-Permits.aspx?source=child](http://www.metrocouncil.org/Wastewater-Water/Services/Wastewater-Treatment-(1)/Sanitary-Sewer-Permits.aspx?source=child)

**Approval letter from MCES must be submitted with application to MPCA.**

If above box is checked, one of the following boxes must also be checked:

- Authorized signature is included in signature 4 on signature page.
- Approval letter from Sanitary Sewer District or WWTF is attached.

### Project information

Project title: 2022 TH 23 Utility Improvements

What city is the project primarily located: Foley      What county is the project primarily located: Benton

What collection system will the project connect to: City of Foley

- (This is usually the municipality that owns the sanitary sewer collection system.)

What wastewater treatment plant is the collection system named above connected to: Foley WWTF

- (The municipality that owns the collection system may have their own treatment plant or could be connected to wastewater treatment plant owned by another city or sanitary district.)

Have all questions on the *Design Certification for Sanitary Sewer Extension Plans and Specifications* been answered as "yes" or "NA"?  Yes    No

Are you pursuing Clean Water Revolving Fund financial assistance?    Yes    No

If yes, plans and specifications must be submitted for MPCA review.

### MPCA information

For additional information and forms see the MPCA's website at <http://www.pca.state.mn.us/enzq915> or by contacting the MPCA at 651-296-6300 or toll-free at 800-657-3864. You can also contact the Municipal Wastewater Section staff assigned to the city the project is in. A directory of office locations can be found at: <http://www.pca.state.mn.us/about/regions/index.html>

**Send project information packet to:**      **Fiscal Services – 6<sup>th</sup> floor**, Minnesota Pollution Control Agency  
520 Lafayette Road North, St. Paul, MN 55155

**Note:** No project construction may begin until you are in receipt of the required permit(s) issued by the MPCA and as defined by law under Minn. Stat. § 115.07, subd. 3.

## Contact information

All four contacts type fields must be completed. The same individual may be used for multiple types.

### 1. Project proposer name:

Contact name: Sarah Brunn Title: City Administrator  
Name of firm or organization: City of Foley  
Mailing address: PO Box 709  
City: Foley State: MN Zip code: 56329  
Phone: 320.968.7260 Email: sbrunn@ci.foley.mn.us

*The proposer is the entity requesting consideration for the construct of the project. The proposer is often a developer or other private entity that is not the Permittee and will not be the ultimate owner of the sewer system. The Permittee, which is usually the municipality, may also propose projects.*

### 2. Design engineer name for the project sewer system:

Contact name: Jarod Griffith, PE (MN) Title: Project Engineer  
Name of firm or organization: SEH  
Mailing address: 2351 Connecticut Avenue, Suite 300  
City: Sartell State: MN Zip code: 56377  
Phone: 218.849.0539 Email: jgriffith@sehinc.com

### 3. Permittee authorized representative (collection system) contact information:

Contact name: Sarah Brunn Title: City Administrator  
Name of firm or organization: City of Foley  
Mailing address: PO Box 709  
City: Foley State: MN Zip code: 56329  
Phone: 320.968.7260 Email: sbrunn@ci.foley.mn.us

### 4. WWTP authorized representative contact information:

Contact name: Mark Pappenfus Title: Public Works Director  
Name of firm or organization: City of Foley  
Mailing address: PO Box 709  
City: Foley State: MN Zip code: 56329  
Phone: 320.290.9186 Email: mpappenfus@ci.foley.mn.us

## Connections and flows components

*Complete these items with respect to how many connections are being requested for the proposed project. Project component types are defined as residential, commercial, industrial, and other. (Projects are often described in different ways, so the parameters have been selected as common quantities. **Acres** means the total area of the proposed project; **Lots** means the number of individual properties the area will be divided into, and **REU** means 'Residential Equivalent Unit', or unit equivalent to one home):*

### 1. Project components

#### a. Residential

Number of homes: 0  
Design flow per home:  
(gallons per day per home) 0  
Total residential flow from project:  
(gallons per day) 0  
Total residential BOD<sub>5</sub> from  
proposed project: (pounds per day) 0

#### b. Commercial

Number of commercial components 0 Units (check only one):  Acres  Lots  REU  
Design flow per component (gallons per day per component): 0  
Total commercial flow from project (gallons per day): 0  
Total commercial BOD<sub>5</sub> from proposed project (pounds per day): 0

**c. Industrial**

Number of industrial components 0 Units (check only one):  Acres  Lots  REU  
Design flow per component (gallons per day per component): 0  
Total industrial flow from project (gallons per day): 0  
Total industrial BOD<sub>5</sub> from proposed project (pounds per day): 0

**d. Other**

Number of other components 0 Units (check only one):  Acres  Lots  REU  
Design flow per component (gallons per day per component): 0  
Total flow from other project components (gallons per day): 0  
Total BOD<sub>5</sub> from other project components (pounds per day): 0

**e. Proposed total design flow (Sum of all components types listed above) (gallons per day): 0**

**f. Proposed total design BOD<sub>5</sub> (Sum of all component types listed above) (pounds per day): 0**

**2. Specification of the WWTF where flow will be treated (Contact the WWTF for current specifications.)**

- a. Design Average Wet Weather flow (AWW) (use *design average flow* if AWW not available): 0.2103 MGD
- b. Actual current annual average daily flow received in the past 12 months: 0.156 MGD
- c. Percent of design flow (b ÷ a) x 100: 74.18 %

**Certification and signature**

Federal Regulations (40 CFR Part 122.22) and State Regulations (Minn. Rule 7001.0060) require all permit applications to be signed as follows:

- A. For a corporation: by a responsible corporate officer. For the purpose of this permit, a responsible corporate officer means:
  - 1) A president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.
  - 2) The manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having a gross annual sales or expenditures exceeding 425 million, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- B. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
- C. For a municipality, county or other political subdivision: by a principal executive officer or ranking elected official.
- D. For a state, federal or other public agency/agents: by a commissioner, assistant or deputy commissioner; director, assistant or deputy director.

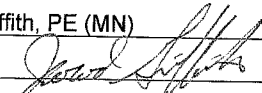
**1. Project proposer's signature**

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

Print name: Sarah Brunn Title: City Administrator  
Signature: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

**2. Design engineer's certification and signature**

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

Print name: Jarod Griffith, PE (MN) Title: Project Engineer  
Authorized signature:  Date (mm/dd/yyyy): 03/16/2022 PE Registration No.: 56772

**3. Permittee's approval**

*"My signature, or the signature of a delegated official, represents the approval of this project's connection to the sewer system and/or wastewater treatment facility under my jurisdiction. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*

Print name: Sarah Brunn Title: City Administrator  
Signature: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_



**4. Sanitary district or WWTF approval - Authorized municipal official signature (or delegated authority) from sanitary sewer district or municipality, if different than permittee.**

*"My signature, or the signature of a delegated official, represents the approval of this project's connection to the sewer system and/or wastewater treatment facility under my jurisdiction. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*

**If the sanitary sewer district or regional treatment authority has provided project approval under a separate process, a copy of that approval letter may be submitted with this application in place of this signature.**

Print name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Authorized signature: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

**Design certification for sanitary sewer extension plans and specifications**

**Title of plans and specifications:** 2022 TH 23 Utility Improvements

All sanitary sewer extensions shall be designed according to the latest version of the following recommendations, specifications, and guidelines (specific MPCA guidelines take precedence over other documents):

- *Recommended Standards for Wastewater Facilities, Great Lakes – Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers. (Ten States Standards)*
- *Standard Utilities Specification, City Engineers Association of Minnesota.*
- *Design Flow and Loading Determination Guidelines, Minnesota Pollution Control Agency.*

**Sewer pipe:**

Yes	No	N/A	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Does the project only include work on a lift station or pump station? If yes, go to questions No. 24.</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1. Are all sewers designed without an overflow or bypass point?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2. Are all gravity sewers at least eight inches in diameter? ( <i>Answer N/A only if there are no gravity sewers.</i> )
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3. Are all sewers sufficiently deep to receive wastewater from basements and to prevent freezing, or is insulation provided for sewers that are not placed at a depth to prevent freezing?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4. Is all nonconductive sewer pipe designed to be installed with a locate wire or equally effective means of marking the location in accordance with Minn. R. 7560.0150?  Additional information for this rule can be obtained from the Minnesota Office of Pipeline Safety website at <a href="https://dps.mn.gov/divisions/ops/Pages/default.aspx">https://dps.mn.gov/divisions/ops/Pages/default.aspx</a> or by calling 651-296-9636.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	5. If there are sewers that cross or enter any water body, has the Minnesota Department of Natural Resources (DNR) been contacted to determine if the project will require a permit for construction? ( <i>Answer N/A only if there are no sewers located in a water body.</i> )
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6. If the project has the potential to adversely impact wetlands, has a permit or approval from another official statewide program (U.S. Army Corps of Engineers, DNR, or Minnesota Wetlands Conservation Act) been issued to specifically address the project? ( <i>Answer N/A only if there are no impacts to wetlands.</i> )
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7. Do the design plans and specification contain specific size and location requirements for reaction blocking or pipe restraint to withstand water hammer and other cyclic reversal of stresses associated with lift station operation? ( <i>Answer N/A only if there are no pressure sewers.</i> )
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	8. Is there an air relief or vacuum relief valve provided at all high points in force mains? ( <i>Answer N/A only if there are no pressure sewers.</i> )
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	9. Are grinder pumps or other solids removal equipment included for any force main that is less than 4 inches in diameter? ( <i>Answer N/A only if there is no pressure sewer or force main less than 4 inches.</i> )
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10. Are all sewers designed with mean velocities when flowing full, of at least 2.0 feet per second, based on Manning's formula using an "n" value of 0.013?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11. Is the slope of 8-inch diameter gravity sewer at least 0.40 percent; 10-inch diameter sewer at least 0.28 percent; 12-inch diameter sewer at least 0.22 percent; 14-inch diameter sewer at least 0.17 percent; 15-inch diameter sewer at least 0.15 percent; 16-inch diameter sewer at least 0.14 percent; and 18-inch diameter sewer at least 0.12 percent? The pipe diameter and slope shall be selected to obtain the greatest practical velocities to minimize settling problems. Oversizing sewers to achieve flatter slopes should not be done. If proposed slopes are less than those listed above, what is the depth of flow and velocity of flow at the average wet weather flow and peak hourly wet weather flow (PHWW) for affected pipe sections?

**Sewer pipe (continued):**

Yes	No	N/A	
			If sewer grades are less than those listed above, sedimentation problems, frequent sewer maintenance, and backups may result. All sewers with a slope less than the minimums listed above must be cleaned at least once per year to ensure problems do not develop and to develop a site specific maintenance interval. <i>(Answer N/A only if no gravity sewer.)</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>		12. Are individual service connections to the sewer designed to be water tight and do not protrude into the sewer?
<input checked="" type="checkbox"/>	<input type="checkbox"/>		13. Are all gravity and pressure sewer pipes and water supply pipe separated horizontally by at least 10 feet and vertically by at least 1.5 feet when crossing?  If these separation distances cannot be obtained, has approval from the Minnesota Department of Health (MDH) and/or the Department of Labor and Industry (DLI) been granted.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	14. Has an application for water supply and/or building sewer construction been submitted to the MDH or DLI? <i>(Answer N/A only if there is no water supply piping included with this project.)</i>  Any project that involves the construction of water supply pipes may also require a permit from the MDH or the DLI. For additional information refer to the MDH website at <a href="http://www.health.state.mn.us/divs/eh/water/index.html">http://www.health.state.mn.us/divs/eh/water/index.html</a> or the DLI website at <a href="http://www.dli.mn.gov/CCLD/Plumbing.asp">http://www.dli.mn.gov/CCLD/Plumbing.asp</a> .
<input checked="" type="checkbox"/>	<input type="checkbox"/>		15. Has an inventory of <b>all</b> wells on <b>all</b> properties in the project area been completed, and will all wells be at least 50 feet from buried sewers, lift stations and grinder stations, as required by Minn. R. ch. 4725 (Minnesota Well Code)?  For more information on well setbacks and exceptions to the 50-foot requirement, refer to the MDH website at <a href="http://www.health.state.mn.us/divs/eh/wells/index.html">http://www.health.state.mn.us/divs/eh/wells/index.html</a> or contact the MDH Well Management Section at 651-201-4600 or 1-800-383-9808.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16. Are all manholes at least 48 inches in diameter? <i>(Answer N/A only if there are no manholes.)</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17. Are all manholes constructed to prevent surface water run off from entering through the cover? <i>(Answer N/A only if there are no manholes.)</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	18. Are drop manholes used at locations where the sewer pipe enters the manhole at an elevation of 24 inches or more above the manhole invert? <i>(Answer N/A only if sewer pipes enter at an elevation less than 24 inches.)</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	19. Is the spacing between manholes 400 feet or less or if the spacing is greater than 400 feet, do operation and maintenance personnel have access to adequate cleaning equipment that can accommodate the spacing? <i>(Answer N/A only if all pressure sewer.)</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>		20. Will a leakage test be performed to demonstrate watertightness of the sewer pipes?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	21. Will a deflection test be performed on all plastic gravity sewer after the pipe has been in place for at least 30 days? <i>(Answer N/A only if televising or other method is used instead.)</i>
<input checked="" type="checkbox"/>		<input type="checkbox"/>	22. Will sewer line televising be performed? <i>(Answer only as Yes or N/A.)</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>		23. Have questions No. 1 through No. 22 been answered as Yes or N/A?

**Lift stations:**

Yes	No	N/A	
<input type="checkbox"/>		<input checked="" type="checkbox"/>	<b>Does the project include any work on a lift station? (Answer N/A only if there is no work on a lift station as part of this project and proceed to question No. 46 and answer Yes.)</b>
<input type="checkbox"/>	<input type="checkbox"/>		24. Will the lift station be fully operational and accessible during a 25-year flood?
<input type="checkbox"/>	<input type="checkbox"/>		25. Will the lift station structural, electrical and mechanical equipment be protected from physical damage during at 100-year flood?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	26. Where high ground water conditions are anticipated, has the buoyancy of the lift station structure been considered and adequate provisions made to protect the structures? <i>(Answer N/A only if high ground water conditions are not anticipated.)</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	27. Are wet wells and dry wells completely separated and common walls are gas tight? <i>(Answer N/A only if no dry well is included)</i>
<input type="checkbox"/>	<input type="checkbox"/>		28. Are multiple pumps provided such that with any unit out of service, the remaining units have capacity to handle the design peak hourly wet weather flow?
<input type="checkbox"/>	<input type="checkbox"/>		29. Are all pumps capable of passing spheres of at 3 inches in diameter?
<input type="checkbox"/>	<input type="checkbox"/>		30. Are all pump suction and discharge openings at least 4 inches in diameter?

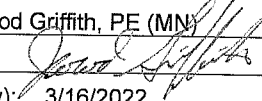
**Lift stations (continued):**

Yes	No	N/A	
<input type="checkbox"/>	<input type="checkbox"/>		31. Are all electrical components in raw wastewater wet wells in compliance with National Electrical Code requirements for Class I Group D, Division 1 locations?
<input type="checkbox"/>	<input type="checkbox"/>		32. There are no bypass or overflow pipes from the wet well?
<input type="checkbox"/>	<input type="checkbox"/>		33. Are suitable shutoff and check valves placed on the discharge line of each pump?
<input type="checkbox"/>	<input type="checkbox"/>		34. Are check valves located between the shutoff valve and the pump?
<input type="checkbox"/>	<input type="checkbox"/>		35. Are check valves placed in the horizontal position, except ball valves which may be placed vertically?
<input type="checkbox"/>	<input type="checkbox"/>		36. Are shutoff and check valves for submersible pump lift stations located in a separate valve pit? If a separate valve pit is not provided, are all valves easily accessible for maintenance?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	37. If a drain line is provided between a valve pit or dry well and a wet well, is the drain line equipped with a gas and water tight valve or extended below the low water level in the wet well to prevent entry of hazardous gases to the valve pit? (Answer N/A <b>only</b> if a drain line is not included.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	38. If continuous wet well ventilation is provided, are at least 12 complete air changes per hour provided? (Answer N/A <b>only</b> if submersible pump lift station.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	39. If intermittent wet well ventilation is provided, are at least 30 complete air changes per hour provided? (Answer N/A <b>only</b> if submersible pump lift station.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	40. If continuous dry well ventilation is provided, are at least 6 complete air changes per hour provided? (Answer N/A <b>only</b> if submersible pump lift station.)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	41. If intermittent dry well ventilation is provided, are at least 30 complete air changes per hour for 10 minutes and 6 complete air changes per hour thereafter provided? (Answer N/A <b>only</b> if submersible pump lift station.)
<input type="checkbox"/>	<input type="checkbox"/>		42. Are provisions for flow measurement provided? Type: _____
<input type="checkbox"/>	<input type="checkbox"/>		43. Are a sufficient number of running time meters provided to record when each pump is running and when multiple pumps are running at the same time?
<input type="checkbox"/>	<input type="checkbox"/>		44. Is an appropriate alarm system provided to indicate power failure, pump failure, unauthorized entry, or other malfunction? Type of alarm: _____
<input type="checkbox"/>	<input type="checkbox"/>		45. Are provisions included for emergency operation to prevent the bypassing or backup of sewage? Emergency pumping capability may be accomplished by connection to at least two independent utility substations, or by provision of portable or in-place electrical generation, or by portable pumping equipment? Type: _____
<input checked="" type="checkbox"/>	<input type="checkbox"/>		46. Have questions No. 24 through No. 45 been answered as Yes or N/A?

**Fast track certification statement** (Do not submit plans and specifications)

Yes - "I certify under penalty of law that I am a licensed professional engineer and that this document was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

By typing my name in the following box I certify the above statements to be true and correct, to the best of my knowledge, and that this information can be used for the purpose of processing my application.

Print name: Jarod Griffith, PE (MN) Title: Project Engineer  
 Signature:   Check if document has been electronically signed.  
 Date (mm/dd/yyyy): 3/16/2022 PE Registration No.: 56772

**Justification for questions answered "No"** (attach additional pages if needed):

Section number	Justification for variation

**INSTRUCTIONS FOR COMPLETING THE APPLICATION FOR  
UTILITY ACCOMMODATION ON TRUNK HIGHWAY RIGHT OF WAY (FORM 2525)**

Note: An incomplete application will delay processing.

Utility Accommodation Form 2525 is used for the vast majority of utility placements and relocations. Form 2525 is for placing, constructing, and reconstructing utilities within trunk highway right of way, whether longitudinally, oblique, or perpendicular in relationship to the centerline of the highway (utilities crossing the highway, or parallel installations). This form is sent to the MnDOT Central Office in St Paul for processing. Permit approval depends on meeting the technical guidance that is contained in the Utility Accommodation Section of the [Utility Accommodation and Coordination Manual](#). It is important for utility owners to understand and follow the MnDOT Utility Accommodation on Highway Right of Way Policy, which consists of a [policy document](#) and a Utility Accommodation Section that is part of the updated [Utility Accommodation and Coordination Manual](#).

Miscellaneous Work on Trunk Highway Right of Way (Form 1723) is for minor work such as installation of utility service connections that do not cross or parallel the roadway within the trunk highway right of way. Form 1723 is also used for installing miscellaneous guy wires and anchors, to place temporary obstructions on the right of way and to perform temporary relocations of a more minor nature to accommodate a construction project. This form is sent to the District offices for processing.

**Fill Out Form Completely, be specific**

Print (in ink), type the application, or fill out on line and print form at: <http://www.dot.state.mn.us/utility/forms.html>

- Be sure to sign it at the bottom. Submit the original form only; submit all 4 pages of application.
- COPIES AND FAXES ARE UNACCEPTABLE AND WILL BE RETURNED TO YOU.

Submit the following information:

- One permit application form completed in its entirety, if an item does not apply, print "N.A." in the blank,
- Two sets of sketches, no larger than 11 x 17.
- Drawn to a scale no smaller than 1 inch = 200 feet
- Include location of all other utilities within the construction area
- Include a typical of all pole structures, if applicable
- A separate application for each trunk highway
- A separate application for each maintenance area involved

The sketch must show in detail the proposed location of any facilities to be placed as well as any relocation of existing facilities. The sketch must include the location of all other utilities within the area. The sketches must be on state right of way maps or state construction plan sheets. Right of way maps are available at: <http://www.dot.state.mn.us/maps/gisweb/row/>

The sketch must contain references from the trunk highway centerline or the right of way line and a starting and ending point must be given. If there is no right of way map available a detailed drawing must be submitted with distances given from pertinent features such as centerline, right of way lines, curb and gutter, distances from nearest county roads and highway mile markers, etc.

Indicate any tree trimming and/or clearing requirements. If the facility being placed is an aerial facility, include "blow out zone" (conductor movement envelope) information. A vegetation management plan must be worked out with the District office.

If you have questions filling out the form you may contact Central Office Permits for assistance. Contact information can be found at: [www.dot.state.mn.us/utility/contacts.html](http://www.dot.state.mn.us/utility/contacts.html)

After the application has been completed, signed and dated, mail the application (all 4 pages of form) with the required plans to the St Paul office at: Minnesota Department of Transportation, Utility Permits Unit – Mailstop 678, 395 John Ireland Blvd, St. Paul, MN, 55155.

**After the Permit has been approved**

The applicant will be notified of the approved permit and of the amount of security deposit required. The permit will include Special Provisions indicating the construction requirements. Compliance with all Special Provisions is required. A copy of the permit must be in the possession of the utility contractor while working on MnDOT right of way.

**Security Deposit**

A security deposit is required for permits that authorize work in state right of way to ensure that work is completed to MnDOT's satisfaction. The District Permit Office will determine the amount and type of deposit to be submitted. The security deposit must be payable to the "Minnesota Commissioner of Transportation" and must be irrevocable and cannot expire.

**After construction is completed**

After construction has been completed and all turf items re-established, the applicant must return the certificate of completion form to the District Permit Office for final inspection. If all work is satisfactory, the District Permit Office will determine when the security deposit will be returned to the applicant.



