



**City Council – Meeting Agenda
April 2, 2024 – 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 12, 2024.
 - Appoint David Campbell to Foley Library Board.
 - Approve payment of bills.
5. Mayor's Comments & Open Forum
6. Presentation of 2025 Street Improvements (Broadway, 4th Avenue N, etc.) Feasibility Study.
 - Adopt Resolution #2024-09 Receiving Report and Calling for Hearing on 2025 Improvements.
7. Review and Approval of Updated Wastewater Agreement with St. Cloud Regional Cities.
 - Consider Amended Wastewater Treatment System Use Agreement.
 - Adopt Resolution #2024-08 Approving Amended Agreement.
8. Department Reports:
 - Police Department –Katie McMillin
 - Update on crime free housing training requirement.
 - City Engineer – Jarod Griffith
 - Public Works/Fire – Mark Pappenfus
 - Consider Compost Gate Electrical Quotes.
 - Administration – Sarah Brunn
 - City audit fieldwork April 8-12, 2024.
 - Discussion on Tri-County Humane Society Contract.
9. Old Business
 - Discussion on garbage contract.
 - Consider re-negotiation with Republic or soliciting for RFP's.
10. New Business
 - Schedule any necessary council workshops?
11. 2nd Open Forum
12. Adjourn Regular Meeting
13. Council Workshop Discussion – Consider Downtown Façade Program
 - Discussion Only – No Official Action!

CITY OF FOLEY, MINNESOTA
CITY COUNCIL MEETING – March 12, 2024

The Foley City Council held their regular meeting on March 12, 2024, at 5:30 p.m. at Foley City Hall.

Members Present: Mayor Jack Brosh, Councilmembers Jeff Gondeck, Deb Mathiowetz, and Brandon Voit.

Members Absent: Gary Swanson

The pledge of allegiance was recited.

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

Motion carried, unanimous.

Motion by Gondeck, seconded by Voit, to approve the consent agenda:

- Approve minutes of February 6, 2024.
- Approve Resolution # 2024-6 Accepting Donation for The Foley Police Department
- Approving hiring of part-time police officers Bryce Lind, Dana Anton, and Brett Schramel.
- Updated Pursuit Policy (Mandated policy from POST Board).
- Approve Vet Clinic Horse Coggins Event on April 20th and Hold Harmless Agreement.
- Consider approval of No Mow May for occupied properties only!
- Approve re-hire of Pool Manager, Emma Thorsten.
- Approve payment of bills.

Motion carried, unanimous.

Mayor's Open Forum

Jesse Gerads, 16810 170th Street, from Jim's Mille Lacs Disposal said he would like the opportunity to bid on the city's garbage contract if the council decided to go in that direction.

Public Hearing – Zoning Ordinance Amendment

Brosh suspended the regular council meeting at 5:32 p.m. for a public hearing to discuss the adoption of Zoning Ordinance #478.

Debra Olson, 600 Dewey Street, spoke and referred to the email she had previously sent to the council. She expressed concern that the zoning ordinance regarding property size didn't include language grandfathering in older properties.

Sarah Brunn, City Administrator, explained that 'legal non-conformity' is automatically written into the city's zoning ordinance as a standalone section. The proposed ordinance changes actually loosens up some of the restrictions currently in place so less properties will actually be non-conforming if the changes are adopted.

Discussion and questions followed.

Brunn clarified that when an ordinance passes the other properties are grandfathered in according to state statute. There are no changes to the rights of the homeowners with this ordinance.

No one else spoke. The public meeting was closed at 5:37 p.m. and the regular council meeting resumed.

Motion by Gondeck, seconded by Mathiowetz, to approve Zoning Ordinance #478.

Voit asked for clarification on shipping containers and if they were allowed for storage only and not for tiny homes?

Gondeck replied that the Planning Commission had a discussion and felt that shipping containers could be used for short-term storage only.

Motion carried, unanimous.