## APPLICATION FOR UTILITY ACCOMMODATION ON TRUNK HIGHWAY RIGHT OF WAY

<b>Applicant:</b> 1. Complete entire application 2. Sign and date completed form, send original 3. Include two sets of sketches, drawn to a scale no smaller than 1 inch = 200 feet, on a page(s) no larger than 11 x 17	<b>Mail to:</b> Minnesota Department of Transportation Utilities Engineer - MS 678 395 John Ireland Blvd. St. Paul, MN 55155-1899
---	---

Highway <u>TH 23</u>	Section <u>25/26</u>	Township <u>037</u>	Range <u>029</u>	Company Project No. <u>FOLEY 158958</u>
County <u>Benton</u>	City/Township <u>Foley</u>			State Proj. No./State Aid Proj. No. <u>SP 0504-20 (TH 23)</u>
<input checked="" type="checkbox"/> New facility <input type="checkbox"/> Replacement facility				PUC Docket No. _____ Agreement No. <u>TBD</u>

Will this facility be within Tribal Lands     Yes     No    If yes, which one:

**Application is hereby made for permission to place, construct and thereafter maintain a:**  
PVC SANITARY SEWER, DIP WATER MAIN, RCP STORM SEWER, STEEL CASING, STREET LIGHTING, AND FIBER CONDUITS

**Location** (distance from nearest cross roads and distinguishing features (mile point if known)):  
BROADWAY AVENUE S TO 500 LF EAST OF 13TH AVENUE S

<u>ALONG &amp; ACROSS TH 23</u> <small>(Along, Across, Along &amp; Across)</small>	<u>0' - 60'</u> <small>(Feet from Centerline)</small>	<u>NORTH &amp; SOUTH</u> <small>(North, South, East, or West of Centerline)</small>
---	--	--

<b>AERIAL CONSTRUCTION</b> (Check appropriate box) <input type="checkbox"/> Single pole <input type="checkbox"/> Open wire <input type="checkbox"/> H-Frame <input type="checkbox"/> Cable <input type="checkbox"/> Single pole & H-Frame <input type="checkbox"/> Vertical <input type="checkbox"/> Steel tower <input type="checkbox"/> Cross-arm <input type="checkbox"/> Existing pole line <input type="checkbox"/> Vertical & Cross-arm <input type="checkbox"/> Other, explain _____	<b>BLOW OUT ZONE INFORMATION</b> (Conductor Movement Envelope) _____ _____ _____	<b>LIGHTING</b> Mounting Height <u>40</u> Mast Arm Length <u>9</u> Type of Lamp <u>LED</u> Watts <u>135 MAX</u> Poles <input checked="" type="checkbox"/> Breakaway <input type="checkbox"/> Non-Breakaway
---	--	--

Voltage	Number, Type, and Size of Conductors
---------	--------------------------------------

If attaching to existing pole line, owner of pole line:	Facility to be placed on existing poles (ex: fiber, copper, coaxial, power):
---	---

**Height of utility to be a minimum of 22 feet at crossings over the highway.**  
 Proposed height crossing over highway: \_\_\_\_\_                      Proposed height along highway: 40'

**UNDERGROUND CONSTRUCTION / METHOD OF INSTALLING** (crossing and/or parallel to highway, check all that apply)

Direct Buried     Directional Boring     Jacking     Boring     Pneuma Gopher  
 Open trench, explain why necessary: ROAD RECONSTRUCTION, FITTINGS, VALVE, AND INSULATION  
 Other, explain: \_\_\_\_\_

Will Facility be attached to a bridge? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No    If yes, submit bridge details	Will dewatering be necessary? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If yes, submit dewatering plan
--	--

Voltage <u>120/240</u>	Number, Type, and Size of Conductors <u>4-1/C 8AWG &amp; 1-4/C 4AWG</u>	Depth (minimum 5 feet at crossings) <u>3'</u>
---------------------------	--	--

<b>Facility Type:</b>	<i>SEE ATTACHMENT</i>		
Max. Oper. Pres.			
Wall thickness			
Grade			
Class			
Size			
Depth			
Number			

<b>Conduit/Duct type</b>		<b>Casing type</b>	
<input checked="" type="checkbox"/> Plastic (type and size) <u>2" PVC OR HDPE SCH 80</u>	<input checked="" type="checkbox"/> Steel pipe (type and size) <u>ASTM A53</u>	<input type="checkbox"/> Sectional Concrete (type and size) _____	<input type="checkbox"/> Other _____
<input type="checkbox"/> Steel pipe (type and size) _____		Wall thickness <u>MIN 0.344"</u>	Grade <u>B</u>
<input type="checkbox"/> Multiple tile (type and size) _____			Class _____
<input type="checkbox"/> Clay tile (type and size) _____			Size <u>16", 18", &amp; 20"</u>
<input type="checkbox"/> Sectional concrete (type and size) _____			
<input type="checkbox"/> Ductile Iron (type and size) _____			
<input type="checkbox"/> Other _____			

**Is traffic control necessary as per the most current versions of Minnesota Manual on Uniform Traffic Control Devices or the Temp Traffic Control Zone Layout Field Manual?** YES

**Is tree trimming and/or clearing necessary?**  Yes  No If yes, describe location and extents  
8TH AVENUE TO LORD AVENUE

**Work to start on or after:** MAY 2022 **Work to be completed on or before:** DECEMBER 2022

**Applicant / Owner information**

Owner of facility (company name): CITY OF FOLEY

Address: P.O. BOX 709

City: FOLEY State: MN Zip: 56329

Telephone: 320.968.7260 Cell: \_\_\_\_\_

Email: SBRUNN@CI.FOLEY.MN.US

Contact Person (name and title): SARAH BRUNN, CITY ADMINISTRATOR

Alternate Contact for design questions, (name and phone): JAROD GRIFFITH, 218.849.0539

Contractor (name of company performing work): TBD

The applicant, in carrying on all of the work mentioned above or referred to in its application and in the Permit for construction issued therefore, shall strictly conform to the terms of the Permit, of Minn. Stat. §§161.45 and 161.46, and Minnesota Rules parts 8810.3100 through 8810.3600, together with the Special Provisions, all of which are made a part hereof. The applicant specifically agrees to be bound hereby. The applicant shall also comply with the regulations of all other governmental agencies for the protection of the public. The work shall be accomplished in a manner that will not be detrimental to the highway, and will safeguard the public consistent with the MnDOT Utility Accommodation and Coordination Manual.

**Date** \_\_\_\_\_ **Signature** \_\_\_\_\_

Pursuant to Minnesota Statutes, § 161.45, the following Rules have been promulgated by the Commissioner of Transportation (see pages 3 & 4).

**Additional Information:**  
DEWATERING PLAN TO BE SUBMITTED AFTER THE CONTRACTOR HAS BEEN AWARDED.

\_\_\_\_\_

\_\_\_\_\_

**8810.3100 DEFINITIONS.**

**Subpart 1. Interstate highways.** Under this order "interstate highways" shall mean all trunk highways which are a part of the interstate system.

**Subp. 2. Noninterstate highways.** Under this order "noninterstate highways" shall mean all trunk highways which are not a part of the interstate system.

**Subp. 3. Trunk highways.** Under this order "trunk highways" shall mean all trunk highways including those which are a part of the interstate system.

**Subp. 4. Utility.** Under this order "utility" shall mean and include all privately, publicly, or cooperatively owned communication lines and facilities, any systems, lines, and facilities for the distribution and transmission of electrical energy, oil, gas, water, sewer, steam, and other pipe lines, railways, ditches, flumes, or other structures which under the laws of this state or the ordinance of any village or city may be constructed, placed, or maintained across, along, or on trunk highway right-of-way. Dependent upon the meaning intended in the context, "utility" shall also mean the utility company, inclusive of any wholly owned subsidiary.

**8810.3200 PURPOSE AND SCOPE.**

**Subpart 1. Purpose.** The purpose of parts 8810.3100 to 8810.3600 is to carry out the mandate of the legislature and to effectuate that mandate as set forth in the Laws of Minnesota 1959, chapter 500, article II, section 45 (Minnesota Statutes, section 161.45) with reference to the placing, constructing, reconstructing, and maintaining of utilities across, along, upon, or under the right-of-way of trunk highways.

**Subp. 2. Scope.** The scope of parts 8810.3100 to 8810.3600 is confined within the framework of and consistent with the Laws of Minnesota 1959, chapter 500, article II, section 45.

**8810.3300 PERMITS.**

**Subpart 1. Construction.** Except as otherwise permitted, utility construction and relocation on trunk highway right-of-way shall not be commenced until an application for a permit for construction has been made and such permit granted. The permit for construction sketch shall show the location of the proposed utility with reference to pertinent features such as the right-of-way lines, curb lines, trunk highway center line, etc. A copy of the sketch shall be provided for each copy of such permit. Prints of trunk highway right-of-way maps are available upon request from the Road Plans Information Office, Department of Transportation Building, Saint Paul, Minnesota 55155.

**Subp. 2. Maintenance.** The utility shall obtain a work permit from the office of the assistant district engineer, maintenance, prior to performing service and maintenance operations on the interstate highways and shall also obtain a work permit prior to performing service and maintenance operations on the noninterstate highways when such operations require opening and disturbing the surface of the right-of-way thereof. In all other instances the utility shall notify the office of the assistant district engineer, maintenance, prior to performing service and maintenance operations on the noninterstate highways which interfere with the normal flow of traffic thereon. However, the company may perform service and maintenance operations on the trunk highways including opening and disturbing the surface of the right-of-way without a work permit in those instances where an emergency exists that is dangerous to the life or safety of the public and which requires immediate repair. The utility upon knowledge of such an emergency shall immediately notify the State Patrol Division. The utility shall take all necessary and reasonable safety measures to protect the traveling public and shall cooperate fully with the State Patrol Division to that end. The utility in such an event will request a work permit from the office of the assistant district engineer, maintenance, not later than the second working day thereafter when a work permit would ordinarily have been required but for the emergency.

**Subp. 3. Orders to make improvements.** If at any time the state of Minnesota, acting through its commissioner of transportation, shall deem it necessary to make any improvements or changes on all or any part of the right-of-way of the trunk highway which affect a utility located on trunk highway right-of-way, then and in such event, the owner of the utility shall within 15 days after written notice from the commissioner of transportation or an authorized agent, proceed to alter, change, vacate, or remove said utility from the trunk highway right-of-way so as to conform to said trunk highway changes and as directed by the commissioner of transportation. Such work shall be done without any cost whatsoever to the state of Minnesota except as otherwise provided by law or agreement and shall be completed within the date specified in said written notice, which date shall be reasonable under the circumstances. The utility shall assume all liability and save the state of Minnesota harmless from any and all claims of damage of any nature whatsoever occasioned by reason of not having removed said utility within the time specified in said notice. Notwithstanding the provisions of parts 8810.3100 to 8810.3600, the state may reimburse a municipality for the cost of the first relocation of a municipally owned utility located within the limits of a municipal street at the time that the street was taken over by the state as a trunk highway, when such relocation is required by construction or reconstruction of the trunk highway.

**Subp. 4. Along interstate highways.** Utilities along the interstate highways shall be located outside the control-of-access lines except as outlined below. Where the control-of-access lines coincide with the right-of-way lines, the utilities shall generally be located on private property. Where the control-of-access lines and right-of-way lines do not coincide, utilities may in general be located in the area between them. All utilities shall be serviced and maintained without access from the ramps, loops, and through traffic roadbeds. Utilities may be serviced from frontage roads and roads other than another interstate highway which cross either over or under the interstate highway. At aerial crossings of an interstate highway, supporting poles may be located on interstate highway right-of-way if they are a minimum of 30 feet beyond the shoulders of all through traffic roadbeds; however, in no event shall they be located in a median unless its width is 80 feet or more. Manholes and other points of access to underground crossings may be permitted on the interstate highway right-of-way only when located outside the shoulders of the through traffic roadbeds, loops, or ramps. The restrictions of this subpart shall not apply to utility lines which service facilities required for operating the interstate highway.

There may be extreme cases where, under strictly controlled conditions, a utility may be permitted inside the control-of-access lines along an interstate highway. In each case there must be a showing that any other utility location is extremely difficult and unreasonably costly to the utility consumer, that the installation on the right-of-way of the interstate highway will not adversely affect the design, construction, stability, traffic safety, or operation of the interstate highway and that the utility can be serviced without access from through traffic roadbeds, loops, or ramps.

**Subp. 5. Deposit, bond, or undertaking.** The commissioner of transportation may require the utility, or its contractor, to furnish a deposit in the form of a certified check, a surety bond or corporate undertaking in favor of the state of Minnesota, commissioner of transportation, for any expense incurred by the state in the repairing of damage to any portion of the trunk highway right-of-way caused by work performed under a work permit or a permit for construction, including any out of the ordinary engineering supervision and inspection expense provided by the state. In those instances wherein a deposit is required, the amount of the deposit shall be specified in the special provisions of the permit. If a check is furnished, any moneys remaining over and above such expense shall be returned to the applicant.

**Minnesota Rules, 1983, Chapter 8810, UTILITIES EQUIPMENT**  
**Statutory Authority: Minn. Stat. §161.45**

**Subp. 6. Liability.** Except for the negligent acts of the state, its agents, and employees, the utility shall assume all liability for, and save the state, its agents and employees, harmless from, any and all claims for damages, actions, or causes of action arising out of the work to be done herein and the continuing uses by the utility, including but not limited to the placing, constructing, reconstructing, maintaining, and using of said utility under this application and permit for construction.

**Subp. 7. No easement.** The work permit or permit for construction as issued does not in any way imply an easement on private property.

**8810.3400 STANDARDS FOR WORK CONDUCTED UNDER PERMIT.**

**Subpart 1. Trees, brush, and vegetation.** At the time of construction of the utility and at the times of subsequent maintenance, prior approval shall be obtained from the district engineer or an authorized representative for the cutting and trimming of trees within the trunk highway right-of-way. Wherever trees are cut the resulting stumps shall be removed unless otherwise provided in the special provisions of the permit for construction. Any holes caused by stump removal shall be backfilled, the area leveled, and all materials associated therewith disposed of outside the trunk highway right-of-way. The utility shall advise the district engineer or an authorized representative at least 48 hours in advance of its intent to start clearing and grubbing operations so that proper supervision can be provided.

Burning or disking operations and/or the use of chemicals to control or kill trees, brush, and other vegetation is prohibited without prior approval from the assistant district engineer, maintenance.

**Subp. 2. Waterways.** All waterways and lines of drainage shall remain operative.

**Subp. 3. Topsoil and sod.** Wherever topsoil and sod are disturbed they shall be replaced and maintained satisfactorily until the turf is established.

**Subp. 4. Existing utility facilities.** The utility facility and installation shall not interfere with any existing utility facilities on the trunk highway right-of-way.

**Subp. 5. Warning devices.** When necessary, barricades, warning devices, and flaggers shall be provided by the utility during all phases of their construction and maintenance operations on the trunk highway right-of-way.

**Subp. 6. Restoration to original condition.** Upon completion of an installation, the utility shall restore the trunk highway right-of-way to its original condition. The utility shall then notify the office of the assistant district engineer, maintenance, or project engineer of the completion of the work so that inspection can be made to determine its acceptability.

**Subp. 7. Conformity.** The installations shall be made in conformity with all applicable laws, rules, and codes covering said installations. All installations shall be made in conformity with rules of governmental agencies for the protection of the public.

**8810.3500 AERIAL LINES.**

There shall be only a single pole line on the trunk highway right-of-way on either side of the center line thereof, unless otherwise authorized in the special provisions of the permit for construction.

Longitudinal installations on noninterstate trunk highways shall normally be located in the outer five feet of the right-of-way. At crossings of the noninterstate trunk highway, poles shall be placed at a minimum of 30 feet from the shoulder lines of the through roadbeds unless right-of-way widths are prohibitive to such location.

Unless clearly indicated on the permit for construction sketch, the location of all brace poles, anchors, and anchor poles within the limits of the trunk highway right-of-way shall be approved by the district engineer or an authorized representative prior to actual installation.

In those instances in which a utility is issued a permit or permits for construction on both sides of the trunk highway right-of-way in a given area, such permit is conditioned upon the utility subsequently providing joint use to other utilities upon reasonable terms mutually agreeable to the utilities.

**8810.3600 UNDERGROUND LINES.**

All crossings of the roadbeds of the trunk highways shall be made by boring inside a casing or carrier pipe, or by jacking, unless this procedure is modified in the special provisions of the permit for construction. The auger shall not lead the casing or carrier pipe by more than one inch. Open trenching shall be restricted to the area from five feet beyond the shoulder to the right-of-way line except as modified in the special provisions of the permit for construction.

When pipes with bells or flanges are installed, the crossings of the roadbeds of trunk highway shall be made by boring inside a conduit, as provided in the preceding paragraph, of jacking a conduit of sufficient diameter to permit threading the carrier pipe through it.

All voids caused by jacking or boring shall be filled by pressure grouting. The grout material shall consist of a sand-cement slurry of at least two sacks of cement per cubic yard and a minimum of water to assure satisfactory placement.

The underground utilities shall be so installed as virtually to preclude any necessity for disturbing the roadbeds to perform maintenance operations.

Underground installations shall be accomplished without damaging or destroying the principal root structure of specimen trees.

**Note:**

As used in the Minnesota Rules, Utilities Equipment, part 8810.3300 Definitions, Subpart 1, interstate highways shall include all Interstate Highways and Federal Aid freeways.



## Bills List - April 5th, 2022

Gross Salaries	Payroll -3/11/22	\$ 32,561.85
EFTPS	Federal Withholding	\$ 5,450.59
MN Dept of Revenue	State Withholding	\$ 1,055.15
State Treas. PERA	PERA	\$ 6,194.89
Nationwide	Deferred Comp	\$ 1,002.85
Pacific Life Ins	Deferred Comp/Roth IRA	\$ 70.00
Further	HSA Contribution	\$ 2,034.79
Gross Salaries	Payroll -3/25/22	\$ 31,748.61
EFTPS	Federal Withholding	\$ 5,677.08
MN Dept of Revenue	State Withholding	\$ 1,098.75
State Treas. PERA	PERA	\$ 5,978.27
Nationwide	Deferred Comp	\$ 1,002.85
Pacific Life Ins	Deferred Comp/Roth IRA	\$ 70.00
Further	HSA Contribution	\$ 2,034.79
LELS	Police Union Dues	\$ 195.00

### ***To Be Paid - 4/5/2022***

Advanced Graphix	PD Vehicle Maintaince	\$ 54.00
All Flags, LLC	US Flags	\$ 165.09
AllSpec Services	Building Official Services	\$ 568.40
Auto Value	trailer maintenance, pond pump,vac truck	\$ 183.91
Benton County Attorney	January and February Legal Fee's	\$ 473.00
Benton County Auditor Treasurer	Vac Truck and Truck title	\$ 19,976.37
Benton County Highway Department	PD Fuel - February	\$ 992.85
Benton County Land Services	2022 - Assessment Agreement 2nd 1/2	\$ 5,076.00
Billings Service	PD Vehicle Maintaince	\$ 697.64
Bolten & Menk	WW Expansion	\$ 34,911.00
Central McGowan	PD Medical Equipment	\$ 107.36
Chamberlain Oil Co.	Vehicle Maint / Repair	\$ 496.55
Cintas	Uniforms	\$ 269.28
Cloudnet	Server Fee	\$ 10.00
Coborns	Office Supplies	\$ 57.75
Crysteel	PW Equipement Maintainace	\$ 193.88
Delta Dental	Employee Dental Insurance	\$ 1,265.60
East Central Energy	Utilities	\$ 828.83
Farm-Rite Equipment	PW Equipement Maintainace	\$ 59.52
First National Bank of Omaha	March CC purchases	\$ 295.99
Flow Measurement and Control	Meter Maintenance	\$ 701.00
Foley Hardware Company	Shop, City Hall, Ice Rink	\$ 104.48
Foley Lumber	PW and PD Building Maintenance	\$ 466.17
Further	Employer HSA Contribution and Admin Fee	\$ 387.85
Gilman Creamery	vehicle maintenance	\$ 78.19
Gopher State One Call	Email Tickets-February& March	\$ 21.60
Handyman's Hardware	PW Maintence	\$ 183.18
Hawkins	Water Repairs & Maintenance	\$ 1,746.24
Hawkins	PD Watermaintence	\$ 602.42
HealthPartners	Insurance premium March	\$ 13,690.04
JM Truck & Tractor Repair	PW vehicle maintenance	\$ 4,235.00
Line-X of St. Cloud	PW Vehicle Maintenance	\$ 720.00
Macqueen Equipment	Purchase 2016 Vac Truck	\$ 267,000.00
Marco	Copier Lease	\$ 328.08
Midco	Phone & Internet Services	\$ 814.97
Mimbach	FD maintence	\$ 40.00
MN Department of Health	2022 Pool License & Watermains,	\$ 870.00
MN Department of Health	Quarterly Connection Fee	\$ 2,201.00
MN Department of Natural Resources	WW Expansion	\$ 293.00
MN Department of Revenue	Sales and Use Tax -March	\$ 665.00
MN Pollution Control	Sewer Extension Permit	\$ 310.00

Momentum Truck Group	Vehicle repair	\$	95.85
MTI Distributing	PW Maintenance	\$	69.40
Murphy's Chevrolet	PD Vehicle Maintenance, City Hall	\$	965.50
New Frontier Services	Annual Website maintenance	\$	95.00
PBS Metalworks, Inc.	Vehicle Maint / Repair	\$	38.00
PQL	PW LED light upgrades	\$	1,458.66
Preferred Response LLC	BCSO, PD and FD Training	\$	3,500.00
Recycle Technologies	building maintenance	\$	150.00
RevTrak	CC processing fee	\$	1,160.37
Rinke Noonan	PD Union, WW Expansion Easements, General Legal	\$	2,270.00
RMP Environmental Laboratories	Water & Sewer Testing	\$	319.00
Royal Tire	FD vehicle repair	\$	87.82
Sate of MN Department of Public Safety	Storage of Hazardous Substance	\$	100.00
Shift Technologies, Inc	IT Services, Antivirus, & Antispam	\$	305.70
Short Elliott Hendrickson, Inc	New Ind Park, Gen Eng	\$	1,120.50
Staples	Office Supplies	\$	107.79
Star Publications	Ad Rezoning	\$	126.00
Sunlife	Employee LTD	\$	513.36
Team Lab	Weed killer	\$	318.50
USable Life	Employee Life Insurance	\$	260.50
Verizon	PW, PD, FD Cell Phone	\$	300.82
Victory Door Systems, Inc.	PW building maintenance	\$	250.00
Voss	PW building maintenance	\$	478.80
Water Conservation Services, Inc.	OW locate leak	\$	404.25
Xcel	Utilities	\$	8,329.61
Ziegler Cat	PW vehicle maintenance	\$	121.03
		\$	<b>481,263.17</b>

## BID TABULATION

**PROJECT:** WASTEWATER REGIONALIZATION PROJECT  
FOLEY, MN

**DATE:** MARCH 30, 2022

**PROJECT NO.** R21.120226

**TIME:** 1:00 P.M.

**QUEST PROJECT NO.** 8141404

BIDDERS	BASE BID
1. C&L Excavating, Inc. St. Joseph, MN	
2. Eagle Construction Co., Inc. Little Falls, MN	
3. G M Contracting, Inc. Lake Crystal, MN	
4. Geislinger & Sons Watkins, MN	15,960,705. <u>51</u>
5. Kuechle Underground Inc. Kimball, MN	
6. LaTour Construction, Inc. Maple Lake, MN	
7. Magney Construction, Inc. Chanhassen, MN	
8. Northdale Construction Company, Inc. Albertville, MN	
9. Northern Lines Contracting Bloomington, MN	
10. Rice Lake Construction Grp Deerwood, MN	
11. RL Larson Excavating Inc. St. Cloud, MN	22,022,110. <u>06</u>
12. S.J. Louis Construction, Inc. Rockville, MN	
13.	
14.	
15.	
16.	
17.	



Real People. Real Solutions.

## TEMPORARY CONSTRUCTION EASEMENT

**THIS EASEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **David J. Schefers and Amy Turnes-Schefers**, married to each other and **Kevin W. Schefers and Maggie Schefers**, married to each other (collectively “Grantor”) and the **City of Foley**, a municipal corporation organized under the laws of Minnesota (“City”).

### RECITALS

- A. Grantor is the fee owner of the real property located in Benton County, Minnesota, as described in **Exhibit A** (“Property”);
- B. The City is in the process of undertaking a public wastewater project that may include a buried sanitary sewer force main, buried fiber optic cable, and related utility infrastructure (the “Project”) and requires a temporary construction easement over the Property in order to facilitate construction, installation, operation and maintenance of the Project, including the installation of facilities and related equipment on the Property; and
- C. The Grantor desires to grant a permanent utility easement (the “Easement”) over the Property to the City for the Project as described in **Exhibit B** and depicted in **Exhibit C**.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Easement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Grant of Easement.** Grantor grants to the City and its agents, hired contractors, and employees a temporary construction easement over and across the portion of the Property described **Exhibit B** and depicted in **Exhibit C** for right-of-way, drainage, and utility purposes, including the acquisition of all vegetation (“Easement”).
2. **Easement Rights.** The Easement includes the right of the City, its contractors, agents, officers, employees, and inspectors to enter the Easement area at all reasonable times for the purposes of performing any necessary grading, excavating, construction of slope, parking of construction machinery, storing of Project materials, restoration work, and any other use related to the construction of the Project. This Easement grants the City the right to cut, trim, or remove

trees, shrubs, or other vegetation within the Easement that, in the City's judgment unreasonably interferes with the use, safety, or maintenance of the Easement. The City may remove structures, pavement, soil, gravel or other materials with the Easement. Grantor and the City will work together to minimize the disruption to Grantor by the excavation and work. The City shall also require the contractors to restore any excavated areas and to repair any damage done to the Property from their work, except that there shall be no obligation to restore or replace trees or shrubs cut or removed as part of the installation, repair, maintenance, or replacement of the Project. The Temporary Easement shall expire upon completion of the Project, but in any event will expire no later than **June 30, 2024**, whichever occurs first.

3. **Counterparts.** This document may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

**GRANTOR SIGNATURE PAGE**

**GRANTOR:**

\_\_\_\_\_

David J. Schefers

\_\_\_\_\_

Amy Turnes-Schefers

STATE OF MINNESOTA    )  
  )  SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by David J. Schefers, married to Amy Turnes-Schefers.

\_\_\_\_\_

Notary Public

STATE OF MINNESOTA    )  
  )  SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Amy Turnes-Schefers, married to David J. Schefers.

\_\_\_\_\_

Notary Public

**GRANTOR SIGNATURE PAGE**

**GRANTOR:**

\_\_\_\_\_  
Kevin W. Schefers

\_\_\_\_\_  
Maggie Schefers

STATE OF MINNESOTA    )  
                                   )   SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Kevin W. Schefers, married to Maggie Schefers.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
                                   )   SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Maggie Schefers, married to Kevin W. Schefers.

\_\_\_\_\_  
Notary Public

**CITY SIGNATURE PAGE**

**CITY OF FOLEY, MINNESOTA**

By \_\_\_\_\_  
Gerard Bettendorf, Its Mayor

Attest:

By \_\_\_\_\_  
Sarah Brunn, Its City Administrator

STATE OF MINNESOTA    )  
  )   SS  
COUNTY OF BENTON    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public for this County, personally appeared Gerard Bettendorf, who, being by me duly sworn, did say that he is the Mayor of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  )   SS  
COUNTY OF BENTON    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public for this County, personally appeared Sarah Brunn, who, being by me duly sworn, did say that she is the City Administrator of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

**THIS INSTRUMENT DRAFTED BY:**  
Rinke Noonan (AAR/mjr)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
Our File No. 04313-0262



**EXHIBIT A**

**(Property Description)**

Southwest Quarter of the Southwest Quarter of Section 4, Township 36, Range 29, Benton County, Minnesota.

## **EXHIBIT B**

### **(Easement Legal Description)**

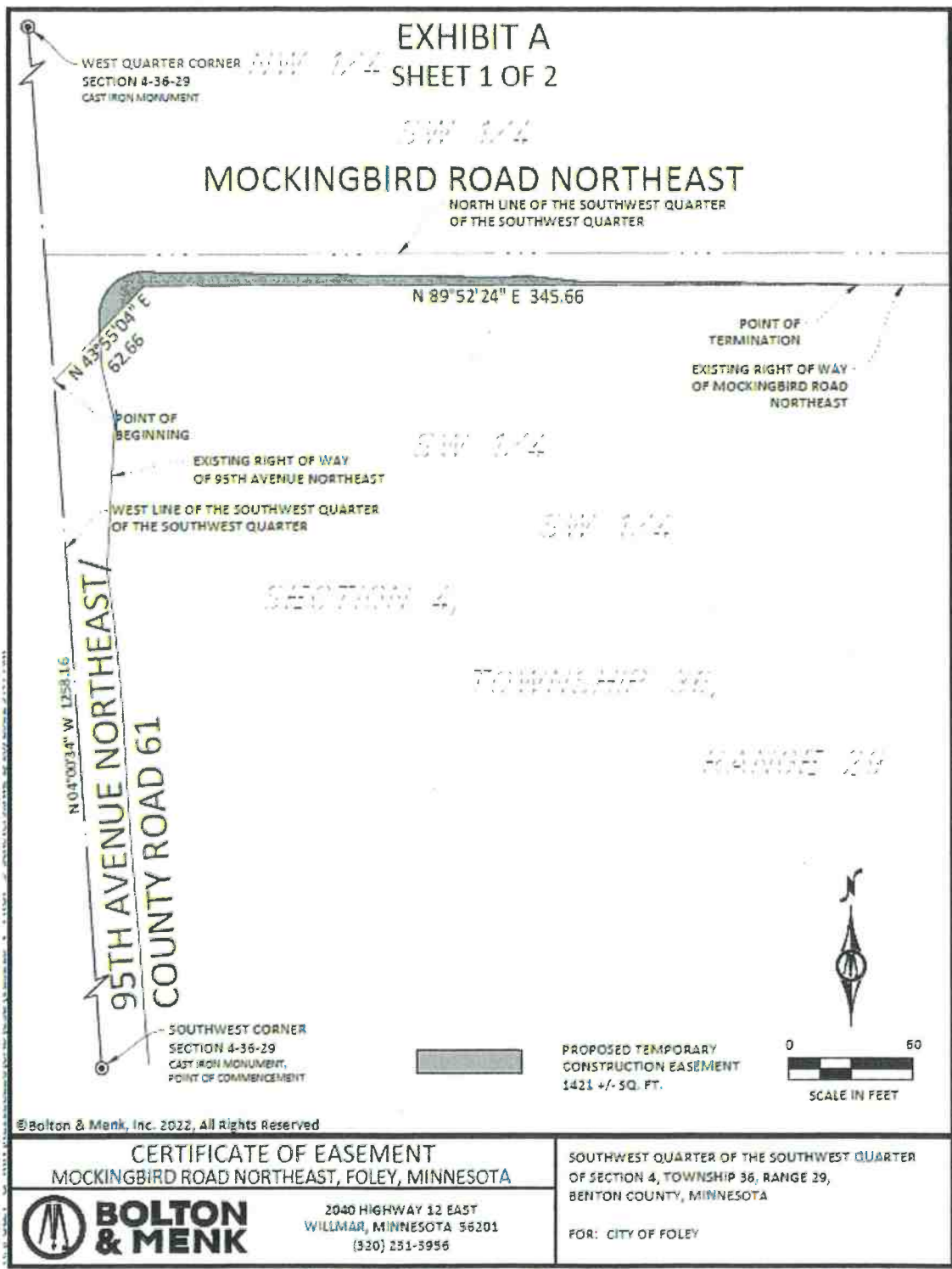
A temporary construction easement over, under and across that part of the Southwest Quarter of the Southwest Quarter of Section 4, Township 36, Range 29, Benton County, Minnesota, lying northwesterly and northerly of the following described line:

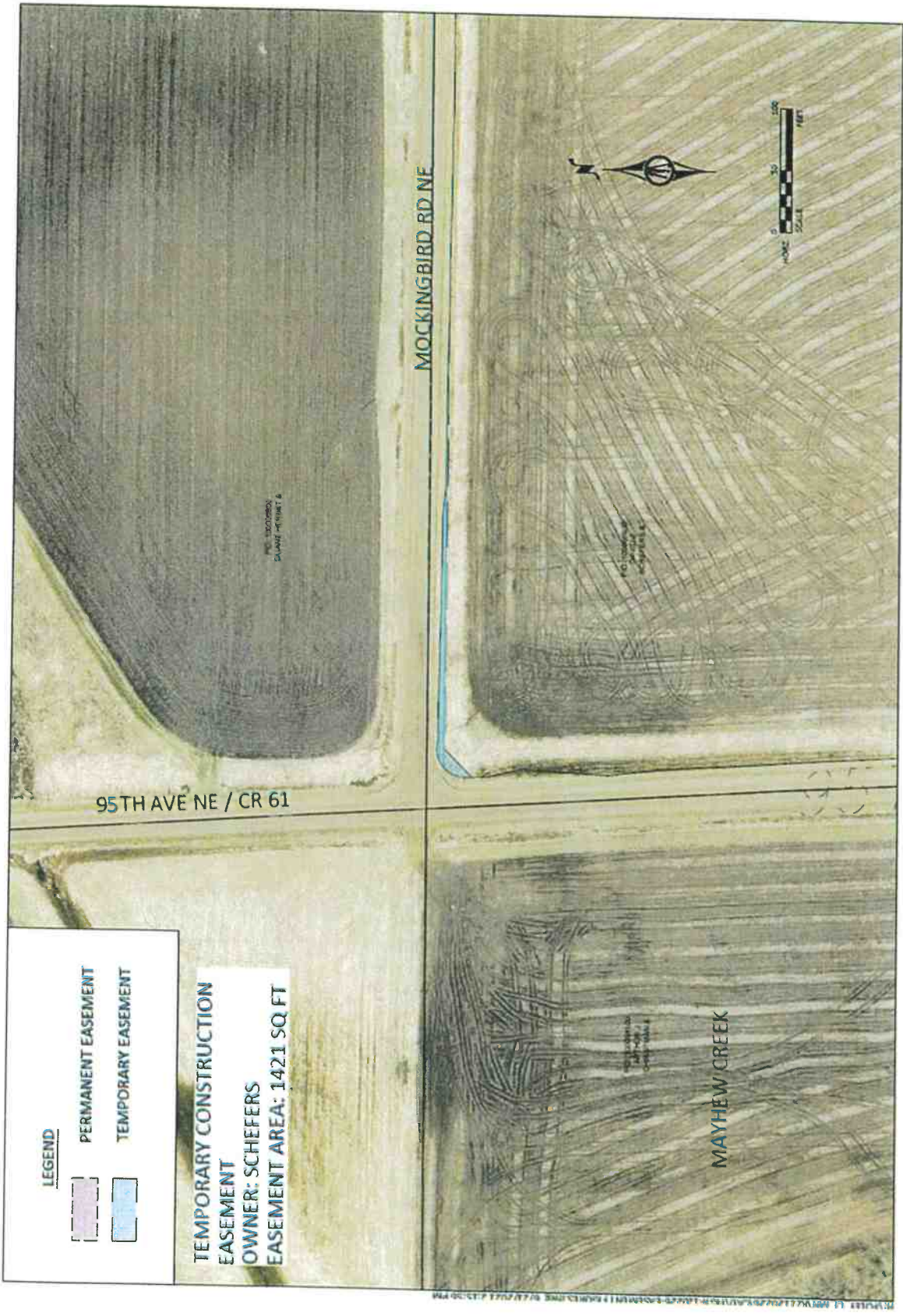
Commencing at the southwest corner of said Southwest Quarter of the Southwest Quarter; thence on an assumed bearing of North 04 degrees 00 minutes 34 seconds West, along the west line of said Southwest Quarter of the Southwest Quarter, a distance of 1258.16 feet to the point of beginning of the line to be described; thence North 43 degrees 55 minutes 04 seconds East, a distance of 62.66 feet; thence North 89 degrees 52 minutes 24 seconds East, a distance of 345.66 feet and said line there terminating.

EXCEPT existing right of way of Mockingbird Road Northeast and 95th Avenue Northeast.

Said temporary easement to expire June 30th, 2024.

**EXHIBIT C**  
(Easement Sketch)





**LEGEND**

-  PERMANENT EASEMENT
-  TEMPORARY EASEMENT

**TEMPORARY CONSTRUCTION  
EASEMENT  
OWNER: SCHEFERS  
EASEMENT AREA: 1421 SQ FT**



FSA-2060  
(08-03-16)

U.S. DEPARTMENT OF AGRICULTURE  
Farm Service Agency

Position 5

APPLICATION FOR PARTIAL RELEASE, SUBORDINATION, OR CONSENT

PART A – BORROWER REQUEST

1. The undersigned (a) \_\_\_\_\_

("Borrower") in accordance with the terms of the security instruments now held by the United States, acting through U.S. Department of Agriculture, Farm Service Agency (called "Government") on the property, applies for:

(b)  release,

(c)  subordination (d) \_\_\_\_\_

\_\_\_\_\_ . I agree that none of the funds obtained as a result of the subordination will be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as provided in 7 CFR Part 12, or will adversely affect compliance with any of the environmental requirements of 7 CFR Part 799;

(e)  consent to (f), \_\_\_\_\_

2. Description of Property:

3. Name of lienholder, approximate amount of each lien, including FSA in the order of lien priority:

(a) Name of lienholder	(b) Approximate amount of lien	(c) Lien priority
	\$	
	\$	
	\$	
	\$	

4. The use to be made of the property covered by this application:

5. The anticipated proceeds or benefits from this transaction are:

6. Additional considerations:

7. Borrower proposes to use the proceeds as follows:

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.



**PART B – FSA APPROVAL**

1. Recommendation for approval or denial of the request and comments:

2(a) Initial Payment

- (1) \$ \_\_\_\_\_ to prior liens
- (2) \$ \_\_\_\_\_ to extra payment on FSA loan
- (3) \$ \_\_\_\_\_ to regular payment on FSA loan
- (4) \$ \_\_\_\_\_ Other (specify): \_\_\_\_\_
- (5) \$ \_\_\_\_\_ to borrower

2(b) Subsequent Payments

- (1) \$ \_\_\_\_\_ or \_\_\_\_\_ % to prior liens
- (2) \$ \_\_\_\_\_ or \_\_\_\_\_ % to extra payment of FSA loan
- (3) \$ \_\_\_\_\_ or \_\_\_\_\_ % to regular payment of FSA loan
- (4) \$ \_\_\_\_\_ Other (specify): \_\_\_\_\_
- (5) \$ \_\_\_\_\_ or \_\_\_\_\_ % to borrower

3. I hereby:

- (a)  recommend this application for approval.
- (b)  do NOT recommend this application be approved.

(c) Recommending Official Name

(d) Title

(e) Signature

(f) Date

4. I hereby:

- (a)  approve this application.
- (b)  do NOT approve this application.
- (c) Reason for denial of the request:

(d) Approving Official Name

(e) Title

(f) Signature

(g) Date





## PERMANENT UTILITY AND DRAINAGE EASEMENT

**THIS EASEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **Eugene Rudolph and Shirley Rudolph**, married to each other (“Grantor”) and the **City of Foley**, a municipal corporation organized under the laws of Minnesota (“City”).

### RECITALS

- A. Grantor is the fee owner of the real property located in Benton County, Minnesota, as described in **Exhibit A** (“Property”);
- B. The City is in the process of undertaking a public wastewater project that may include a buried sanitary sewer force main, buried fiber optic cable, and related utility infrastructure (the “Project”) and requires a permanent utility and drainage easement over the Property in order to facilitate construction, installation, operation and maintenance of the Project, including the installation of facilities and related equipment on the Property; and
- C. The Grantor desires to grant a permanent utility easement (the “Easement”) over the Property to the City for the Project as described in **Exhibit B** and depicted in **Exhibit C**.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Easement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Grant of Permanent Easement.** Grantor grants to the City and its agents, hired contractors, and employees a permanent easement over and across the portion of the Property described **Exhibit B** and depicted in **Exhibit C** for right-of-way, drainage, and utility purposes, including the acquisition of all vegetation (“Easement”). Grantor retains the right to use the Easement so long as the use does not interfere with the City’s use of and access to the Easement.
2. **Scope of Easement.** The Easement includes the right of the City, its contractors, agents, officers, employees, and inspectors to enter the Easement area at all reasonable times for the purposes of performing such construction, excavation, reconstruction, inspection, alteration, pumping, and related work as is needed to install, operate, maintain, repair, improve, and replace the Project. This Easement grants the City the right to cut, trim, or remove trees, shrubs, or other

vegetation within the Easement, now or in the future, that, in the City's judgment unreasonably interferes with the use, safety, or maintenance of the Easement. The City may remove structures, pavement, soil, gravel or other materials with the Easement. Signage, manholes, and testing access may be placed above ground within the Easement. Grantor and the City will work together to minimize the disruption to Grantor by the excavation and work. The City shall also require the contractors to restore any excavated areas and to repair any damage done to the Property from their work, except that there shall be no obligation to restore or replace trees or shrubs cut or removed as part of the installation, repair, maintenance, or replacement of the Project.

3. **Obstructions and Placement of Structures Prohibited.** Grantor shall not erect any structure under, on, across or within the Easement without obtaining the prior written consent of City. The Easement includes the right of the City to remove any object, including landscaping, trees, shrubs, timber and wood, which in the opinion of the City or its contractors will interfere with the Project.

4. **Grantor's Covenants.** Grantor specifically covenants with the City that:
- a. Grantor holds the Property in fee simple title, except for the permitted encumbrances identified in **Exhibit D**, for which Grantor agree to assist in securing consent;
  - b. Grantor has full and good lawful authority to convey the Easement for the purposes stated in this Easement; and
  - c. Grantor will defend the Easement against claims of all persons whomsoever.

5. **Easement Runs with the Land.** This Easement shall be deemed to be a perpetual easement and shall run with the land and be binding upon the Grantor's heirs, successors and assigns, and the Property.

6. **Amendment.** This document represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. Only an instrument in writing signed by both parties may amend this document.

7. **Counterparts.** This document may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

GRANTOR SIGNATURE PAGE

GRANTOR:

\_\_\_\_\_  
Eugene Rudolph

\_\_\_\_\_  
Shirley Rudolph

STATE OF MINNESOTA )  
                                  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Eugene Rudolph, married to Shirley Rudolph.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
                                  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Shirley Rudolph, married to Eugene Rudolph.

\_\_\_\_\_  
Notary Public

CITY SIGNATURE PAGE

**CITY OF FOLEY, MINNESOTA**

By \_\_\_\_\_  
Gerard Bettendorf, Its Mayor

Attest:

By \_\_\_\_\_  
Sarah Brunn, Its City Administrator

STATE OF MINNESOTA )  
  ) SS  
COUNTY OF BENTON  )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public for this County, personally appeared Gerard Bettendorf, who, being by me duly sworn, did say that he is the Mayor of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
  ) SS  
COUNTY OF BENTON  )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public for this County, personally appeared Sarah Brunn, who, being by me duly sworn, did say that she is the City Administrator of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

**THIS INSTRUMENT DRAFTED BY:**

Rinke Noonan (AAR/mjr)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
Our File No. 04313-0262

**EXHIBIT A**

**(Property Description)**

Northeast Quarter of the Southeast Quarter of Section 4, Township 36, Range 29, Benton County, Minnesota.

## **EXHIBIT B**

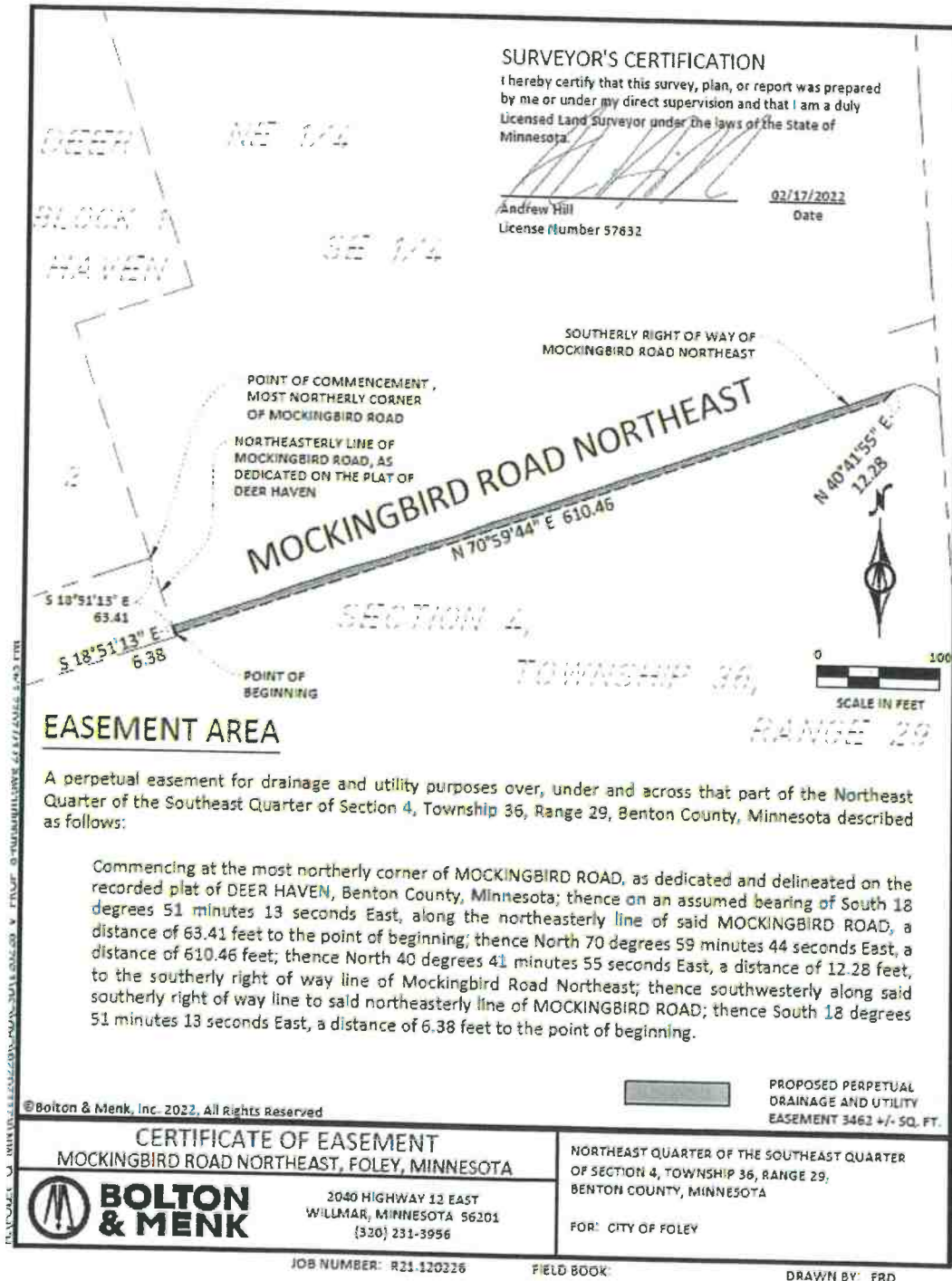
### **(Easement Legal Description)**

A perpetual easement for drainage and utility purposes over, under and across that part of the Northeast Quarter of the Southeast Quarter of Section 4, Township 36, Range 29, Benton County, Minnesota described as follows:

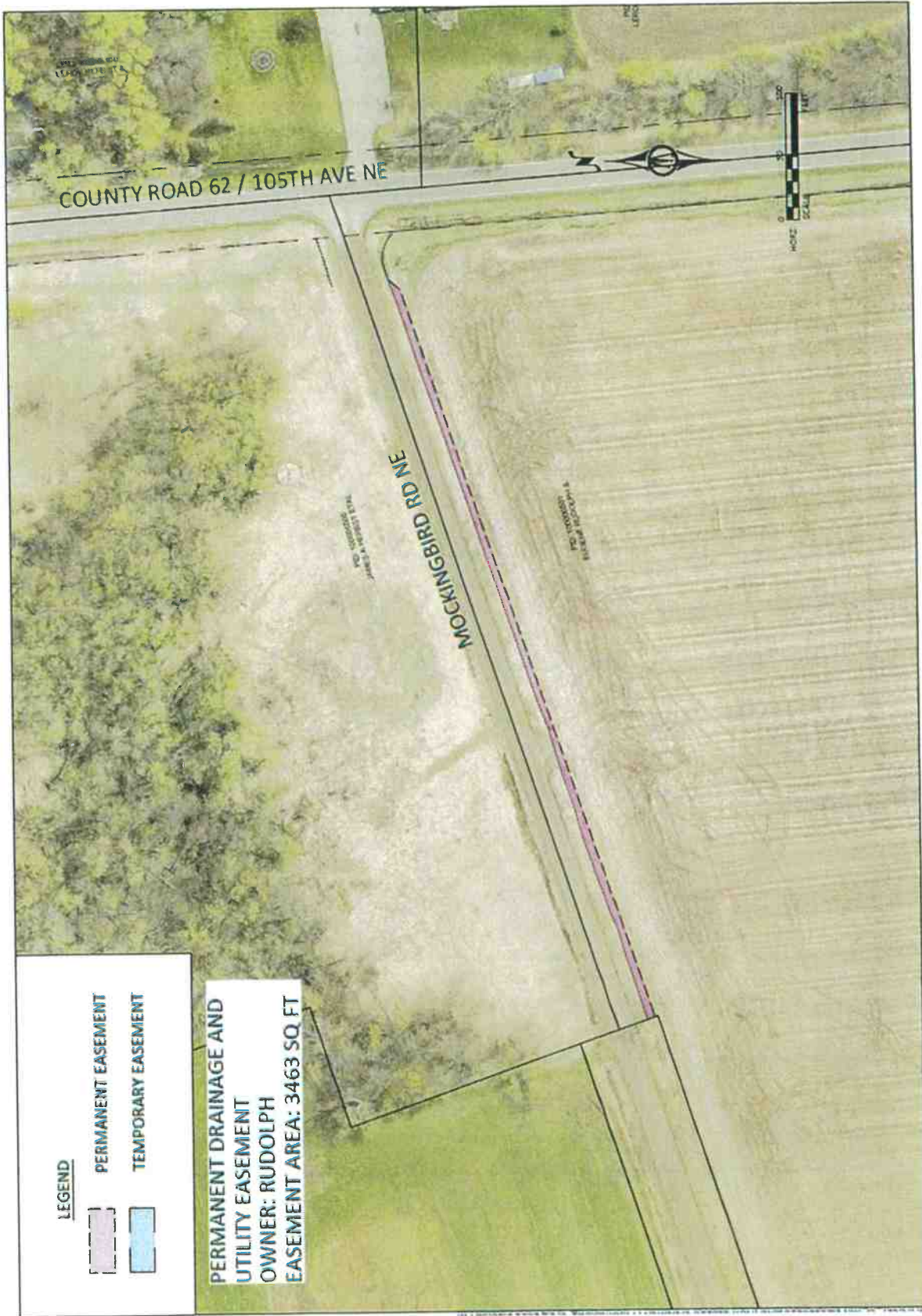
Commencing at the most northerly corner of MOCKINGBIRD ROAD, as dedicated and delineated on the recorded plat of DEER HAVEN, Benton County, Minnesota; thence on an assumed bearing of South 18 degrees 51 minutes 13 seconds East, along the northeasterly line of said MOCKINGBIRD ROAD, a distance of 63.41 feet to the point of beginning; thence North 70 degrees 59 minutes 44 seconds East, a distance of 610.46 feet; thence North 40 degrees 41 minutes 55 seconds East, a distance of 12.28 feet, to the southerly right of way line of Mockingbird Road Northeast; thence southwesterly along said southerly right of way line to said northeasterly line of MOCKINGBIRD ROAD; thence South 18 degrees 51 minutes 13 seconds East, a distance of 6.38 feet to the point of beginning.