Discussion on Garbage Contract Renewal

Brunn explained that the current contract with Republic Services is set to expire on June 30. The contract does allow for one five-year extension if the council decided not to open the contract up for bid. Discussion and questions followed.

Gondeck and Mathiowetz stated they were happy with the service. Voit was undecided, but appreciated that the Jim's Mille Lacs representative had come to the meeting. Brosh stated he would like to see it go out for bid.

More questions and discussion followed. The council was split on how to proceed.

Motion by Gondeck, seconded by Voit, to table the discussion until the April meeting.

Department Reports

Police Department

Chief Katie McMillin gave the state report for February. The department responded to 378 calls in February. In February of 2023, the department responded to 345 calls. This continues the upward trend in calls. Traffic stops were up including driving with a revoked license. Fun with Police last month had 14 kids participating. The meal was sponsored by Foley's Family Restaurant. On March 23, McMillin will attend the Community Connect Expo at the high school. The Bike Rodeo is scheduled for June 15 for their 10th year. The department has also been receiving a lot of data requests. Use of force training is scheduled for Thursday.

Brunn added that the state legislature is voting to fix some concerns with the SRO law. McMillin explained that Officer Pausch (SRO) has already attended the training the legislature is looking to put in place.

McMillin stated the new officers will start after their psychological and physical exams are completed. The 2021 squad is getting repaired. The 2019 and the spare squad are working fine.

McMillin gave an overview for the crime free housing class that is a requirement for obtaining a renter's license per the ordinance. She reported that landlords are finding it difficult to enroll in the class since it is not offered very frequently. Some agencies do an online version, but she said she had not been able to get a link to the course. She did find the binder for the class that she used to teach in 2013. Brunn added that staff had received complaints about taking the all-day class and was looking

into alternatives. The council agreed to move the course online or something similar. Brunn and McMillin said they would look into how to make that happen.

City Engineer

Jarod Griffith gave an overview of different projects. The surveyors are ready for the southside development project. The second water treatment plant tour is this Thursday. Gondeck and Brosh will attend on March 14 for the St. Joseph tour. The date for the Wisconsin tour needs to be rescheduled.

Public Works and Fire Department

Mark Pappenfus reminded the council of the Xcel Energy power outage scheduled for this Saturday. He also mentioned that now is a good time to purchase more holiday decorations because of sales. He recommended buying 10 this year for \$5,200 and 10 more next year. The purchase is already budgeted for and within the department heads spending authority so no need for a motion from the council. The crew is getting a lot of maintenance work done. Need to find a place to store the salt that is not used due to the mild winter.

Administration

Brunn indicated no pay app this month from Bolton & Menk. They've been working on some of the parts coming in. Brunn also added that staff is really excited to be working with the county on the allocation of some ARPA money that is still available - \$500,000 for infrastructure for housing. It's why we're moving forward on the southside development. We are very grateful and thankful for the opportunity with the county. It really helps a lot in the environment we're currently in.

Gondeck thanked Commission Scott Johnson for his support.

Mathiowetz asked if the southside project would include senior housing.

Brunn said that one of the plans included townhomes which would be well suited to seniors. There's also another project that staff is in early discussions with which would include apartments.

Brunn gave an overview of the current Tri-County Human Society contract with the city. Tri-County has stated they will no longer split the cost of fees with the resident and have asked the city to pay for the entire amount. This makes the contract higher. With the additional expense, the city is already over budget for the year and it could be over significantly by the end of the year if the trends continue. Strays are dropped off and if they aren't adopted they're euthanized and the charge comes to the city. Brunn asked the council if they wanted to continue with the contract. Discussion and questions followed. Brosh asked what the charge would be without the contract in place. Brunn said she would find out and report back.

Brunn also informed the council that staff would be transitioning the checking to Falcon Bank with the new software implementation to save on fees. Brunn also shared staff might have found a way to avoid the single line audit in 2023 due to the timing and draws of the wastewater expenditures. The city is under the Federal limit of \$750,000 for the wastewater project. No single line audit will save several thousands of dollars in audit fees this year.