# EXHIBIT C

## (Easement Sketch)







**EXHIBIT D**

**(Permitted Encumbrances)**

If blank, indicates none.



## PERMANENT UTILITY AND DRAINAGE EASEMENT

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **Robert Rothfork and Roxanne M. Rothfork**, married to each other (collectively “Grantor”) and the **City of Foley**, a municipal corporation organized under the laws of Minnesota (“City”).

### RECITALS

- A. Grantor is the fee owner of the real property located in Benton County, Minnesota, as described in **Exhibit A** (“Property”);
- B. The City is in the process of undertaking a public wastewater project that may include a buried sanitary sewer force main, buried fiber optic cable, and related utility infrastructure (the “Project”) and requires a permanent utility and drainage easement over the Property in order to facilitate construction, installation, operation and maintenance of the Project, including the installation of facilities and related equipment on the Property; and
- C. The Grantor desires to grant a permanent utility easement (the “Easement”) over the Property to the City for the Project as described in **Exhibit B** and depicted in **Exhibit C**.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Easement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Grant of Permanent Easement.** Grantor grants to the City and its agents, hired contractors, and employees a permanent easement over and across the portion of the Property described **Exhibit B** and depicted in **Exhibit C** for right-of-way, drainage, and utility purposes, including the acquisition of all vegetation (“Easement”). Grantor retains the right to use the Easement so long as the use does not interfere with the City’s use of and access to the Easement.
2. **Scope of Easement.** The Easement includes the right of the City, its contractors, agents, officers, employees, and inspectors to enter the Easement area at all reasonable times for the purposes of performing such construction, excavation, reconstruction, inspection, alteration, pumping, and related work as is needed to install, operate, maintain, repair, improve, and replace the Project. This Easement grants the City the right to cut, trim, or remove trees, shrubs, or other

vegetation within the Easement, now or in the future, that, in the City's judgment unreasonably interferes with the use, safety, or maintenance of the Easement. The City may remove structures, pavement, soil, gravel or other materials with the Easement. Signage, manholes, and testing access may be placed above ground within the Easement. Grantor and the City will work together to minimize the disruption to Grantor by the excavation and work. The City shall also require the contractors to restore any excavated areas and to repair any damage done to the Property from their work, except that there shall be no obligation to restore or replace trees or shrubs cut or removed as part of the installation, repair, maintenance, or replacement of the Project.

3. **Obstructions and Placement of Structures Prohibited.** Grantor shall not erect any structure under, on, across or within the Easement without obtaining the prior written consent of City. The Easement includes the right of the City to remove any object, including landscaping, trees, shrubs, timber and wood, which in the opinion of the City or its contractors will interfere with the Project.

4. **Grantor's Covenants.** Grantor specifically covenants with the City that:

- a. Grantor holds the Property in fee simple title, except for the permitted encumbrances identified in **Exhibit D**, for which Grantor agree to assist in securing consent;
- b. Grantor has full and good lawful authority to convey the Easement for the purposes stated in this Easement; and
- c. Grantor will defend the Easement against claims of all persons whomsoever.

5. **Easement Runs with the Land.** This Easement shall be deemed to be a perpetual easement and shall run with the land and be binding upon the Grantor's heirs, successors and assigns, and the Property.

6. **Amendment.** This document represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. Only an instrument in writing signed by both parties may amend this document.

7. **Counterparts.** This document may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

**GRANTOR SIGNATURE PAGE**

**GRANTOR:**

\_\_\_\_\_  
Robert Rothfork

\_\_\_\_\_  
Roxanne M. Rothfork

STATE OF MINNESOTA    )  
                                  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Robert Rothfork, married to Roxanne M. Rothfork.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
                                  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Roxanne M. Rothfork, married to Robert Rothfork.

\_\_\_\_\_  
Notary Public

**CITY SIGNATURE PAGE**

**CITY OF FOLEY, MINNESOTA**

By \_\_\_\_\_  
Gerard Bettendorf, Its Mayor

Attest:

By \_\_\_\_\_  
Sarah Brunn, Its City Administrator

STATE OF MINNESOTA )  
   ) SS  
COUNTY OF BENTON         )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public for this County, personally appeared Gerard Bettendorf, who, being by me duly sworn, did say that he is the Mayor of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
   ) SS  
COUNTY OF BENTON         )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public for this County, personally appeared Sarah Brunn, who, being by me duly sworn, did say that she is the City Administrator of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

**THIS INSTRUMENT DRAFTED BY:**

Rinke Noonan (AAR/mjr)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
Our File No. 04313-0262

**EXHIBIT A**

**(Property Description)**

The West 302.70 feet of the South 227.70 feet of the Southwest Quarter of the Southeast Quarter of Section 35, Township 37, Range 29, Benton County, Minnesota.



## **EXHIBIT B**

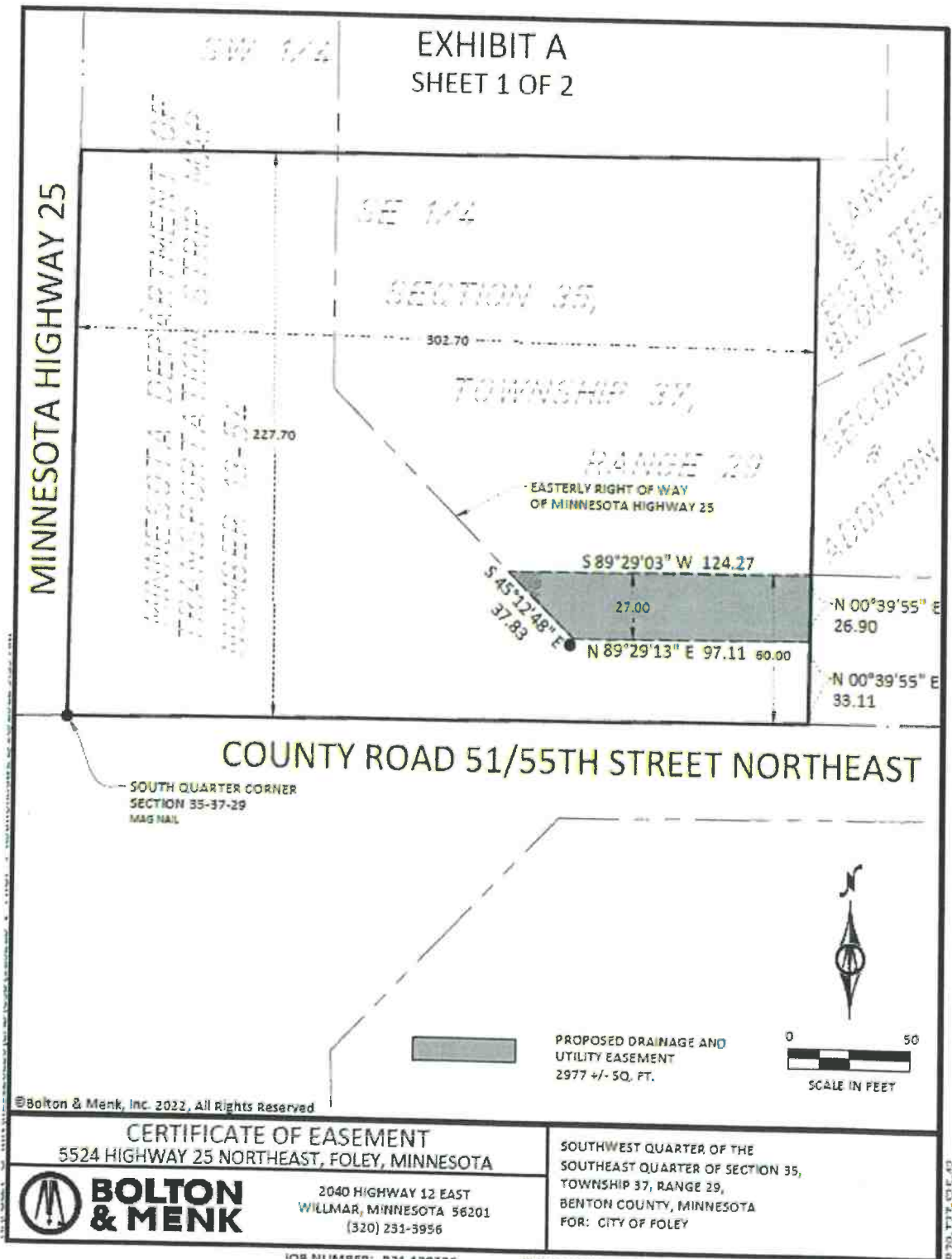
### **(Easement Legal Description)**

A perpetual easement for drainage and utility purposes over, under and across the North 27.00 feet of the South 60.00 feet of the hereinbefore described PREMISES lying easterly of the easterly right of way line of Minnesota Highway 25, according to the Minnesota Department of Transportation Strip Map Number 13-54, Benton County, Minnesota.

The sidelines of said easement shall be prolonged or shortened to terminate on the east line of said PREMISES and on the easterly right of way of Minnesota Highway 25.

# EXHIBIT C

(Easement Sketch)





**EXHIBIT D**

**(Permitted Encumbrances)**

Mortgage with BankVista dated December 14, 2016, and recorded on December 20, 2016, as Document No. 420104.

Mortgage with BankVista dated October 23, 2017, and recorded on October 30, 2017, as Document No. 425915.

**CONSENT TO EASEMENT**

BankVista, a Minnesota Banking Corporation, hereby consents to the Permanent Utility and Drainage Easement by Robert J. Rothfork and Roxanne M. Rothfork.

The undersigned holds an interest pursuant to the following:

1. Mortgage with BankVista dated December 14, 2016, and recorded on December 20, 2016, as Document No. 420104; and
2. Mortgage with BankVista dated October 23, 2017, and recorded on October 30, 2017, as Document No. 425915

Both of which encumbers the real property described in attached Agreement.

Dated: \_\_\_\_\_, 2022

BANKVISTA

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) SS  
COUNTY OF \_\_\_\_\_)

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022,  
by \_\_\_\_\_, the \_\_\_\_\_ of BankVista.

\_\_\_\_\_  
Notary Public

## PERMANENT UTILITY AND DRAINAGE EASEMENT

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between Robert W. Neis, Jr. and Ashton A. Neis, married to each other (collectively "Grantor") and the City of Foley, a municipal corporation organized under the laws of Minnesota ("City").

### RECITALS

- A. Grantor is the fee owner of the real property located in Benton County, Minnesota, as described in **Exhibit A** ("Property");
- B. The City is in the process of undertaking a public wastewater project that may include a buried sanitary sewer force main, buried fiber optic cable, and related utility infrastructure (the "Project") and requires a permanent utility and drainage easement over the Property in order to facilitate construction, installation, operation and maintenance of the Project, including the installation of facilities and related equipment on the Property; and
- C. The Grantor desires to grant a permanent utility easement (the "Easement") over the Property to the City for the Project as described in **Exhibit B** and depicted in **Exhibit C**.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Easement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Grant of Permanent Easement.** Grantor grants to the City and its agents, hired contractors, and employees a permanent easement over and across the portion of the Property described **Exhibit B** and depicted in **Exhibit C** for right-of-way, drainage, and utility purposes, including the acquisition of all vegetation ("Easement"). Grantor retains the right to use the Easement so long as the use does not interfere with the City's use of and access to the Easement.
2. **Scope of Easement.** The Easement includes the right of the City, its contractors, agents, officers, employees, and inspectors to enter the Easement area at all reasonable times for the purposes of performing such construction, excavation, reconstruction, inspection, alteration, pumping, and related work as is needed to install, operate, maintain, repair, improve, and replace the Project. This Easement grants the City the right to cut, trim, or remove trees, shrubs, or other

vegetation within the Easement, now or in the future, that, in the City's judgment unreasonably interferes with the use, safety, or maintenance of the Easement. The City may remove structures, pavement, soil, gravel or other materials with the Easement. Signage, manholes, and testing access may be placed above ground within the Easement. Grantor and the City will work together to minimize the disruption to Grantor by the excavation and work. The City shall also require the contractors to restore any excavated areas and to repair any damage done to the Property from their work, except that there shall be no obligation to restore or replace trees or shrubs cut or removed as part of the installation, repair, maintenance, or replacement of the Project.

3. **Obstructions and Placement of Structures Prohibited.** Grantor shall not erect any structure under, on, across or within the Easement without obtaining the prior written consent of City. The Easement includes the right of the City to remove any object, including landscaping, trees, shrubs, timber and wood, which in the opinion of the City or its contractors will interfere with the Project.

4. **Grantor's Covenants.** Grantor specifically covenants with the City that:

- a. Grantor holds the Property in fee simple title, except for the permitted encumbrances identified in **Exhibit D**, for which Grantor agree to assist in securing consent;
- b. Grantor has full and good lawful authority to convey the Easement for the purposes stated in this Easement; and
- c. Grantor will defend the Easement against claims of all persons whomsoever.

5. **Easement Runs with the Land.** This Easement shall be deemed to be a perpetual easement and shall run with the land and be binding upon the Grantor's heirs, successors and assigns, and the Property.

6. **Amendment.** This document represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. Only an instrument in writing signed by both parties may amend this document.

7. **Counterparts.** This document may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

**GRANTOR SIGNATURE PAGE**

**GRANTOR:**

\_\_\_\_\_  
Robert W. Neis, Jr.

\_\_\_\_\_  
Ashton A. Neis

STATE OF MINNESOTA    )  
                                  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Robert W. Neis, Jr., married to Ashton A. Neis.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
                                  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Ashton A. Neis, married to Robert W. Neis, Jr.

\_\_\_\_\_  
Notary Public





**EXHIBIT A**

**(Property Description)**

West Half of the Southeast Quarter of Section 4, Township 36, Range 29, Benton County, Minnesota.

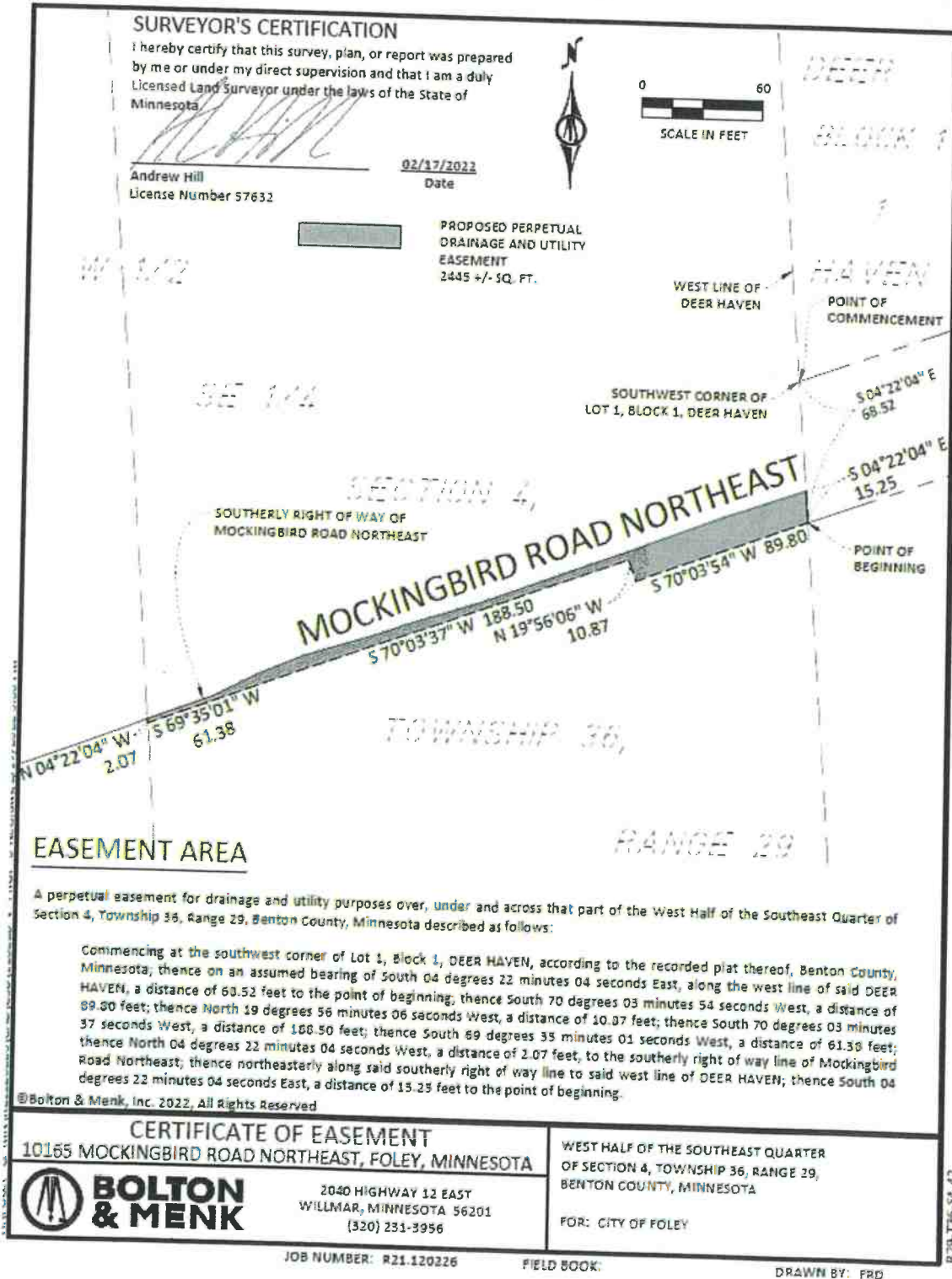
## **EXHIBIT B**

### **(Easement Legal Description)**

A perpetual easement for drainage and utility purposes over, under and across that part of the West Half of the Southeast Quarter of Section 4, Township 36, Range 29, Benton County, Minnesota described as follows:

Commencing at the southwest corner of Lot 1, Block 1, DEER HAVEN, according to the recorded plat thereof, Benton County, Minnesota; thence on an assumed bearing of South 04 degrees 22 minutes 04 seconds East, along the west line of said DEER HAVEN, a distance of 68.52 feet to the point of beginning; thence South 70 degrees 03 minutes 54 seconds West, a distance of 89.80 feet; thence North 19 degrees 56 minutes 06 seconds West, a distance of 10.87 feet; thence South 70 degrees 03 minutes 37 seconds West, a distance of 188.50 feet; thence South 69 degrees 35 minutes 01 seconds West, a distance of 61.38 feet; thence North 04 degrees 22 minutes 04 seconds West, a distance of 2.07 feet, to the southerly right of way line of Mockingbird Road Northeast; thence northeasterly along said southerly right of way line to said west line of DEER HAVEN; thence South 04 degrees 22 minutes 04 seconds East, a distance of 15.25 feet to the point of beginning.

**EXHIBIT C**  
(Easement Sketch)



**SURVEYOR'S CERTIFICATION**

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Andrew Hill  
License Number 57632

02/17/2022  
Date

PROPOSED PERPETUAL  
DRAINAGE AND UTILITY  
EASEMENT  
2445 +/- SQ. FT.

SCALE IN FEET

**EASEMENT AREA**

A perpetual easement for drainage and utility purposes over, under and across that part of the West Half of the Southeast Quarter of Section 4, Township 36, Range 29, Benton County, Minnesota described as follows:

Commencing at the southwest corner of Lot 1, Block 1, DEER HAVEN, according to the recorded plat thereof, Benton County, Minnesota; thence on an assumed bearing of South 04 degrees 22 minutes 04 seconds East, along the west line of said DEER HAVEN, a distance of 60.52 feet to the point of beginning; thence South 70 degrees 03 minutes 54 seconds West, a distance of 89.80 feet; thence North 19 degrees 56 minutes 06 seconds West, a distance of 10.87 feet; thence South 70 degrees 03 minutes 37 seconds West, a distance of 188.50 feet; thence South 69 degrees 35 minutes 01 seconds West, a distance of 61.38 feet; thence North 04 degrees 22 minutes 04 seconds West, a distance of 2.07 feet, to the southerly right of way line of Mockingbird Road Northeast; thence northeasterly along said southerly right of way line to said west line of DEER HAVEN; thence South 04 degrees 22 minutes 04 seconds East, a distance of 15.25 feet to the point of beginning.

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**CERTIFICATE OF EASEMENT**

10165 MOCKINGBIRD ROAD NORTHEAST, FOLEY, MINNESOTA



2040 HIGHWAY 12 EAST  
WILLMAR, MINNESOTA 56201  
(320) 231-3956

WEST HALF OF THE SOUTHEAST QUARTER  
OF SECTION 4, TOWNSHIP 36, RANGE 29,  
BENTON COUNTY, MINNESOTA

FOR: CITY OF FOLEY

JOB NUMBER: R21.120226

FIELD BOOK:

DRAWN BY: FRD

R29-T36-S4-42



**EXHIBIT D**

**(Permitted Encumbrances)**

Assignment of Mortgage to Servion, Inc. dated February 1, 2022, recorded as Document No. 458668.



## TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **John E. Janku and Heidi L. Janku**, married to each other (“Grantor”) and the **City of Foley**, a municipal corporation organized under the laws of Minnesota (“City”).

### RECITALS

- A. Grantor is the fee owner of the real property located in Benton County, Minnesota, as described in **Exhibit A** (“Property”);
- B. The City is in the process of undertaking a public wastewater project that may include a buried sanitary sewer force main, buried fiber optic cable, and related utility infrastructure (the “Project”) and requires a temporary construction easement over the Property in order to facilitate construction, installation, operation and maintenance of the Project, including the installation of facilities and related equipment on the Property; and
- C. The Grantor desires to grant a permanent utility easement (the “Easement”) over the Property to the City for the Project as described in **Exhibit B** and depicted in **Exhibit C**.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Easement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Grant of Easement.** Grantor grants to the City and its agents, hired contractors, and employees a temporary construction easement over and across the portion of the Property described **Exhibit B** and depicted in **Exhibit C** for right-of-way, drainage, and utility purposes, including the acquisition of all vegetation (“Easement”).
2. **Easement Rights.** The Easement includes the right of the City, its contractors, agents, officers, employees, and inspectors to enter the Easement area at all reasonable times for the purposes of performing any necessary grading, excavating, construction of slope, parking of construction machinery, storing of Project materials, restoration work, and any other use related to the construction of the Project. This Easement grants the City the right to cut, trim, or remove trees, shrubs, or other vegetation within the Easement that, in the City’s judgment unreasonably



interferes with the use, safety, or maintenance of the Easement. The City may remove structures, pavement, soil, gravel or other materials with the Easement. Grantor and the City will work together to minimize the disruption to Grantor by the excavation and work. The City shall also require the contractors to restore any excavated areas and to repair any damage done to the Property from their work, except that there shall be no obligation to restore or replace trees or shrubs cut or removed as part of the installation, repair, maintenance, or replacement of the Project. The Temporary Easement shall expire upon completion of the Project, but in any event will expire no later than June 30, 2024, whichever occurs first.

3. **Counterparts.** This document may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

**GRANTOR SIGNATURE PAGE**

**GRANTOR:**

\_\_\_\_\_   
John E. Janku

\_\_\_\_\_   
Heidi L. Janku

STATE OF MINNESOTA )   
 ) SS   
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by John E. Janku, married to Heidi L. Janku.

\_\_\_\_\_   
Notary Public

STATE OF MINNESOTA )   
 ) SS   
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Heidi L. Janku, married to John E. Janku.

\_\_\_\_\_   
Notary Public

**CITY SIGNATURE PAGE**

**CITY OF FOLEY, MINNESOTA**

By \_\_\_\_\_  
Gerard Bettendorf, Its Mayor

Attest:

By \_\_\_\_\_  
Sarah Brunn, Its City Administrator

STATE OF MINNESOTA )  
                                       ) SS  
COUNTY OF BENTON )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public for this County, personally appeared Gerard Bettendorf, who, being by me duly sworn, did say that he is the Mayor of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
                                       ) SS  
COUNTY OF BENTON )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public for this County, personally appeared Sarah Brunn, who, being by me duly sworn, did say that she is the City Administrator of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

**THIS INSTRUMENT DRAFTED BY:**

Rinke Noonan (AAR/mjr)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
Our File No. 04313-0262

**EXHIBIT A**

**(Property Description)**

West Half of the Southeast Quarter of Section 34, Township 37, Range 29, Benton County, Minnesota.

**EXHIBIT B**

**(Easement Legal Description)**

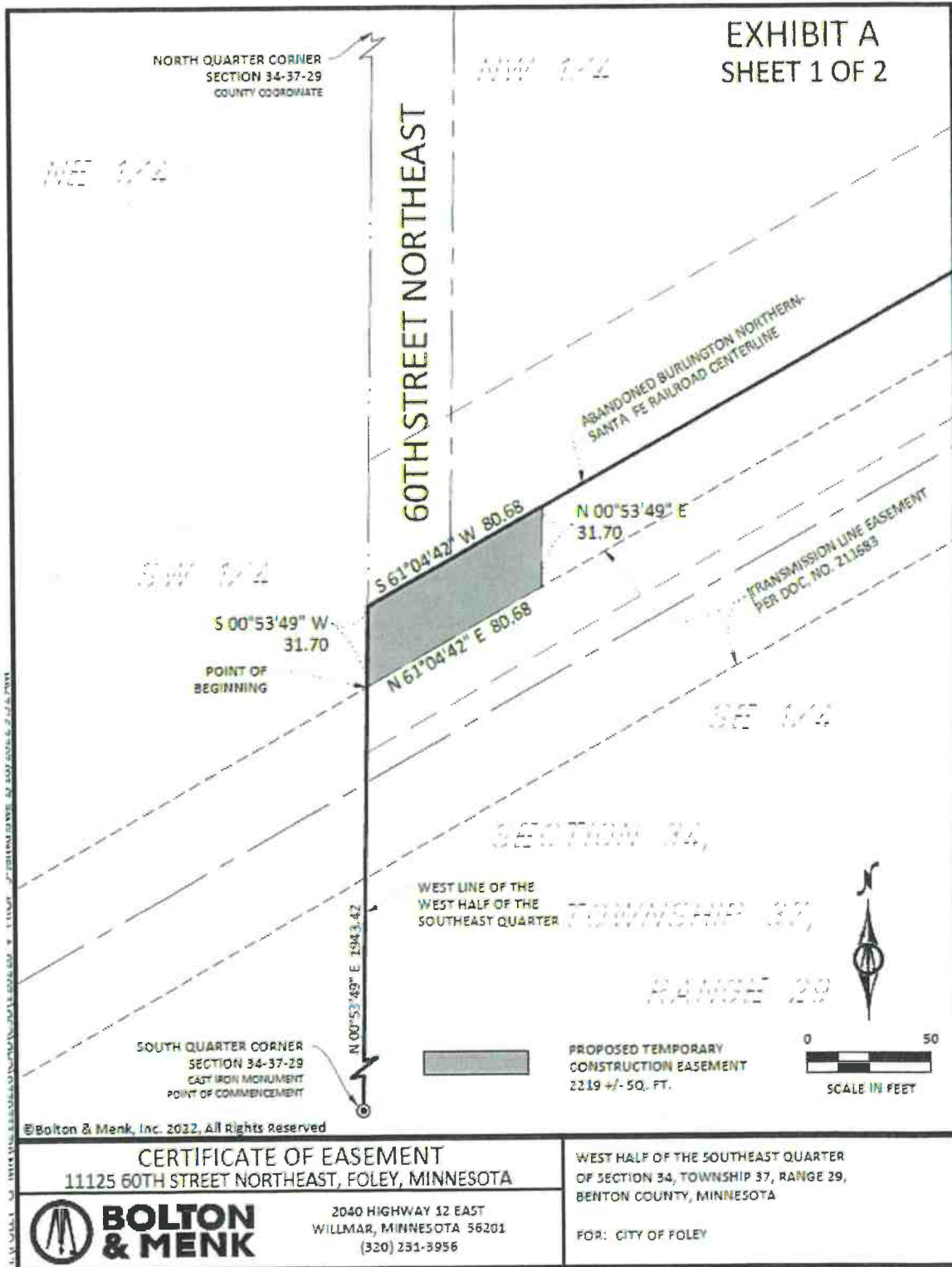
A temporary construction easement over, under and across that part of the West Half of the Southeast Quarter of Section 34, Township 37, Range 29, Benton County, Minnesota, described as follows:

Commencing at the southwest corner of the West Half of the Southeast Quarter of Section 34, Township 37, Range 29, Benton County, Minnesota; thence on an assumed bearing of North 00 degrees 53 minutes 49 seconds East, along the west line of said West Half of the Southeast Quarter, a distance of 1943.42 feet to the point of beginning; thence North 61 degrees 04 minutes 42 seconds East, a distance of 80.68 feet; thence North 00 degrees 53 minutes 49 seconds East, a distance of 31.70 feet; thence South 61 degrees 04 minutes 42 seconds West, a distance of 80.68 feet, to said west line of the West Half of the Southeast Quarter; thence South 00 degrees 53 minutes 49 seconds West, along said west line, a distance of 31.70 feet to the point of beginning.

Said temporary easement to expire June 30th, 2024.

# EXHIBIT C

(Easement Sketch)





**TEMPORARY CONSTRUCTION  
 EASEMENT**  
 OWNER: JANKU  
 EASEMENT AREA: 2219 SQ FT

**LEGEND**

- PERMANENT EASEMENT
- TEMPORARY EASEMENT



## PERMANENT UTILITY AND DRAINAGE EASEMENT

**THIS EASEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **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 “Grantor”) and the **City of Foley**, a municipal corporation organized under the laws of Minnesota (“City”).

### RECITALS

- A. Grantor is the fee owner of the real property located in Benton County, Minnesota, as described in **Exhibit A** (“Property”);
- B. The City is in the process of undertaking a public wastewater project that may include a buried sanitary sewer force main, buried fiber optic cable, and related utility infrastructure (the “Project”) and requires a permanent utility and drainage easement over the Property in order to facilitate construction, installation, operation and maintenance of the Project, including the installation of facilities and related equipment on the Property; and
- C. The Grantor desires to grant a permanent utility easement (the “Easement”) over the Property to the City for the Project as described in **Exhibit B** and depicted in **Exhibit C**.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Easement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Grant of Permanent Easement.** Grantor grants to the City and its agents, hired contractors, and employees a permanent easement over and across the portion of the Property described **Exhibit B** and depicted in **Exhibit C** for right-of-way, drainage, and utility purposes, including the acquisition of all vegetation (“Easement”). Grantor retains the right to use the Easement so long as the use does not interfere with the City’s use of and access to the Easement.

2. **Scope of Easement.** The Easement includes the right of the City, its contractors, agents, officers, employees, and inspectors to enter the Easement area at all reasonable times for the purposes of performing such construction, excavation, reconstruction, inspection, alteration,



pumping, and related work as is needed to install, operate, maintain, repair, improve, and replace the Project. This Easement grants the City the right to cut, trim, or remove trees, shrubs, or other vegetation within the Easement, now or in the future, that, in the City's judgment unreasonably interferes with the use, safety, or maintenance of the Easement. The City may remove structures, pavement, soil, gravel or other materials with the Easement. Signage, manholes, and testing access may be placed above ground within the Easement. Grantor and the City will work together to minimize the disruption to Grantor by the excavation and work. The City shall also require the contractors to restore any excavated areas and to repair any damage done to the Property from their work, except that there shall be no obligation to restore or replace trees or shrubs cut or removed as part of the installation, repair, maintenance, or replacement of the Project.

3. **Obstructions and Placement of Structures Prohibited.** Grantor shall not erect any structure under, on, across or within the Easement without obtaining the prior written consent of City. The Easement includes the right of the City to remove any object, including landscaping, trees, shrubs, timber and wood, which in the opinion of the City or its contractors will interfere with the Project.

4. **Grantor's Covenants.** Grantor specifically covenants with the City that:

- a. Grantor holds the Property in fee simple title, except for the permitted encumbrances identified in **Exhibit D**, for which Grantor agree to assist in securing consent;
- b. Grantor has full and good lawful authority to convey the Easement for the purposes stated in this Easement; and
- c. Grantor will defend the Easement against claims of all persons whomsoever.

5. **Easement Runs with the Land.** This Easement shall be deemed to be a perpetual easement and shall run with the land and be binding upon the Grantor's heirs, successors and assigns, and the Property.

6. **Amendment.** This document represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. Only an instrument in writing signed by both parties may amend this document.

7. **Counterparts.** This document may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

**GRANTOR SIGNATURE PAGE**

**GRANTOR:**

\_\_\_\_\_  
LeRoy Charles Herbst, as Trustee of the  
LeRoy Charles Herbst Revocable Trust and  
as Trustee of the Catherine Marie Herbst  
Revocable Trust

\_\_\_\_\_  
Catherine Marie Herbst, as Trustee of the  
Catherine Marie Herbst Revocable Trust and  
as Trustee of the LeRoy Charles Herbst  
Revocable Trust

STATE OF MINNESOTA    )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by LeRoy Charles Herbst, as Trustee of the LeRoy Charles Herbst Revocable Trust and as  
Trustee of the Catherine Marie Herbst Revocable Trust.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Catherine Marie Herbst, as Trustee of the Catherine Marie Herbst Revocable Trust and as  
Trustee of the LeRoy Charles Herbst Revocable Trust.

\_\_\_\_\_  
Notary Public

**CITY SIGNATURE PAGE**

**CITY OF FOLEY, MINNESOTA**

By \_\_\_\_\_  
Gerard Bettendorf, Its Mayor

Attest:

By \_\_\_\_\_  
Sarah Brunn, Its City Administrator

STATE OF MINNESOTA    )  
  ) SS  
COUNTY OF BENTON    )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public for this County, personally appeared Gerard Bettendorf, who, being by me duly sworn, did say that he is the Mayor of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  ) SS  
COUNTY OF BENTON    )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public for this County, personally appeared Sarah Brunn, who, being by me duly sworn, did say that she is the City Administrator of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

**THIS INSTRUMENT DRAFTED BY:**

Rinke Noonan (AAR/mjr)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
Our File No. 04313-0262

**EXHIBIT A**

**(Property Description)**

The East Half of the Southwest Quarter of Section 34, Township 37, Range 29, Benton County, Minnesota.

## **EXHIBIT B**

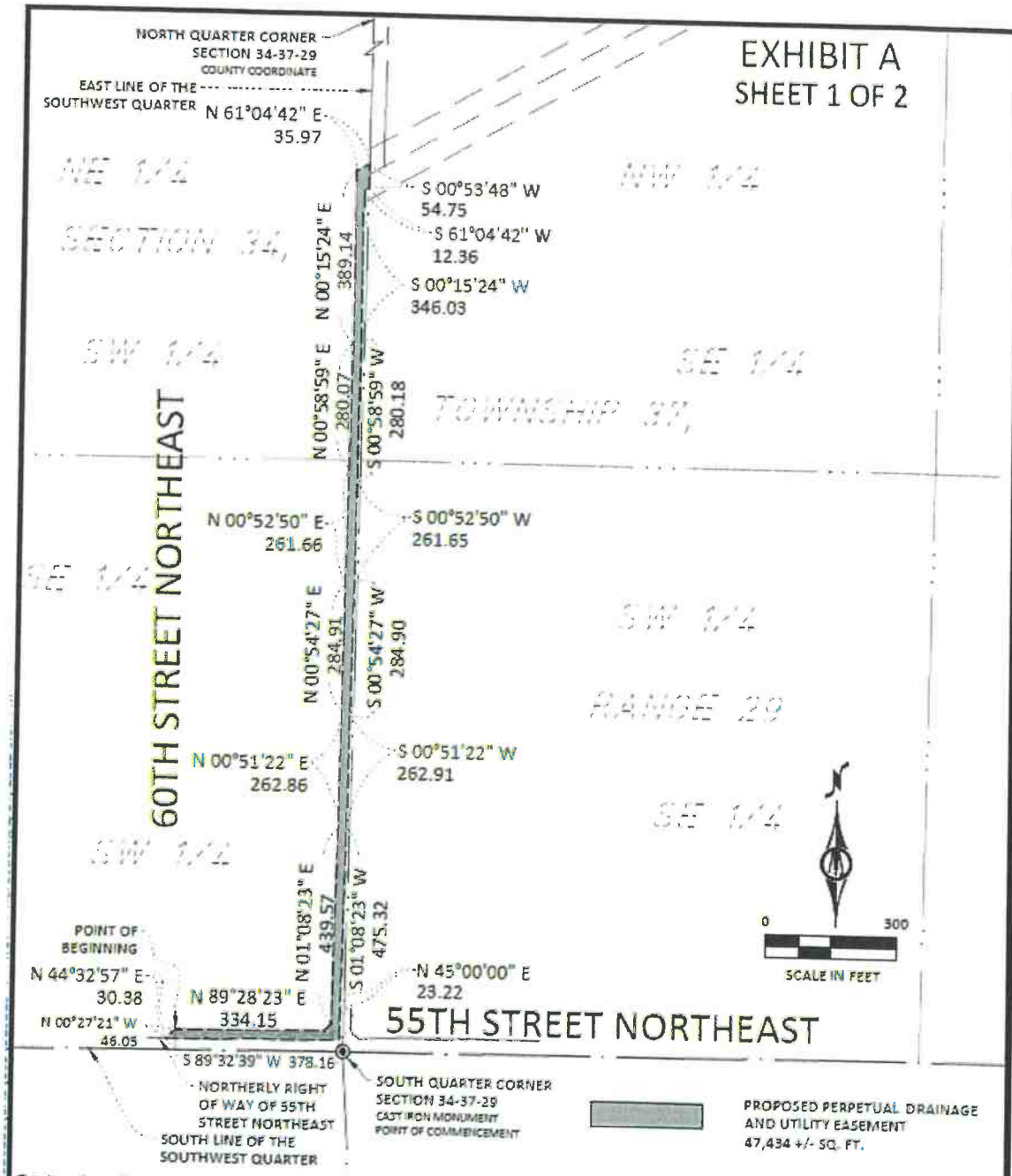
### **(Easement Legal Description)**

A perpetual easement for drainage and utility purposes over, under and across that part of the hereinbefore described PREMISES described as follows:

Commencing at the southeast corner of the East Half of the Southwest Quarter of Section 34, Township 37, Range 29, Benton County, Minnesota; thence on an assumed bearing of South 89 degrees 32 minutes 39 seconds West, along the south line of said Southwest Quarter, a distance of 378.16 feet; thence North 00 degrees 27 minutes 21 seconds West, a distance of 46.05 feet to the point of beginning; thence North 89 degrees 28 minutes 23 seconds East, a distance of 334.15 feet; thence North 45 degrees 00 minutes 00 seconds East, a distance of 23.22 feet; thence North 01 degrees 08 minutes 23 seconds East, a distance of 439.57 feet; thence North 00 degrees 51 minutes 12 seconds East, a distance of 262.86 feet; thence North 00 degrees 54 minutes 27 seconds East, a distance of 284.91 feet; thence North 00 degrees 52 minutes 50 seconds East, a distance of 261.66 feet; thence North 00 degrees 58 minutes 59 seconds East, a distance of 280.07 feet; thence North 00 degrees 15 minutes 24 seconds East, a distance of 389.14 feet; thence North 61 degrees 04 minutes 42 seconds East, a distance of 35.97 feet; to the east line of said Southwest Quarter; thence South 00 degrees 53 minutes 48 seconds West, along said east line, a distance of 54.75 feet; thence South 61 degrees 04 minutes 42 seconds West, a distance of 12.36 feet; thence South 00 degrees 15 minutes 24 seconds West, a distance of 346.03 feet; thence South 00 degrees 58 minutes 59 seconds West, a distance of 280.18 feet; thence South 00 degrees 52 minutes 50 seconds West, a distance of 261.65 feet; thence South 00 degrees 54 minutes 27 seconds West, a distance of 284.90 feet; thence South 00 degrees 51 minutes 22 seconds West, a distance of 262.91 feet; thence South 01 degrees 08 minutes 23 seconds West, a distance of 475.32 feet, to the easterly extension of the northerly right of way line of 55<sup>th</sup> Street Northeast; thence westerly along said easterly extension and said northerly right of way line to the intersection of a line that bears South 44 degrees 32 minutes 57 seconds West from said point of beginning; thence North 44 degrees 32 minutes 57 seconds East, a distance of 30.38 feet to the point of beginning.

# EXHIBIT C

(Easement Sketch)



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**CERTIFICATE OF EASEMENT**  
**60TH STREET NORTHEAST, FOLEY, MINNESOTA**



2040 HIGHWAY 12 EAST  
 WILLMAR, MINNESOTA 56201  
 (320) 231-3956

EAST HALF OF THE SOUTHWEST QUARTER OF  
 SECTION 34, TOWNSHIP 37, RANGE 29,  
 BENTON COUNTY, MINNESOTA

FOR: CITY OF FOLEY

JOB NUMBER: R21.120226

FIELD BOOK:

DRAWN BY: FRD

R29-137-334-31-34



## **EXHIBIT D**

### **(Permitted Encumbrances)**

Underground Utility Easement with Southern Minnesota Municipal Power Agency dated December 13, 1991, and recorded on January 29, 1992 as Document No. 206084.

Assignment of Easements with United Power Association n/k/a Great River Energy dated June 18, 1984, and recorded on October 3, 1984 as Document No. 171041.

Solar Power Site Lease with Novel Herbst 1 Solar LLC dated January 6, 2021, and recorded on July 20, 2021 as Document No. 453965.



**CONSENT TO EASEMENT**

Southern Minnesota Municipal Power Agency, a not-for-profit joint-action agency, hereby consents to the Permanent Utility and Drainage Easement by 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.

The undersigned holds an interest pursuant to the Underground Utility Easement of which encumbers the real property described in attached Easement.

Dated: \_\_\_\_\_, 2022

SOUTHERN MINNESOTA MUNICIPAL  
POWER AGENCY

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) SS  
COUNTY OF \_\_\_\_\_)

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022,  
by \_\_\_\_\_, the \_\_\_\_\_ of Southern Minnesota  
Municipal Power Agency.

\_\_\_\_\_  
Notary Public

**CONSENT TO EASEMENT**

United Power Association n/k/a Great River Energy, a Minnesota cooperative, hereby consents to the Permanent Utility and Drainage Easement by 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.

The undersigned holds an interest pursuant to the Assignments of Easements of which encumbers the real property described in attached Easement.

Dated: \_\_\_\_\_, 2022

UNITED POWER ASSOCIATION N/K/A  
GREAT RIVER ENERGY

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA )  
  ) SS  
COUNTY OF \_\_\_\_\_)

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022,  
by \_\_\_\_\_, the \_\_\_\_\_ of United Power Association  
n/k/a Great River Energy.

\_\_\_\_\_  
Notary Public

**CONSENT TO EASEMENT**

Novel Herbst 1 Solar LLC, a Minnesota limited liability company, hereby consents to the Permanent Utility and Drainage Easement by 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.

The undersigned holds an interest pursuant to the Solar Power Site Lease of which encumbers the real property described in attached Easement.

Dated: \_\_\_\_\_, 2022

NOVEL HERBST 1 SOLAR LLC

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) SS  
COUNTY OF \_\_\_\_\_)

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022,  
by \_\_\_\_\_, the \_\_\_\_\_ of Novel Herbst 1 Solar LLC.

\_\_\_\_\_  
Notary Public

(Top 3 inches reserved for recording data)

**CERTIFICATE OF TRUST**  
**by Individual**  
**Minn. Stat. 501C.1013**

**Minnesota Uniform Conveyancing Blanks**  
**Form 90.1.1 (2016)**

State of Minnesota, County of \_\_\_\_\_

LeRoy C. Herbst and Catherine M. Herbst, being first duly sworn, on oath state, or affirms under penalties of perjury, that:

1. The name of the Trust, if one is given, is: Catherine Marie Herbst Revocable Trust.

2. The date of the Trust Instrument is: \_\_\_\_\_

3. The name and address of each trustee empowered to act under the trust instrument at the time of execution of this Certificate of Trust is:

Leroy C. Herbst and Catherine M. Herbst  
4012 – 105th Avenue NE  
Foley, MN 56329

4. The Trustees are authorized by the trust instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, except as limited by the following: (if none, so indicate)

5. The number of trustees required to act is: \_\_\_\_\_

6. The Trust  has  has not been terminated.

The Trust  has  has not been revoked.

Pursuant to Minn. Stat. 501C.1013 subd. 2:

The name of each settlor of the trust is: LeRoy C. Herbst and Catherine M. Herbst.

The name of each original trustee is: LeRoy C. Herbst and Catherine M. Herbst.