Old Business

Mathiowetz stated her support for keeping the Fun Days parade route as it is so the residents at the nursing home would be able to continue watch the parade. Moving the route back to the original route as planned would mean the route would no longer go past the nursing home. It's too difficult for the residents to find a place to watch the parade from another location.

Brosh asked Juanita Beauchamp of the Civic Group to speak.

Beauchamp addressed the council outlining her duties with the Civic Group and her 20 years of experience in parade planning. She explained that the last two years the parade route had to be changed due to road construction. The change was temporary. She gave an overview of the problems the new route caused – e.g. cars and busses causing chaos, unsafe conditions, garbage, additional port-a-potties. The old route is better and safer for everyone – fewer police are needed to control traffic. The original route is preferred by the visiting bands because they can park their busses at the high school and the parade starts and ends in the same spot. The last two years the busses have had to follow the bands and it takes away from the bands. For these reasons, the parade will be going back to the original route this year.

Discussion and questions followed with the council agreeing to go with Beauchamp's recommendation to returning to the original parade route. Voit expressed that he would be open to investigating other options. Gondeck expressed that more volunteers are needed to help.

Pamela Vizenor, 600 Broadway Avenue N, addressed the council and said that more nurses and CNAs would be needed to help move residents to a viewing area in order to watch the parade if it returns to the original route. It is much easier to help residents at the nursing home if they can watch the parade from their front lawn.

Brosh replied that the council has given their opinion on the matter and any further questions or concerns should be directed to the Civic Group.

New Business

Voit asked the council to adopt Resolution #2024-07 Approving Art Grant Application. This would submit the grant to the Central Minnesota Arts Board for the construction and installation of the city's welcome signs.

Motion by Mathiowetz, seconded by Gondeck, to adopt Resolution #2024-07.

Motion carried, unanimous.

Voit also asked if the council could have more workshops to discuss bigger issues that might require longer or in-depth discussion. Discussion and questions followed. Brunn suggested having a standing line item on the agenda to decide if a second meeting during the month is needed. If a second meeting was needed, staff and department heads would have to be available to attend as well. Brosh suggested further discussion at the next meeting.

Voit also brought up the possibility of a downtown façade program for businesses. He mentioned that previously a request for the program had not made it into the budget, but there are several new business owners who might be interested. He asked to schedule a discussion on the topic. He added that many other cities have similar programs to help redevelop downtown. Brunn suggested to keep the program small to gauge success. A discussion could be held at future workshop session.

2nd Open Forum

No one spoke.

Pappenfus added that the trail along Oak Drive is ADA compliant with the ramp. It is on the list to be redone and should happen this year.

Motion by Gondeck, seconded by Voit, to adjourn.

Motion carried, unanimous.

Meeting adjourned at 7:02 p.m.

Sarah A. Brunn, Administrator
(Minutes By: Sara Judson Brown, Administrative Assistant)

From: [David Campbell](#)
To: [Sarah Brunn](#)
Subject: Re: Library Board
Date: Tuesday, March 26, 2024 1:05:17 PM
Attachments: [image001.png](#)
[image001.png](#)

David Campbell
230 4th Ave N PO Box #488
Foley, MN 56329

From Faribault MN
Divorced with 4 adult children
2 1/2 years college
25 years working in mental health field.
8 years as massage therapist and personal trainer.
10 years cross-country motor coach and school bus driver.
1 year working at The Gardens at Foley in activities department.
Currently, nearing certification as a professional genealogist.

I love to read and promote civic participation.

On Tue, Mar 26, 2024, 12:50 PM Sarah Brunn <sbrunn@ci.foley.mn.us> wrote:

David,

Thank you for your interest – could you provide me your address and maybe just a little bit about your background, such as prior/current work or volunteer experience?