Check this box  if an Affidavit of Trustee, consisting of 3 pages, is attached to this Certificate of Trust.

The statements contained in this Certificate of Trust are true and correct and there are no other provisions in the Trust Instrument, or amendments to it, that limit (i) the powers of the trustee(s) to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or personal property, or (ii) the authority of the trustees to exercise any other power identified in this Certificate of Trust.

Trustee or Grantor

\_\_\_\_\_  
LeRoy C. Herbst

\_\_\_\_\_  
Catherine M. Herbst

State of Minnesota, County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_, by LeRoy C. Herbst, as Trustee of the Catherine Marie Herbst Revocable Trust and Catherine M. Herbst, as Trustee of the Catherine Marie Herbst Revocable Trust.

\_\_\_\_\_  
(signature of notarial officer)

Title (and Rank): \_\_\_\_\_

My commission expires: \_\_\_\_\_

(month/day/year)

**THIS INSTRUMENT DRAFTED BY:**  
Rinke Noonan (AAR/mjr)  
300 US Bank Plaza  
1015 West St. Germain Street  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700

(Top 3 inches reserved for recording data)

**CERTIFICATE OF TRUST**  
**by Individual**  
**Minn. Stat. 501C.1013**

**Minnesota Uniform Conveyancing Blanks**  
**Form 90.1.1 (2016)**

State of Minnesota, County of \_\_\_\_\_

LeRoy C. Herbst and Catherine M. Herbst, being first duly sworn, on oath state, or affirms under penalties of perjury, that:

1. The name of the Trust, if one is given, is: LeRoy Charles Herbst Revocable Trust.

2. The date of the Trust Instrument is: \_\_\_\_\_

3. The name and address of each trustee empowered to act under the trust instrument at the time of execution of this Certificate of Trust is:

Leroy C. Herbst and Catherine M. Herbst  
4012 – 105th Avenue NE  
Foley, MN 56329

4. The Trustees are authorized by the trust instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, except as limited by the following: *(if none, so indicate)*

5. The number of trustees required to act is: \_\_\_\_\_.

6. The Trust  has  has not been terminated.

The Trust  has  has not been revoked.

Pursuant to Minn. Stat. 501C.1013 subd. 2:

The name of each settlor of the trust is: LeRoy C. Herbst and Catherine M. Herbst.

The name of each original trustee is: LeRoy C. Herbst and Catherine M. Herbst.

Check this box  if an Affidavit of Trustee, consisting of 3 pages, is attached to this Certificate of Trust.

The statements contained in this Certificate of Trust are true and correct and there are no other provisions in the Trust Instrument, or amendments to it, that limit (i) the powers of the trustee(s) to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or personal property, or (ii) the authority of the trustees to exercise any other power identified in this Certificate of Trust.

Trustee or Grantor

\_\_\_\_\_  
LeRoy C. Herbst

\_\_\_\_\_  
Catherine M. Herbst

State of Minnesota, County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_, by LeRoy C. Herbst, as Trustee of the LeRoy Charles Herbst Revocable Trust and Catherine M. Herbst, as Trustee of the LeRoy Charles Herbst Revocable Trust.

\_\_\_\_\_  
(signature of notarial officer)

Title (and Rank): \_\_\_\_\_

My commission expires: \_\_\_\_\_

(month/day/year)

**THIS INSTRUMENT DRAFTED BY:**

Rinke Noonan (AAR/mjr)  
300 US Bank Plaza  
1015 West St. Germain Street  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700

(Top 3 inches reserved for recording data)

**AFFIDAVIT OF TRUSTEE (inter vivos Trust)**  
Minn. Stat. 501C.1014

**Minnesota Uniform Conveyancing Blanks**  
Form 90.1.3 (2016)

State of Minnesota, County of \_\_\_\_\_

LeRoy C. Herbst and Catherine M. Herbst, being first duly sworn on oath states, or affirms under penalties of perjury, that:

1. Affiant is the Trustee (one of the Trustees) named in that certain Certificate of Trust (or trust instrument):

(check one box)  to which this Affidavit is attached.

record \_\_\_\_\_ as Document Number \_\_\_\_\_ (or in  
Book \_\_\_\_\_ of \_\_\_\_\_ Page \_\_\_\_\_), in the  
Office of the  County Recorder  Registrar of Titles of \_\_\_\_\_ County, Minnesota.  
(check the applicable boxes)

executed by Affiant or another trustee or the settlor of the trust described in the Certificate of Trust (or set forth in the trust instrument), which relates to real property in Benton, County, Minnesota, legally described as follows:

The East Half of the Southwest Quarter of Section 34, Township 37, Range 29, Benton County, Minnesota

Check here if all or part of the described real property is Registered (Torrens)

2. The name(s) and address(es) of the Trustee(s) empowered by the trust instrument to act at the time of the execution of this Affidavit are as follows:

Leroy C. Herbst and Catherine M. Herbst  
4012 – 105th Avenue NE  
Foley, MN 56329

3. The Trustee(s) who have executed that certain instrument, relating to the real property described above, between Leroy C. Herbst and Catherine M. Herbst, as Trustee(s), and the City of Foley, Minnesota, dated \_\_\_\_\_

(a) are empowered by the trust instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in trust; and

(b) are the requisite number of trustees required by the trust instrument to execute and deliver such an instrument.

4. (check one box)  The trust has not terminated and the trust instrument has not been revoked.

The trust has terminated (or the trust instrument has been revoked). The execution and delivery of the instrument described in paragraph 3 has been made pursuant to the provisions of the Trust.



5. There has been no amendment to the trust which limits the power of trustee(s) to execute and deliver the instrument described in paragraph 3.

6. (check one box)  The trust is not supervised by any court.

The trust is supervised by the \_\_\_\_\_ Court of \_\_\_\_\_  
County, \_\_\_\_\_. All necessary approval has been obtained from the court  
for the trustee(s) to execute and deliver the instrument described in paragraph 3.

7. Affiant does not have actual knowledge of any facts indicating the Trust is invalid.

Affiant

\_\_\_\_\_  
LeRoy C. Herbst

\_\_\_\_\_  
Catherine M. Herbst

State of Minnesota, County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_, by LeRoy C. Herbst, as Trustee of the Catherine Marie Herbst Revocable Trust and Catherine M. Herbst, as Trustee of the Catherine Marie Herbst Revocable Trust.

\_\_\_\_\_  
(signature of notarial officer)

Title (and Rank): \_\_\_\_\_

My commission expires: \_\_\_\_\_  
(month/day/year)

**THIS INSTRUMENT DRAFTED BY:**

Rinke Noonan (AAR/mjr)  
300 US Bank Plaza  
1015 West St. Germain Street  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700

(Top 3 inches reserved for recording data)

**AFFIDAVIT OF TRUSTEE (inter vivos Trust)**  
Minn. Stat. 501C.1014

**Minnesota Uniform Conveyancing Blanks**  
Form 90.1.3 (2016)

State of Minnesota, County of \_\_\_\_\_

LeRoy C. Herbst and Catherine M. Herbst, being first duly sworn on oath states, or affirms under penalties of perjury, that:

1. Affiant is the Trustee (one of the Trustees) named in that certain Certificate of Trust (or trust instrument):

(check one box)  to which this Affidavit is attached.

record \_\_\_\_\_ as Document Number \_\_\_\_\_ (or in  
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(check the applicable boxes)

executed by Affiant or another trustee or the settlor of the trust described in the Certificate of Trust (or set forth in the trust instrument), which relates to real property in Benton, County, Minnesota, legally described as follows:

The East Half of the Southwest Quarter of Section 34, Township 37, Range 29, Benton County, Minnesota

Check here if all or part of the described real property is Registered (Torrens)

2. The name(s) and address(es) of the Trustee(s) empowered by the trust instrument to act at the time of the execution of this Affidavit are as follows:

Leroy C. Herbst and Catherine M. Herbst  
4012 – 105th Avenue NE  
Foley, MN 56329

3. The Trustee(s) who have executed that certain instrument, relating to the real property described above, between Leroy C. Herbst and Catherine M. Herbst, as Trustee(s), and the City of Foley, Minnesota, dated \_\_\_\_\_,

(a) are empowered by the trust instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in trust; and

(b) are the requisite number of trustees required by the trust instrument to execute and deliver such an instrument.

4. (check one box)  The trust has not terminated and the trust instrument has not been revoked.

The trust has terminated (or the trust instrument has been revoked). The execution and delivery of the instrument described in paragraph 3 has been made pursuant to the provisions of the Trust.

5. There has been no amendment to the trust which limits the power of trustee(s) to execute and deliver the instrument described in paragraph 3.

6. (check one box)  The trust is not supervised by any court.

The trust is supervised by the \_\_\_\_\_ Court of \_\_\_\_\_  
County, \_\_\_\_\_. All necessary approval has been obtained from the court  
for the trustee(s) to execute and deliver the instrument described in paragraph 3.

7. Affiant does not have actual knowledge of any facts indicating the Trust is invalid.

Affiant

\_\_\_\_\_  
LeRoy C. Herbst

\_\_\_\_\_  
Catherine M. Herbst

State of Minnesota, County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_, by LeRoy C. Herbst, as Trustee of the LeRoy Charles Herbst  
Revocable Trust and Catherine M. Herbst, as Trustee of the LeRoy Charles Herbst Revocable Trust.

\_\_\_\_\_  
(signature of notarial officer)

Title (and Rank): \_\_\_\_\_

My commission expires: \_\_\_\_\_  
(month/day/year)

**THIS INSTRUMENT DRAFTED BY:**

Rinke Noonan (AAR/mjr)  
300 US Bank Plaza  
1015 West St. Germain Street  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700

## PERMANENT UTILITY AND DRAINAGE EASEMENT

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **Larry A. Besser, Jr., Lorin E. Besser, and Robert Kovell, as Trustees of Restated Revocable Trust Agreement for George A. Besser, Jr., dated July 28, 2010** (“Grantor”) and the **City of Foley**, a municipal corporation organized under the laws of Minnesota (“City”).

### RECITALS

- A. Grantor is the fee owner of the real property located in Benton County, Minnesota, as described in **Exhibit A** (“Property”);
- B. The City is in the process of undertaking a public wastewater project that may include a buried sanitary sewer force main, buried fiber optic cable, and related utility infrastructure (the “Project”) and requires a permanent utility and drainage easement over the Property in order to facilitate construction, installation, operation and maintenance of the Project, including the installation of facilities and related equipment on the Property; and
- C. The Grantor desires to grant a permanent utility easement (the “Easement”) over the Property to the City for the Project as described in **Exhibit B** and depicted in **Exhibit C**.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Easement, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Grant of Permanent Easement.** Grantor grants to the City and its agents, hired contractors, and employees a permanent easement over and across the portion of the Property described **Exhibit B** and depicted in **Exhibit C** for right-of-way, drainage, and utility purposes, including the acquisition of all vegetation (“Easement”). Grantor retains the right to use the Easement so long as the use does not interfere with the City’s use of and access to the Easement.
2. **Scope of Easement.** The Easement includes the right of the City, its contractors, agents, officers, employees, and inspectors to enter the Easement area at all reasonable times for the purposes of performing such construction, excavation, reconstruction, inspection, alteration, pumping, and related work as is needed to install, operate, maintain, repair, improve, and replace

the Project. This Easement grants the City the right to cut, trim, or remove trees, shrubs, or other vegetation within the Easement, now or in the future, that, in the City's judgment unreasonably interferes with the use, safety, or maintenance of the Easement. The City may remove structures, pavement, soil, gravel or other materials with the Easement. Signage, manholes, and testing access may be placed above ground within the Easement. Grantor and the City will work together to minimize the disruption to Grantor by the excavation and work. The City shall also require the contractors to restore any excavated areas and to repair any damage done to the Property from their work, except that there shall be no obligation to restore or replace trees or shrubs cut or removed as part of the installation, repair, maintenance, or replacement of the Project. The Easement includes a temporary construction easement, as described in **Exhibit B** and depicted in **Exhibit C**, for the purpose performing any necessary grading, excavating, construction of slope, parking of construction machinery, storing of Project materials, restoration work, and any other use related to the construction of the Project (the "Temporary Easement"). The Temporary Easement shall expire upon completion of the Project, but in any event will expire no later than **June 30, 2024**, whichever occurs first.

3. **Obstructions and Placement of Structures Prohibited.** Grantor shall not erect any structure under, on, across or within the Easement without obtaining the prior written consent of City. The Easement includes the right of the City to remove any object, including landscaping, trees, shrubs, timber and wood, which in the opinion of the City or its contractors will interfere with the Project.

4. **Grantor's Covenants.** Grantor specifically covenants with the City that:

- a. Grantor holds the Property in fee simple title, except for the permitted encumbrances identified in **Exhibit D**, for which Grantor agree to assist in securing consent;
- b. Grantor has full and good lawful authority to convey the Easement for the purposes stated in this Easement; and
- c. Grantor will defend the Easement against claims of all persons whomsoever.

5. **Easement Runs with the Land.** This Easement shall be deemed to be a perpetual easement and shall run with the land and be binding upon the Grantor's heirs, successors and assigns, and the Property.

6. **Amendment.** This document represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. Only an instrument in writing signed by both parties may amend this document.

7. **Counterparts.** This document may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.



**GRANTOR SIGNATURE PAGE**

**GRANTOR:**

\_\_\_\_\_  
Lorin E. Besser, as Trustee of Restated  
Revocable Trust Agreement for George A.  
Besser, Jr., dated July 28, 2010

STATE OF MINNESOTA    )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022,  
by Lorin E. Besser, as Trustee of Restated Revocable Trust Agreement for George A. Besser, Jr.,  
dated July 28, 2010.

\_\_\_\_\_  
Notary Public







## **EXHIBIT A**

### **(Property Description)**

That part of the Northeast Quarter of the Northeast Quarter (NE1/4 of NE 1/4), Section Twenty-seven (27), Township Thirty-six (36), Range Thirty (30), lying Northwesterly of Highway #23 except the West 19 feet thereof and Subject to Highway #23 and Township Road except .33 acres for County Highway, less part of 218A on MNDOT Right-of-way Plat No. 05-9, Benton County, Minnesota.

AND

The West 19 feet of that part of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4), Section Twenty-seven (27), Township Thirty-six (36), Range Thirty (30), lying Northwesterly of Highway #23, Subject to Highway except South 17 feet of North 50 feet of West 19 feet of Northeast Quarter of Northeast Quarter (NE 1/4 NE 1/4) for County Highway, less part 218 on MNDOT Right-of-way Plat No. 05-9. According to the U.S. Government Survey thereof, Benton County, Minnesota.

## **EXHIBIT B**

### **(Easement Legal Description)**

#### **Permanent Easement**

A perpetual easement for drainage and utility purposes over, under and across that part of the hereinbefore described PREMISES described as follows:

Commencing at the northeast corner of the Northeast Quarter of the Northeast Quarter of Section 27, Township 36, Range 30, Benton County, Minnesota; thence on an assumed bearing of North 88 degrees 55 minutes 12 seconds West, along the north line of said Northeast Quarter of the Northeast Quarter, a distance of 1327.76 feet, to the west line of the Northeast Quarter of the Northeast Quarter; thence South 01 degrees 04 minutes 28 seconds East, along said west line of said Northeast Quarter of the Northeast Quarter, a distance of 592.10 to the point of beginning; thence North 47 degrees 30 minutes 03 seconds East, a distance of 187.68 feet; thence North 89 degrees 15 minutes 59 seconds East, a distance of 53.20 feet, to the northwesterly right of way line of Minnesota Highway 23, according to MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY PLAT NO. 05-9, according to the recorded plat thereof, Benton County, Minnesota; thence South 47 degrees 30 minutes 03 seconds West, along said northwesterly right of way line, a distance of 258.25 feet; thence South 30 degrees 51 minutes 14 seconds West, along said northwesterly right of way line, a distance of 0.55 feet, to said west line of the Northeast Quarter of the Northeast Quarter; thence North 01 degrees 04 minutes 28 seconds West, along said west line, a distance of 47.47 feet to the point of beginning.

#### **Temporary Easement**

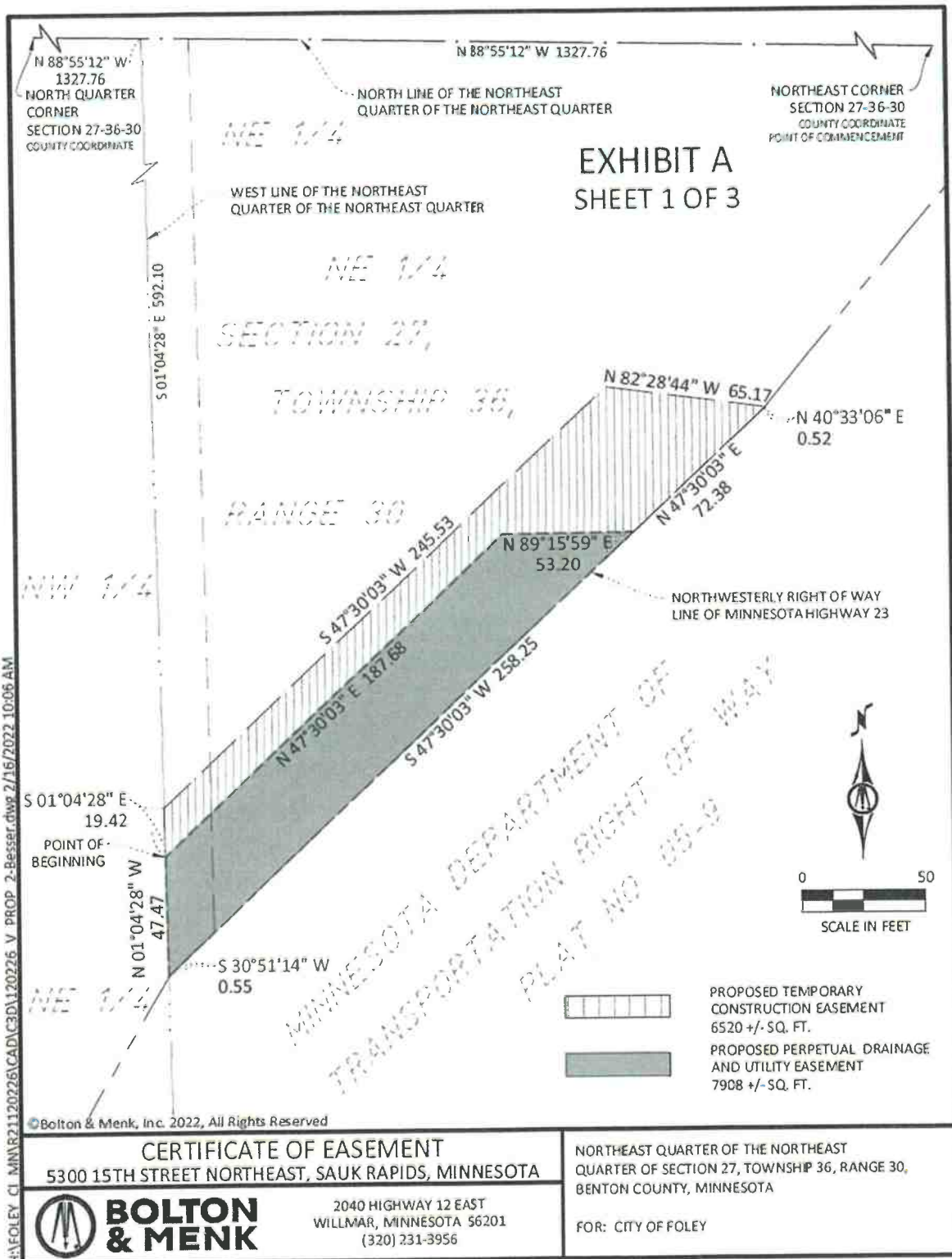
A temporary easement for construction purposes over, under and across that part of the hereinbefore described PREMISES described as follows:

Commencing at the northeast corner of the Northeast Quarter of the Northeast Quarter of Section 27, Township 36, Range 30, Benton County, Minnesota; thence on an assumed bearing of North 88 degrees 55 minutes 12 seconds West, along the north line of said Northeast Quarter of the Northeast Quarter, a distance of 1327.76 feet, to the west line of the Northeast Quarter of the Northeast Quarter; thence South 01 degrees 04 minutes 28 seconds East, along said west line of said Northeast Quarter of the Northeast Quarter, a distance of 592.10 to the point of beginning; thence North 47 degrees 30 minutes 03 seconds East, a distance of 187.68 feet; thence North 89 degrees 15 minutes 59 seconds East, a distance of 53.20 feet, to the northwesterly right of way line of Minnesota Highway 23, according to MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY PLAT NO. 05-9, according to the recorded plat thereof, Benton County, Minnesota; thence North 47 degrees 30 minutes 03 seconds East, along said northwesterly right of way line, a distance of 72.38 feet; thence North 40 degrees 33 minutes 06 seconds East, along said northwesterly right of way line, a distance of 0.52 feet; thence North 82 degrees 28 minutes 44 seconds West, a distance of 65.17 feet;

thence South 47 degrees 30 minutes 03 seconds West, a distance of 245.53 feet, to said west line of the Northeast Quarter of the Northeast Quarter; thence South 01 degrees 04 minutes 28 seconds East, along said west line, a distance of 19.42 feet to the point of beginning.

Temporary easement to expire on June 30, 2024.

**EXHIBIT C**  
**(Easement Sketch)**



H:\FOLEY CL MINVR21120226\CAD\C3D\120226\_V\_PROP\_2-Besser.dwg 2/16/2022 10:06 AM

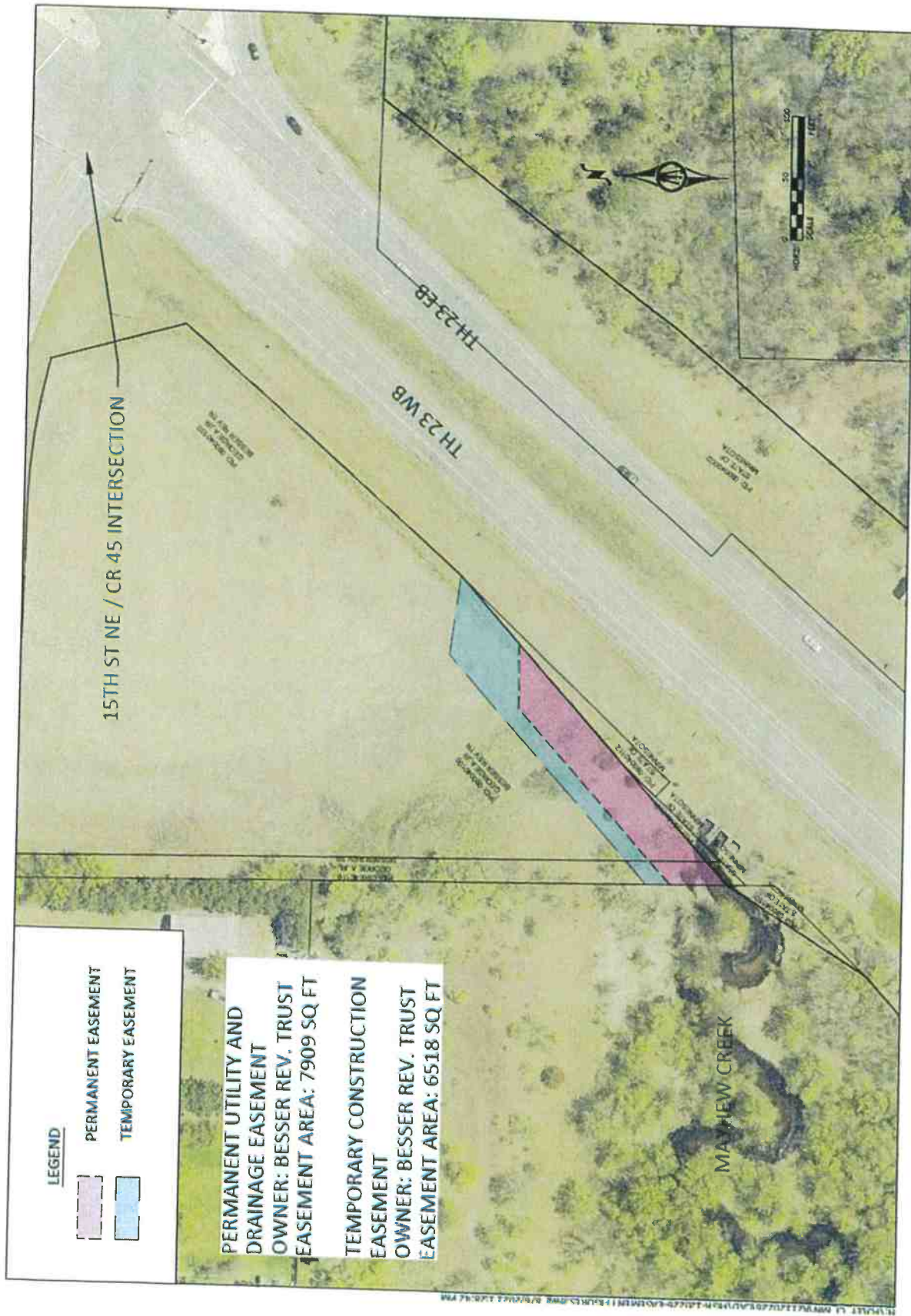
**CERTIFICATE OF EASEMENT**  
5300 15TH STREET NORTHEAST, SAUK RAPIDS, MINNESOTA

**BOLTON & MENK**

2040 HIGHWAY 12 EAST  
WILLMAR, MINNESOTA 56201  
(320) 231-3956

NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 36, RANGE 30, BENTON COUNTY, MINNESOTA

FOR: CITY OF FOLEY



**EXHIBIT D**

**(Permitted Encumbrances)**

If blank, indicates none.

(Top 3 inches reserved for recording data)

**AFFIDAVIT OF TRUSTEE (inter vivos Trust)**  
Minn. Stat. 501C.1014

**Minnesota Uniform Conveyancing Blanks**  
**Form 90.1.3 (2016)**

State of Minnesota, County of \_\_\_\_\_

Larry A. Besser, Jr., being first duly sworn on oath states, or affirms under penalties of perjury, that:

1. Affiant is the Trustee (one of the Trustees) named in that certain Certificate of Trust (or trust instrument):  
(check one box)  to which this Affidavit is attached.

record \_\_\_\_\_ as Document Number \_\_\_\_\_ (or in  
Book \_\_\_\_\_ of \_\_\_\_\_ Page \_\_\_\_\_), in the  
Office of the  County Recorder  Registrar of Titles of \_\_\_\_\_ County, Minnesota.  
(check the applicable boxes)

executed by Affiant or another trustee or the settlor of the trust described in the Certificate of Trust (or set forth in the trust instrument), which relates to real property in Benton, County, Minnesota, legally described as follows:

That part of the Northeast Quarter of the Northeast Quarter (NE1/4 of NE 1/4), Section Twenty-seven (27), Township Thirty-six (36), Range Thirty (30), lying Northwesterly of Highway #23 except the West 19 feet thereof and Subject to Highway #23 and Township Road except .33 acres for County Highway, less part of 218A on MNDOT Right-of-way Plat No. 05-9, Benton County, Minnesota.

AND  
The West 19 feet of that part of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4), Section Twenty-seven (27), Township Thirty-six (36), Range Thirty (30), lying Northwesterly of Highway #23, Subject to Highway except South 17 feet of North 50 feet of West 19 feet of Northeast Quarter of Northeast Quarter (NE 1/4 NE 1/4) for County Highway, less part 218 on MNDOT Right-of-way Plat No. 05-9. According to the U.S. Government Survey thereof, Benton County, Minnesota.

Check here if all or part of the described real property is Registered (Torrens)

2. The name(s) and address(es) of the Trustee(s) empowered by the trust instrument to act at the time of the execution of this Affidavit are as follows:

Larry A. Besser, Jr. 978 – 65 <sup>th</sup> Avenue NE Sauk Rapids, MN 56379	Lorin E. Besser 6225 Highway 95 NE Sauk Rapids, MN 56379	Robert Kovell 1916 Linda Lane St. Cloud, MN 56301
---	--	---



3. The Trustee(s) who have executed that certain instrument, relating to the real property described above, between Larry A. Besser, Jr. as Trustee(s), and the City of Foley:
- (a) are empowered by the trust instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in trust; and
  - (b) are the requisite number of trustees required by the trust instrument to execute and deliver such an instrument.

4. (check one box)  The trust has not terminated and the trust instrument has not been revoked.  
 The trust has terminated (or the trust instrument has been revoked). The execution and delivery of the instrument described in paragraph 3 has been made pursuant to the provisions of the Trust.

5. There has been no amendment to the trust which limits the power of trustee(s) to execute and deliver the instrument described in paragraph 3.

6. (check one box)  The trust is not supervised by any court.  
 The trust is supervised by the \_\_\_\_\_ Court of \_\_\_\_\_ County, \_\_\_\_\_. All necessary approval has been obtained from the court for the trustee(s) to execute and deliver the instrument described in paragraph 3.

7. Affiant does not have actual knowledge of any facts indicating the Trust is invalid.

Affiant

\_\_\_\_\_  
 Larry A. Besser, Jr., as Trustee of Restated Revocable Trust Agreement for George A. Besser, Jr., dated July 28, 2010

STATE OF MINNESOTA     )  
   )     SS  
 COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Larry A. Besser, Jr., as Trustee of Restated Revocable Trust Agreement for George A. Besser, Jr., dated July 28, 2010.

\_\_\_\_\_  
 Notary Public

**THIS INSTRUMENT WAS DRAFTED BY:**

Rinke Noonan (AAR/mjr)  
 1015 W. St. Germain St., Suite 300  
 P.O. Box 1497  
 St. Cloud, MN 56302-1497  
 (320) 251-6700  
 File No. 04313-0262

(Top 3 inches reserved for recording data)

**AFFIDAVIT OF TRUSTEE (inter vivos Trust)**  
Minn. Stat. 501C.1014

**Minnesota Uniform Conveyancing Blanks**  
Form 90.1.3 (2016)

State of Minnesota, County of \_\_\_\_\_

Lorin E. Besser, being first duly sworn on oath states, or affirms under penalties of perjury, that:

1. Affiant is the Trustee (one of the Trustees) named in that certain Certificate of Trust (or trust instrument):

(check one box)  to which this Affidavit is attached.

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AND  
The West 19 feet of that part of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4), Section Twenty-seven (27), Township Thirty-six (36), Range Thirty (30), lying Northwesterly of Highway #23, Subject to Highway except South 17 feet of North 50 feet of West 19 feet of Northeast Quarter of Northeast Quarter (NE 1/4 NE 1/4) for County Highway, less part 218 on MNDOT Right-of-way Plat No. 05-9. According to the U.S. Government Survey thereof, Benton County, Minnesota.

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7. Affiant does not have actual knowledge of any facts indicating the Trust is invalid.

Affiant

\_\_\_\_\_  
 Lorin E. Besser, as Trustee of Restated Revocable Trust Agreement for George A. Besser, Jr., dated July 28, 2010

STATE OF MINNESOTA     )  
   )     SS  
 COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Lorin E. Besser, as Trustee of Restated Revocable Trust Agreement for George A. Besser, Jr., dated July 28, 2010.

\_\_\_\_\_  
 Notary Public

**THIS INSTRUMENT WAS DRAFTED BY:**  
 Rinke Noonan (AAR/mjr)  
 1015 W. St. Germain St., Suite 300  
 P.O. Box 1497  
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Form 90.1.3 (2016)

State of Minnesota, County of \_\_\_\_\_

Robert Kovell, being first duly sworn on oath states, or affirms under penalties of perjury, that:

1. Affiant is the Trustee (one of the Trustees) named in that certain Certificate of Trust (or trust instrument):  
(check one box)  to which this Affidavit is attached.

record \_\_\_\_\_ as Document Number \_\_\_\_\_ (or in  
Book \_\_\_\_\_ of \_\_\_\_\_ Page \_\_\_\_\_), in the  
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AND  
The West 19 feet of that part of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4), Section Twenty-seven (27), Township Thirty-six (36), Range Thirty (30), lying Northwesterly of Highway #23, Subject to Highway except South 17 feet of North 50 feet of West 19 feet of Northeast Quarter of Northeast Quarter (NE 1/4 NE 1/4) for County Highway, less part 218 on MNDOT Right-of-way Plat No. 05-9. According to the U.S. Government Survey thereof, Benton County, Minnesota.

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Larry A. Besser, Jr. 978 – 65 <sup>th</sup> Avenue NE Sauk Rapids, MN 56379	Lorin E. Besser 6225 Highway 95 NE Sauk Rapids, MN 56379	Robert Kovell 1916 Linda Lane St. Cloud, MN 56301
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- (a) are empowered by the trust instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in trust; and
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 The trust has terminated (or the trust instrument has been revoked). The execution and delivery of the instrument described in paragraph 3 has been made pursuant to the provisions of the Trust.

5. There has been no amendment to the trust which limits the power of trustee(s) to execute and deliver the instrument described in paragraph 3.

6. (check one box)  The trust is not supervised by any court.  
 The trust is supervised by the \_\_\_\_\_ Court of \_\_\_\_\_ County, \_\_\_\_\_. All necessary approval has been obtained from the court for the trustee(s) to execute and deliver the instrument described in paragraph 3.

7. Affiant does not have actual knowledge of any facts indicating the Trust is invalid.

Affiant

\_\_\_\_\_  
 Robert Kovell, as Trustee of Restated Revocable Trust Agreement for George A. Besser, Jr., dated July 28, 2010

STATE OF MINNESOTA        )  
   )        SS  
 COUNTY OF \_\_\_\_\_        )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Robert Kovell, as Trustee of Restated Revocable Trust Agreement for George A. Besser, Jr., dated July 28, 2010.

\_\_\_\_\_  
 Notary Public

**THIS INSTRUMENT WAS DRAFTED BY:**  
 Rinke Noonan (AAR/mjr)  
 1015 W. St. Germain St., Suite 300  
 P.O. Box 1497  
 St. Cloud, MN 56302-1497  
 (320) 251-6700  
 File No. 04313-0262

(Top 3 inches reserved for recording data)

**CERTIFICATE OF TRUST**  
by Individual  
Minn. Stat. 501C.1013

Minnesota Uniform Conveyancing Blanks  
Form 90.1.1 (2016)

State of Minnesota, County of \_\_\_\_\_

Larry A. Besser, Jr., Lorin E. Besser, and Robert Kovell, being first duly sworn, on oath state, or affirms under penalties of perjury, that:

1. The name of the Trust, if one is given, is: Restated Revocable Trust Agreement of George A. Besser, Jr.
2. The date of the Trust Instrument is: July 28, 2010
3. The name and address of each trustee empowered to act under the trust instrument at the time of execution of this Certificate of Trust is:

Larry A. Besser, Jr. 978 – 65 <sup>th</sup> Avenue NE Sauk Rapids, MN 56379	Lorin E. Besser 6225 Highway 95 NE Sauk Rapids, MN 56379	Robert Kovell 1916 Linda Lane St. Cloud, MN 56301
---	--	---

4. The Trustees are authorized by the trust instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, except as limited by the following: (if none, so indicate)

None.

5. The number of trustees required to act is: \_\_\_\_\_

6. The Trust  has  has not been terminated.  
The Trust  has  has not been revoked.

Pursuant to Minn. Stat. 501C.1013 subd. 2:

The name of each settlor of the trust is: George A. Besser, Jr.

The name of each original trustee is: George A. Besser, Jr.

Check this box  if an Affidavit of Trustee, consisting of \_\_\_\_\_ pages, is attached to this Certificate of Trust.

---

The statements contained in this Certificate of Trust are true and correct and there are no other provisions in the Trust Instrument, or amendments to it, that limit (i) the powers of the trustee(s) to sell, convey, pledge, mortgage, lease, or transfer title to interests in real or personal property, or (ii) the authority of the trustees to exercise any other power identified in this Certificate of Trust.

TRUSTEE OR GRANTOR

\_\_\_\_\_  
Larry A. Besser, Jr., as Trustee of Restated Revocable Trust Agreement for  
George A. Besser, Jr., dated July 28, 2010

STATE OF MINNESOTA     )  
  )  
COUNTY OF \_\_\_\_\_ )     SS

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Larry A. Besser, Jr., as Trustee of Restated Revocable Trust Agreement for George A. Besser, Jr., dated July 28, 2010.

\_\_\_\_\_  
Notary Public

---

TRUSTEE OR GRANTOR:

\_\_\_\_\_  
Lorin E. Besser, as Trustee of Restated Revocable Trust Agreement for  
George A. Besser, Jr., dated July 28, 2010

STATE OF MINNESOTA     )  
                                  )  
COUNTY OF \_\_\_\_\_ )     SS

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Lorin E. Besser, as Trustee of Restated Revocable Trust Agreement for George A. Besser, Jr., dated July 28, 2010.

\_\_\_\_\_  
Notary Public



---

TRUSTEE OR GRANTOR

\_\_\_\_\_  
Robert Kovell, as Trustee of Restated Revocable Trust Agreement for  
George A. Besser, Jr., dated July 28, 2010

STATE OF MINNESOTA     )  
  )     SS  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Robert Kovell, as Trustee of Restated Revocable Trust Agreement for George A. Besser, Jr., dated July 28, 2010.

\_\_\_\_\_  
Notary Public

**THIS INSTRUMENT WAS DRAFTED BY:**

Rinke Noonan (AAR/mjr)  
1015 W. St. Germain St., Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700  
File No. 04313-0262




**BOLTON  
& MENK**

Real People. Real Solutions.

2040 Highway 12 East  
Willmar, MN 56201-5818

Ph: (320) 231-3956  
Fax: (320) 231-9710  
Bolton-Menk.com

## MEMORANDUM

Date: March 30, 2022  
To: Honorable Mayor Bettendorf  
Members of the City Council, City of Foley  
From:  Jared Voge, P.E.  
Principal Engineer  
Subject: Wastewater Regionalization Improvements  
Foley, Minnesota  
BMI Project No.: R21.120226

We are currently in the process of preparing the Minnesota Public Facilities Authority (PFA) loan application for the above referenced project. The Clean Water Revolving Fund will be utilized for the loan associated with a portion of the project costs. As part of the loan application process, the PFA requires that a Resolution of Application be passed by the City Council. Please find enclosed a resolution for Council adoption. The Resolution is a Resolution of Application for the Clean Water Revolving Fund. We recommend that via a motion, the Council adopt the enclosed Resolution.

If you have any questions on the above, please call.

JAV/kp

Enclosure

CITY OF FOLEY  
COUNTY OF BENTON  
STATE OF MINNESOTA

RESOLUTION 2022 - 11

RESOLUTION OF APPLICATION

**BE IT RESOLVED** that the City of Foley is hereby applying to the Minnesota Public Facilities Authority for a loan from the Clean Water Revolving Fund for improvements to its Wastewater Collection System project as described in the loan application.

**BE IT FURTHER RESOLVED** that the City of Foley estimates the loan amount to be \$26,802,000.00 or the as-bid cost of the project.

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

***BE IT FURTHER RESOLVED*** that the City of Foley hereby expresses its official intent to use proceeds of this loan to reimburse construction expenditures made prior to the issuance of its general obligation bond to the Public Facilities Authority.

**I CERTIFY THAT** the above resolution was adopted by the Foley City Council on April 5, 2022.

SIGNED:

WITNESSED:

---

Mr. Gerard Bettendorf  
Mayor

---

Ms. Sarah Brunn  
City Administrator




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## MEMORANDUM

Date: March 30, 2022  
To: Honorable Mayor Bettendorf  
Members of the City Council, City of Foley  
From:  Jared Voge, P.E.  
Principal Engineer  
Subject: Wastewater Regionalization Improvements  
City of Foley, Minnesota  
Project No.: R21.120226

On March 30, 2022 two bids were received for the above referenced project. They ranged from a low base bid in the amount of \$15,960,705.51 to a high base bid in the amount of \$22,022,110.06. A jack & Auger Casing Alternate was also included in the project bidding documents. The low alternate was \$588,000 and the high alternate was \$735,000. The low bid and alternate was submitted by Geislinger & Sons, Inc. of Watkins, Minnesota. After reviewing the bids submitted, we recommend awarding a contract to Geislinger & Sons, Inc. of Watkins, Minnesota in the amount of \$16,548,705.51 for the base bid plus the alternate. An abstract has been enclosed for your information.

If you have any questions on the above, please call.

JAV/kp

Enclosure

**ABSTRACT OF BIDS**  
**WASTEWATER REGIONALIZATION PROJECT**  
**CITY OF FOLEY, MN**  
**BMI PROJECT NO. R21.120226**

BID DATE: 3/30/2022  
 TIME: 1:00 PM

ITEM NO.	WINDOT SPEC. NO.	ITEM	APPROX. QUANT.	NOTES	UNIT	1 Geislinger & Sons Watkins, MN		2 RL Larson Excavating, Inc. St. Cloud, MN	
						UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1		MOBILIZATION	1		LUMP SUM	\$570,000.00	\$570,000.00	\$2,700,000.00	\$2,700,000.00
2		CLEARING AND GRUBBING	1.7		ACRE	\$31,000.00	\$52,700.00	\$70,000.00	\$34,000.00
3		CLEARING AND GRUBBING	27		TREE	\$1,100.00	\$29,700.00	\$800.00	\$21,600.00
4		DECOMMISSION BIRCH LIFT STATION	1		LUMP SUM	\$7,500.00	\$7,500.00	\$140,000.00	\$140,000.00
5		SALVAGE AND REINSTALL SIGN	14		EACH	\$510.00	\$7,140.00	\$600.00	\$8,400.00
6		SALVAGE AND REINSTALL PIPE CULVERT	252	(1)	LIN FT	\$20.00	\$5,040.00	\$74.00	\$18,648.00
7		AGGREGATE SURFACING FROM STOCKPILE (CV)	4164	(2)	CU YD	\$21.00	\$87,444.00	\$40.00	\$166,560.00
8		DEWATERING	1		LUMP SUM	\$0.01	\$0.01	\$0.01	\$0.01
9		GEOTEXTILE FABRIC, TYPE 5	8053		SQ YD	\$2.00	\$16,106.00	\$4.50	\$36,238.50
10		COMMON EXCAVATION (P)	4082		CU YD	\$15.00	\$61,230.00	\$20.00	\$81,640.00
11		AGGREGATE SURFACING, CLASS 2 (CV)	908		CU YD	\$50.00	\$45,400.00	\$60.00	\$54,480.00
12		AGGREGATE SURFACING, CLASS 5 (CV)	1519		CU YD	\$40.00	\$60,760.00	\$50.00	\$75,950.00
13		AGGREGATE BASE, CLASS 5 (CV)	2747		CU YD	\$35.00	\$96,145.00	\$50.00	\$137,350.00
14		BITUMINOUS PATCH - DRIVEWAY	450		SQ YD	\$90.00	\$40,500.00	\$62.00	\$27,900.00
15		BITUMINOUS PATCH - STREET	796		SQ YD	\$85.00	\$67,660.00	\$65.00	\$51,740.00
16		12" PIPE APRON	4		EACH	\$250.00	\$1,000.00	\$1,180.00	\$4,720.00
17		15" PIPE APRON	6		EACH	\$310.00	\$1,860.00	\$1,200.00	\$7,200.00
18		18" PIPE APRON	4		EACH	\$375.00	\$1,500.00	\$1,520.00	\$6,080.00
19		24" PIPE APRON	4		EACH	\$525.00	\$2,100.00	\$1,685.00	\$6,740.00
20		30" PIPE APRON	1		EACH	\$950.00	\$950.00	\$1,940.00	\$1,940.00
21		12" PIPE CULVERT	80		LIN FT	\$30.00	\$2,400.00	\$90.00	\$7,200.00
22		15" PIPE CULVERT	76		LIN FT	\$32.00	\$2,432.00	\$100.00	\$7,600.00
23		18" PIPE CULVERT	143		LIN FT	\$36.00	\$5,148.00	\$105.00	\$15,015.00
24		24" PIPE CULVERT	282		LIN FT	\$45.00	\$12,690.00	\$117.00	\$32,994.00
25		30" PIPE CULVERT	20		LIN FT	\$65.00	\$1,300.00	\$160.00	\$3,200.00
26		CONNECT TO EXISTING SANITARY MAIN	8		EACH	\$7,500.00	\$60,000.00	\$9,500.00	\$76,000.00
27		8" SANITARY SEWER PIPE	221		LIN FT	\$425.00	\$277,625.00	\$150.00	\$33,150.00
28		12" SANITARY SEWER PIPE	1995		LIN FT	\$135.00	\$269,325.00	\$190.00	\$379,050.00
29		15" SANITARY SEWER PIPE	285		LIN FT	\$140.00	\$39,900.00	\$225.00	\$64,125.00
30		18" SANITARY SEWER PIPE	40		LIN FT	\$165.00	\$6,600.00	\$265.00	\$10,600.00
31		27" SANITARY SEWER PIPE	38		LIN FT	\$250.00	\$9,500.00	\$500.00	\$19,000.00
32		FORCE MAIN (MIN. I.D. 11.65 INCHES)	70839	(3)	LIN FT	\$100.00	\$7,083,900.00	\$110.00	\$7,792,290.00
33		24" CASING (MIN. DIAM)	374	(5)	LIN FT	\$250.00	\$93,500.00	\$600.00	\$224,400.00
34		TRENCHLESS FORCE MAIN - (MIN. I.D. 11.65 INCHES)	10692	(3)	LIN FT	\$115.00	\$1,229,580.00	\$175.00	\$1,871,100.00
35		TRENCHLESS FORCE MAIN & CASING-SIMULTANEOUS PULL-(MIN. I.D. 11.65 IN	1386	(3)	LIN FT	\$250.00	\$346,500.00	\$400.00	\$554,400.00
36		TRENCHLESS 30" CASING (DIRECTIONAL DRILL)	110		LIN FT	\$850.00	\$93,500.00	\$625.00	\$68,750.00
37		GATE VALVE AND BOX	12	(4)	EACH	\$5,500.00	\$66,000.00	\$5,500.00	\$66,000.00