Sarah A. Brunn

City Administrator

sbrunn@ci.foley.mn.us



City of Foley

251 4th Avenue North

P.O. Box 709

Foley, MN 56329

www.ci.foley.mn.us

320-968-7260 Office

320-968-6325 Fax

From: David Campbell <davide548@gmail.com>

Sent: Tuesday, March 26, 2024 12:48 PM

To: Sarah Brunn <sbrunn@ci.foley.mn.us>

Subject: Library Board

Sara,

I would like to officially put my name up for nomination to join the local library board.

I believe that libraries are a bulwark of our country's freedom and democracy. I applaud what our current library staff offer our community. It is a welcoming environment for everyone from toddlers to seniors.

I believe I may offer a unique voice to the board.

Thanks, Dave Campbell

Bills List -March 2024

Gross Salaries	Payroll - 3/22/24	\$	37,373.04
EFTPS	Federal Withholding	\$	6,667.61
MN Dept of Revenue	State Withholding	\$	1,378.54
State Treas. PERA	PERA	\$	7,160.37
Nationwide	Deferred Comp	\$	1,175.02
Pacific Life Ins	Deferred Comp/Roth IRA	\$	80.00
Further	HSA Contribution	\$	1,174.14
MN Dept of Human Services	Child Support Garnishments	\$	329.48
LELS	PD Union Dues	\$	211.50

Already Paid 4/2/2024

NA		\$	-
		\$	55,549.70

To Be Paid 4/2/2024

AllSpec Services	03/24 Inspection Fee	\$	6,226.00
Arrow Building	PW Storage Shed work	\$	5,587.58
Auto Value	PW Supplies, Bobcat,FD, atlas,	\$	116.76
Benton County Highway Depart	02/24 PD Fuel	\$	933.24
Cintas	Uniforms	\$	188.18
City of St. Cloud	WW Charges	\$	16,654.13
Coalition of Greater MN Cities	CGMC 2024 Legislative Day Brunn,Gondeck,Swanson	\$	255.00
Compass Minerals	Bulk Highway Coarse	\$	4,459.62
East Central Energy	Utilities	\$	1,543.90
Emergency Medical Products	FD and PW supplies	\$	188.93
First National Bank of Omaha	03/24 CC invoices	\$	615.21
Foley Fire Relief Association	SBR Reimbursement	\$	1,000.00
Further	4/24 Emplr & Empe H S A contribution & 2023 DCFSA	\$	5,700.00
Galls	PD Uniforms	\$	219.46
Gapinski Construction	PW Storage Shed Steel Installation	\$	2,300.00
Group Health Plan	3/24 PD EAP	\$	21.00
Hach Companies	Water Analysis	\$	2,363.10
Hawkins	Water Chemicals	\$	3,606.75
Iron Valley Equipment	PW Mower Bearing	\$	1,300.00
Jerome Kahl	PD 3 Background Investigations	\$	1,200.00
K&K Tire & Auto	Squad 2012& 2019 Oil changes	\$	155.74
Marco	03/24 Copies lease	\$	422.40
Midco Communications	3/24 Phone and Internet Service	\$	968.35
MN Department of Health	2024 Pool License	\$	720.00
MN Department of Revenue	02/24 Sales & Use Tax	\$	403.00
North Central	PD Vehicle Maint	\$	125.00
Rinke Noonan	Gen Legal/Henry Billabl/Gen Legal-Franchise Agree WW Pro	\$	3,030.00
RMB Environmental Labs	Water/Pond testing	\$	660.44
Shift Technologies	02/24 Antispam	\$	38.25
Short Elliott Hendrickson	WTP Feasibility, 2025 Imp Feasibility, Henry Billable, Other Eng	\$	8,027.50
Staples	CH, PD & FD office Supplies	\$	283.25
Streicher's	FD Uniforms	\$	90.00
Sun Life Assurance	2/24 Employee LTD	\$	269.44
Travis Janson	FD Reimbursement MSFCA school	\$	523.84
USAbLe Life	Employee Life Insurance	\$	13.50
Van Meter	PW Street Conduit	\$	473.85
Verizon	3/24 PW, PD FD Cell phone	\$	318.00
Xcel Energy	Utilities	\$	6,648.47