**ABSTRACT OF BIDS**  
**WASTEWATER REGIONALIZATION PROJECT**  
**CITY OF FOLEY, MN**  
**BMI PROJECT NO. R21.120226**

BID DATE: 3/30/2022  
 TIME: 1:00 PM

ITEM NO.	MINDOT SPEC NO.	ITEM	NOTES	APPROX. QUANT.	UNIT	1 Geisinger & Sons Watkins, MN		2 RL Larson Excavating, Inc. St. Cloud, MN	
						UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
38		METERING & OUTFALL MANHOLES - FOLEY		1	LUMP SUM	\$40,000.00	\$40,000.00	\$150,000.00	\$150,000.00
39		METERING MANHOLE - SAUK RAPIDS		1	LUMP SUM	\$45,000.00	\$45,000.00	\$155,000.00	\$155,000.00
40		CONSTRUCT 8" OUTSIDE DROP		4.3	LIN FT	\$650.00	\$2,795.00	\$2,500.00	\$10,750.00
41		CONSTRUCT SANITARY SEWER MANHOLE - DESIGN 4007 48"		178	LIN FT	\$550.00	\$97,900.00	\$620.00	\$110,360.00
42		CONSTRUCT SANITARY SEWER MANHOLE - 60" DESIGN SPECIAL		23.9	LIN FT	\$650.00	\$15,535.00	\$720.00	\$17,208.00
43		FIBERGLASS-REINFORCED MANHOLE		1	EACH	\$40,000.00	\$40,000.00	\$38,000.00	\$38,000.00
44		CASTING ASSEMBLY		14	EACH	\$1,000.00	\$14,000.00	\$725.00	\$10,150.00
45		AIR & VACUUM RELEASE MANHOLE		42	EACH	\$25,000.00	\$1,050,000.00	\$30,000.00	\$1,260,000.00
46		LOCATE EXISTING UTILITY		468	EACH	\$125.00	\$58,500.00	\$200.00	\$93,600.00
47		CONSTRUCT LIFT STATION - BROADWAY		1	LUMP SUM	\$350,000.00	\$350,000.00	\$550,000.00	\$550,000.00
48		BROADWAY LIFT STATION ELECTRICAL, GENERATOR, & CONTROLS		1	LUMP SUM	\$125,000.00	\$125,000.00	\$132,000.00	\$132,000.00
49		CONSTRUCT LIFT STATION - GOLF		1	LUMP SUM	\$400,000.00	\$400,000.00	\$785,000.00	\$785,000.00
50		GOLF LIFT STATION ELECTRICAL, GENERATOR, & CONTROLS		1	LUMP SUM	\$140,000.00	\$140,000.00	\$146,500.00	\$146,500.00
51		CONSTRUCT LIFT STATION - MAIN		1	LUMP SUM	\$500,000.00	\$500,000.00	\$965,000.00	\$965,000.00
52		MAIN LIFT STATION ELECTRICAL, GENERATOR, & CONTROLS		1	LUMP SUM	\$140,000.00	\$140,000.00	\$146,000.00	\$146,000.00
53		LIFT STATION ALTERATIONS - LANGE		1	LUMP SUM	\$200,000.00	\$200,000.00	\$275,000.00	\$275,000.00
54		LANGE LIFT STATION ELECTRICAL, GENERATOR, & CONTROLS		1	LUMP SUM	\$55,000.00	\$55,000.00	\$56,000.00	\$56,000.00
55		CONSTRUCT ODOR CONTROL BUILDING		1	LUMP SUM	\$600,000.00	\$600,000.00	\$680,000.00	\$680,000.00
56		ODOR CONTROL BUILDING ELECTRICAL & CONTROLS		1	LUMP SUM	\$50,000.00	\$50,000.00	\$46,600.00	\$46,600.00
57		PUBLIC WORKS SCADA/ELECTRICAL & PROGRAMMING INTEGRATION WORK		1	LUMP SUM	\$51,000.00	\$51,000.00	\$52,000.00	\$52,000.00
58		CHAIN LINK FENCE		427	LIN FT	\$50.00	\$21,350.00	\$100.00	\$42,700.00
59		TRAFFIC CONTROL		1	LUMP SUM	\$50,000.00	\$50,000.00	\$68,000.00	\$68,000.00
60		EROSION AND SEDIMENT CONTROL		1	LUMP SUM	\$60,000.00	\$60,000.00	\$50,000.00	\$50,000.00
61		RIPRAP, CLASS III		178	CU YD	\$65.00	\$11,570.00	\$200.00	\$35,600.00
62		SEED 25-141, FERTILIZER, HYDRAULIC MATRIX		305376	SQ YD	\$0.50	\$152,688.00	\$0.50	\$152,688.00
63		SEED 25-141, FERTILIZER, EROSION CONTROL BLANKET		54812	SQ YD	\$2.50	\$1,365,780.00	\$2.65	\$1,443,976.80
64		SEED 34-471		39905	SQ YD	\$0.50	\$19,952.50	\$0.35	\$13,966.75
65		GENERAL CONSTRUCTION ALLOWANCE		1	ALLOWANCE	\$120,000.00	\$120,000.00	\$120,000.00	\$120,000.00
66		COMPUTER ALLOWANCE		1	ALLOWANCE	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
67		ST. CLOUD FLOW METERING ALLOWANCE		1	ALLOWANCE	\$500,000.00	\$500,000.00	\$500,000.00	\$500,000.00
68		UTILITY SERVICE ALLOWANCE		1	ALLOWANCE	\$400,000.00	\$400,000.00	\$400,000.00	\$400,000.00
<b>BASE BID TOTAL:</b>							<b>\$15,960,705.51</b>	<b>\$22,022,110.06</b>	
<b>ALTERNATE 1</b>									
A.1		JACK & AUGER 24" CASING (MIN DIAM) & FORCE MAIN (MIN. I.D. 11.65 INCH)		490	LIN FT	\$1,200.00	\$588,000.00	\$1,500.00	\$735,000.00
<b>ALTERNATE TOTAL:</b>							<b>\$588,000.00</b>	<b>\$735,000.00</b>	

CITY OF FOLEY  
COUNTY OF BENTON  
STATE OF MINNESOTA

RESOLUTION 2022 - 12

Councilmember \_\_\_\_\_ introduced the following resolution and moved for its adoption:

**RESOLUTION ACCEPTING WASTEWATER REGIONALIZATION PROJECT BID  
AND AWARDING CONTRACT**

WHEREAS, pursuant to an advertisement for bids for the Wastewater Regionalization Project, bids were received, opened and tabulated according to law, and the following bids were received complying with the advertisement:

<u>Company</u>	<u>Bid</u>	<u>Alternate 1</u>
Geislinger & Sons, Inc., Watkins, Minnesota	\$15,960,705.51	\$588,000
RL Larson Excavating, Inc., St. Cloud, Minnesota	\$22,022,110.06	\$735,000

AND WHEREAS, it appears that Geislinger & Sons, Inc. of Watkins, Minnesota is the lowest responsible bidder;

AND WHEREAS, Minnesota Public Facilities Authority (PFA) financing (PSIG and Loan) and direct bonding is planned to be utilized for the improvements associated with the project;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of Foley, Benton County, Minnesota resolves as follows:

1. The City of Foley hereby expresses its official intent to use proceeds from all applicable loans, grants, and bonding money to reimburse expenditures made prior to the receipt and issuance of grant and bonding proceeds and general obligation bond to the Public Facilities Authority.
2. Contingent on PFA and MPCA approvals, the Mayor and City Administrator are hereby authorized and directed to enter into a contract with Geislinger & Sons, Inc. in the name of the City of Foley for such construction, according to the plans and specifications therefore approved by the City Council and on file in the office of the City Administrator, for a total contract amount of \$16,548,705.51.
3. The City Administrator is hereby authorized and directed to return forthwith to all bidders the deposits made with their bids, except that the deposits of the successful bidder and the next lowest bidder shall be retained until a contract has been signed.

The foregoing resolution was duly seconded by Councilmember \_\_\_\_\_,  
upon a vote being taken thereon, the following members voted in favor thereof:  
\_\_\_\_\_, the following members voted against:  
\_\_\_\_\_; the following members abstained: \_\_\_\_\_; the following  
members were absent: \_\_\_\_\_.

WHEREUPON, said resolution was declared duly passed and adopted this 5th  
day of April, 2022.

---

City Administrator





## Service Agreement

This Service Agreement is made between Silversmith, Inc. a Michigan corporation dba Silversmith Data ("SSD"), and City of Foley, Minnesota ("Client"), collectively "Parties."

Client wishes to hire SSD to perform certain services as contained in Paragraph 1 below. This Agreement defines the relationship between SSD and Client, and the Parties agree that the consideration contemplated herein is good and sufficient.

City, Village, or Township Name:	<u>City of Foley</u>	Proposal	<u>10834</u>
Population:	<u>2,647</u>		
Initial Setup Cost:	<u>\$2,000</u>		
Annual Recurring Fee:	<u>\$1,500</u>		

As a service, you can purchase through us GPS survey equipment tied directly to our system for instant asset location input into our system. It also allows users to precisely locate assets.

1 GPS Device/Tablet @ \$3100. each \$3,100

*\* Cellular service will be billed in advance on a recurring, annual basis (currently \$600 per tablet per year).*

**Package Customization** can be added at any time and may include additional tablets, GPS devices, Water Treatment Facilities and Wastewater Plants. These additional products can be quoted upon request in addition to our base package by Silversmith.

**Responsibilities** - We provide the framework for data collection including suggested fields. In no way do we imply nor have responsibility for the data, data input, data structure or fields involved in your programs. You are the experts in your fields/industries and, by signing this Agreement, take responsibility and liability for all information contained within the programs.

**Yearly Billing in Advance** - Billing is done on your contract anniversary, in advance. If absolutely necessary, we could make a **one-time move** of the contract anniversary date at the time of the initial purchase to better coincide with your budgeting.

Client initials \_\_\_\_\_

Initial Setup Cost: \$2000  
Annual Recurring Fee: \$1500 each year on the renewal date  
GPS/Tablet Device: \$3100  
Tablet Recurring Fee: \$600 Unlimited data each year on the renewal date  
Additional Tablet: \$400  
Tablet Recurring Fee: \$600 Unlimited data each year on the renewal date

**Total upfront cost: \$8200.**

Annual Recurring Fee: \$2700 Total fees starting in 2023

1. SSD agrees to perform for Client the services described in this Agreement, which consist of providing the software and data service for the collection and maintenance of Client's data, marking the GPS coordinates of specified Client fire hydrants (if Client has selected this service), and maintaining Client's data on SSD's server or other third-party data service.
2. All fees for services provided pursuant to this Agreement are non-refundable (except as set forth in Section 13 below). Invoices issued by SSD to Client are due upon receipt. If Client fails to pay within 30 days of the invoice date, Client agrees to pay interest at 1% per month on all overdue amounts.
3. Notices shall be provided to, and communication shall occur between:

**Silversmith Data**

**Foley, Minnesota**

Ray Cook

Rcook@silversmithinc.com

320.510.4683

Each individual listed above shall be authorized to make binding decisions on behalf of the Party for whom he or she is listed.

4. SSD is an independent contractor of Client, and nothing contained in this Agreement shall be construed to create an employer-employee, partner, or joint venture relationship between the Parties.
5. SSD is providing services pursuant to this Agreement on an "as is" basis. In addition, Client acknowledges that SSD's sole responsibility with respect to any hardware provided by SSD to Client pursuant to this Agreement shall be to pass through the warranty, if any, provided by the manufacturer of such hardware, but SSD makes no representation as to the existence, scope, or availability of any such manufacturer's warranty. SSD HEREBY EXPRESSLY DISCLAIMS ANY AND

ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED AND WHETHER BY STATUTE, COMMON LAW, OR OTHERWISE, AS TO ANY MATTER RELATING TO THE SERVICES OR THIS AGREEMENT, INCLUDING (WITHOUT LIMITATION) PERFORMANCE, RESULTS, SECURITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AVAILABILITY OF DATA. SSD has no responsibility or liability for cellular service that may be provided to Client.

6. Notwithstanding anything to the contrary in this Agreement, Client's sole and exclusive remedy for any breach of this Agreement by SSD, or any claim arising out of or otherwise relating to this Agreement, shall be limited to reimbursement by SSD of the aggregate dollar amount Client actually paid to SSD pursuant to this Agreement. Under no circumstances shall SSD be liable for any other damages, costs, expenses, or claims of any kind relating to this Agreement.
7. Client agrees to hold harmless, defend, and fully indemnify SSD, its affiliates, and their respective employees, agents, and subcontractors from and against any and all costs, expenses, losses, claims, actions, and damages of any kind (including reasonable attorney fees) arising out of any actual or threatened third party claim (advanced by a person or entity other than SSD or Client) that arises from or is in any way related to either (a) SSD's performance (or alleged lack thereof) of this Agreement, and/or (b) the use, storage, access to, or dissemination of Client's data.
8. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.
9. This Agreement contains the entire agreement of the Parties, and any and all prior and contemporaneous agreements, representations, and/or promises between the Parties relating to the subject matter of this Agreement are superseded in their entirety by this Agreement. This Agreement may only be modified by a written instrument signed by an authorized representative of each Party.
10. This Agreement is governed by the laws of the State of Minnesota and any disputes arising out of this Agreement shall be litigated in Benton County, Minnesota. All Parties to this Agreement consent to the jurisdiction of the State of Minnesota.
11. This Agreement may be executed in counterparts both of which together will be deemed an original of this Agreement, and this Agreement may be signed in an electronic format.
12. Client agrees to comply with all technical specifications, policies and procedures, and other requirements that may be imposed by SSD from time to time with respect to Client's receipt of the services described in this Agreement.
13. This agreement shall renew annually on contract date. Either Party may terminate this Agreement upon written notice to the other Party with 30 days written notice. If SSD terminates this Agreement prior to a contract anniversary date, SSD shall refund to Client a prorated portion

of the Annual Recurring Fees paid by Client for the contract year in which SSD terminates the Agreement.

By their signatures below, the Parties acknowledge that (i) they have had sufficient opportunity to, and have, carefully read each provision of this Agreement; (ii) they have had the opportunity to review the Agreement with legal counsel of their own choice; (iii) they understand each provision; (iv) they are not under any duress; (v) they are not relying upon any representations or promises that are not set forth in this Agreement; and (vi) they are freely and voluntarily signing this Agreement and intend to be bound by it as a solemn contractual undertaking.

Contract Date: \_\_\_\_\_

City of Foley, Minnesota

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

Silversmith Inc. (DBA Silversmith Data)

By: \_\_\_\_\_  
Ray Cook, Silversmith Data  
Sartell, Minnesota



1130 73<sup>rd</sup> Avenue NE  
Fridley, MN 55432  
(763) 571-1902  
1-800-795-1280  
Fax # (763) 571-5091

Highway 60 East  
Lake Crystal, MN 56055  
(507) 726-6041  
1-800-722-0588  
Fax # (507) 726-2984

[www.crysteeltruck.com](http://www.crysteeltruck.com)

*AN EQUAL OPPORTUNITY EMPLOYER*

March 28, 2022

Mark Pappenfus  
City Of Foley  
321 4th Avenue N  
Foley, MN 56329

Dear Mark:

Crysteel Truck Equipment is pleased to submit this quote for your approval. Pricing is based on Mn-State Contract # T-763(5) **Expiring April, 30 2022.**

3.0 FRONT SNOW PLOWS

Manufacturer Toro

Make Boss

Warranty Length 2 years

3.45 9'2" V-DXT Steel Vee Plow (installed) \$7,400.00

*Hand held control included*

3.83 Light Adapter \$130.00

3.105 Snow Deflector (installed) \$321.00

3.127 Bumper Trim Kit (GMC 2500/3500, 2015+) \$308.00

3.130 Timbren Load Saver in Front (installed) \$345.00

**Plow Total:** **\$8,504.00**

Sincerely,

Rob Weldon

- All prices are subject to applicable taxes
- Quotes are good for 30 days

CITY OF FOLEY  
COUNTY OF BENTON  
STATE OF MINNESOTA

ORDINANCE NUMBER 465

AN ORDINANCE AMENDING THE FOLEY CITY ORDINANCES  
CHAPTER VI, SECTION 611 SEWER USE REGULATIONS

THE COUNCIL OF THE CITY OF FOLEY HEREBY ORDAINS that the 1974 Code of Ordinances of the City of Foley CHAPTER VI, SECTION 611 SEWER USE REGULATIONS be amended:

**SECTION 1:** The existing Section 611:00 ARTICLE III Unlawful Discharge is repealed, substituting therefore the following Section 611:00 ARTICLE III Unlawful Discharge to read as follows:

- Sec. 1. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under jurisdiction, any human or animal excrement, garbage or objectionable waste.
- Sec. 2. It shall be unlawful to discharge to any natural outlet any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance and the City's NPDES/SDS Permit.
- Sec. 3. Except as provided hereinafter, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.
- Sec. 4. All structures which wastewater is discharged from and which is situated within the City and where the property is within 150 feet of the public sanitary sewer, a public sanitary sewer of the City shall be required within (90) days such public sewer becomes operational. At the owner(s) expense, a connection to the public sanitary sewer must be installed in accordance within the provisions of this code. All future buildings constructed on property adjacent to the public sewer shall be required to immediately connect to the public sewer. If sewer connections are not made pursuant to this section, an official thirty (30) day notice shall be served instructing the affected property owner to make said connection.
- Sec. 5. Where a parcel of property in the City has connected to the City sanitary sewer system, no owner or occupant of the property or any other person shall:
- a) Construct a private subsurface sewage treatment systems (SSTS) on the property; or
  - b) Make use of any existing private SSTS on the property for sewage disposal or commercial purposes.

- Sect. 6. In cases of extreme hardship, the City may allow a SSTS or an owner may request an exemption from the City Code to construct a private SSTS. Hardship includes but is not limited to:
- a) The property is more than 150 feet away from the public sanitary sewer.
  - b) The topography does not allow for the installation of a sewer system.
  - c) There is extreme financial burden on the City or individual.
  - d) There is unforeseen circumstances in installing or connecting to the public sanitary sewer system.

When a parcel of property is required to connect to public utilities, but unforeseen circumstances make complying with city ordinance impractical or impossible, the City Administrator and Public Works Director shall determine whether connection is required. Before the City Administration and Public Works Director make a final determination, the City Administrator shall submit a written notice to the property owner stating the reason for the deviation from the city ordinance. The notice shall also state that the property owner may, within (10) days of receipt of the notice, demand a hearing on the matter. If the property owner requests a hearing within that time, a hearing shall be held on the matter by the City Council within (30) days after the date on which the request is made. If as a result of the hearing, the City Council finds that the proposed deviation due to impracticality or impossibility and serves the best interest of the City, the deviation shall be final. If the City Council determines that the proposed deviation is not in the best interest of the City, or that compliance with city ordinance can be achieved, they shall make a determination and compliance with the ordinance shall be required. All applicable city staff and officials shall be at the hearing to answer any questions. No deviation shall be made until after the hearing or determined after the expiration of ten days from receipt of the notice when there has been no request within that time for a hearing.

In allowing an exemption, the City Council may apply special conditions. The hardship will no longer exist once the situations described above no longer exist. At that time, the owner will be required to connect to the City's public sanitary sewer main.

- Sec. 5. In the event an owner shall fail to connect to a public sewer in compliance with a notice given under Article III of the Ordinance, the City must undertake to have said connection made and shall assess the cost thereof against the benefitted property. Such assessment, when levied, shall bear interest at the rate determined by the City Council and shall be certified to the Auditor of the County of Benton, Minnesota and shall be collected and remitted to the City in the same manner as assessments for local improvements. The rights of the City shall be in addition to any remedial or enforcement provisions of this ordinance.

**SECTION 2.** Summary Publication:

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

**“AN AMENDMENT TO SEWER CONNECTIONS.** It is the intent and effect of this Ordinance to update language regarding required sewer connections in the City of Foley.”

PASSED AND ADOPTED by the City Council of the City of Foley this 5<sup>th</sup> day of April, 2022.

---

Gerard L. Bettendorf, Mayor

ATTEST:

---

Sarah A. Brunn, Administrator



## Apparent Bids for Proposal 220034

Select another proposal

Proposal 034--220034

[Export CSV](#)

[Export PDF](#)

Refresh the page to see any bidding updates. If no bids are published, the agency may have chosen not to post them.

**Letting ID**

22032500

**Letting date**


Mar 25, 2022

**Cut-off time**

9:30:59 AM CDT

220034

CALL ORDER: 034

 BENTON MILLE LACS

0504-20 (T.H. 23=023), 4801-24 (T.H. 23=023), SP 005-090-002 HSIP-TA 0522(110) In Benton and Mille Lacs Counties on TH 23 from Broadway Ave S to Rum River Grading, Bituminous Milling &

**Bidder Name**

**Bid Amount**

Michels Road & Stone, Inc.

\$18,153,695.50

OMG Midwest, Inc. dba Minnesota Paving & Materials

\$18,901,892.45

Knife River Corporation - North Central

\$19,087,350.09

KGM Contractors, Inc.

\$19,487,268.13

Displaying 4 apparent bids and 0 withdrawn bids.

**TO:** FOLEY CITY COUNCIL  
**FROM:** SARAH BRUNN, CITY ADMINISTRATOR  
**SUBJECT:** 04-05-22 –COUNCIL MEETING  
**DATE:** MARCH 30, 2022

---

### **Consent Agenda**

A resolution supporting housing and local decision-making authority is in your packet. The League of MN Cities is asking for this support as there is a bill in the legislature that would remove some local control related to zoning.

The vet clinic has signed the indemnification agreement and has requested 3<sup>rd</sup> Avenue be closed for a horse clinic on April 9<sup>th</sup>. Staff has no concerns with this request and the clinic is notifying property owners in the vicinity.

The personnel committee has met and is recommending starting a hiring process for another part-time officer eligibility list. We have another officer being backgrounded for a different full-time position and may need to hire again in the near future.

Season employee rates are being proposed in your packet. Some of the rates are an increase of nearly 30% but is comparable to other starting wages in our community. We do have concerns with being able to attract enough staff for our seasonal positions and find it necessary to raise our starting rates in order to compete. We have already raised pool admissions and will also be raising swimming lesson rates to help off-set wage increases.

Ordinance # 464 is simply cleaning up other ordinance language which references “quarterly” that now needs to state “monthly” with our new billing cycle. We also corrected an ordinance reference to ensure it always references the most current utility charges ordinance.

Resolution # 2022-09, the subscriber agreement and CJDN fee structure are updating our agreement for access to BCA records. We are required to update these agreements for the police department access. We will have to make some budgetary adjustments to accommodate for the fees they will now be charging.

The sanitary sewer extension permit and utility accommodation application is for the utility work on Highway 23. These are necessary in order for us to proceed with the project.

### **Foley Wastewater Regionalization Project**

Bid results are in your packet and were also emailed to the council. A resolution awarding the bid and proceeding with the final steps in financing are in your packet. Staff will provide an overview at the meeting on Tuesday.

### **Easement Agreements – Wastewater Project**

All of the agreements are in your packet and I will provide you a financial listing next week when it becomes available.

## **Department Reports**

Public Works Director Pappenfus has a number of capital request items on the agenda. He can review those with you at the meeting.

## **Sewer Ordinance Updates**

Ordinance # 465 updates language in our required sewer connection ordinance. We had already made changes to the water ordinance when we banned well drilling a couple years ago to also include a 150 foot from property requirement to connect to water services. We are still reviewing that language to see if additional changes are needed.

This sewer ordinance does include language for usual circumstances. This does not mean that individuals who simply do not want to connect can use a financial hardship – but it allows for the city to consider extraordinary financial hardships – i.e. boring underneath a major highway or something else out of the ordinary. The ordinance also references within 150 feet of the property.

The council will need to continue the discussion on how we connect existing city residents to the community system as it becomes available. The largest area this affects is Lord Ave/Fouquette as we will be bringing that water and sewer main across the highway this summer. As the city further extends those mains we need to develop a plan on the transition those residents.

## **Highway 23 Bid Opening**

I have provided the bid results in the packet. We still do not have final utility numbers on the city cost shares. Our city engineer will be relaying them as soon as they become available.

## **Joint Meeting – Planning Commission/City Council – Parking & Storage Ordinance**

Planning members will be at the meeting to have a joint session with the council regarding the parking and storage ordinance. Having a joint meeting was recommended last year and staff would like to make sure they have clear direction on the ordinance, and if there will be any changes, for enforcement purposes.

## **Upcoming Reminders:**

**April 11, 2022** – Planning Commission Meeting (if needed)

**April 15, 2022** – City Hall closes @ 11:30am – ½ day holiday



**City Council - Meeting Agenda  
April 5, 2022 - 5:30 P.M. - Foley City Hall**

- Update on downtown stakeholders meeting.
- 
8. Old Business
    - Update on Highway 23 project bid opening.
  9. New Business
  10. Joint Session with Planning Commission on Parking & Storage Ordinance – Section 1030.
    - To begin @ 6:30pm or as soon as regular council meeting agenda items complete.
  11. Adjourn

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.