\$ 111,575.05

Additional To Be Paid - 4/2/2024

\$ 111,575.05

Feasibility Report

2025 Street & Utility Improvements

Foley, Minnesota

FOLEY 175938 | April 2, 2024



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April 2, 2024

RE: 2025 Street & Utility Improvements
Feasibility Report
Foley, Minnesota
SEH No. FOLEY 175938 4.00

Honorable Mayor and City Council
City of Foley
251 4th Avenue North
Foley, MN 56329

Dear Mayor and Members of the City Council:

Enclosed is the Feasibility Report for the above referenced improvement. It includes recommendations, probable costs, and proposed assessments.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jarod Griffith".

Jarod Griffith, PE
City Engineer
(Lic. MN)

csc/jrg/mrb

x:\fj\foley\175938\4-prelim-dsgn-rpts\feasibility study\feasibility report - 2024.04.02.docx

Engineers | Architects | Planners | Scientists

Short Elliott Hendrickson Inc., 2351 Connecticut Avenue, Suite 300, Sartell, MN 56377-2485

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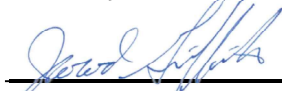
Feasibility Report

2025 Street & Utility Improvements
Foley, Minnesota

SEH No. FOLEY 175938

April 2, 2024

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



Jarod Griffith, PE

Date: April 2, 2024

License No.: 56772

Reviewed By: Scott Hedlund, PE

Date: April 2, 2024

Short Elliott Hendrickson Inc.
2351 Connecticut Avenue, Suite 300
Sartell, MN 56377-2485
320.229.4300





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Certification Page
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Feasibility Report

2025 Street & Utility Improvements

Prepared for City of Foley, Minnesota

1 Introduction

As Authorized by the City Council, this Feasibility Report was prepared for improvements to Broadway Avenue North from Highway 23 to Penn Street, 3rd Avenue from John Street to Murphy Street, 4th Avenue North from 200 feet south of the south right of way of Highway 23 to Penn Street, Murphy Street from 3rd Avenue to Broadway Avenue North, Parent Street from 4th Avenue North to Broadway Avenue North, 4th Avenue North Alley from Murphy Street to Penn Street. See Figure 1 for the general project location. The improvement includes reconstruction of the streets, alley, drainage system, sanitary sewer, water main, and pedestrian walkways.

This report contains estimated costs and design recommendations for the above sections. This report was developed based on preliminary field observations and discussions with City Staff.

2 Feasibility and Recommendations

The project, as presented in this report, is both cost effective and feasible from an engineering standpoint. The estimated project costs and assessment revenue contained within are intended to assist the City in determining the feasibility of the project from a monetary standpoint. The improvements are necessary to replace deteriorating streets and utilities, improve drainage, and extend pedestrian walkways within the project area.

Based on the information presented in this report, we make the following recommendations:

- Construct utility, street, and drainage improvements as recommended herein.
- Easements should be dedicated or retained as determined by the final project design.
- Soil borings should be taken throughout the project limits to determine the subsurface conditions, such as the soil types and water table elevations. Final design would be subject to results of the geotechnical evaluation.
- City Public Works staff should inspect water system valves and appurtenances in the project area that are currently planned to remain. Final design of the water system rehabilitation would be subject to the inspection results.
- Conduct sanitary sewer televising and manhole inspections to determine the appropriate rehabilitation method. Final design of the sanitary sewer would be subject to the televising and inspections results.

3 Existing Conditions and Project Improvements

3.1 Streets

This project includes about 1 mile of street and utility improvements. The streets identified in this report are both urban and rural roadways. Rural roads include Parent Street from 4th Avenue North to Broadway Avenue North and Murphy Street from 4th Avenue North to Broadway Avenue North. The existing streets within the project range from 20 to 50 feet wide and can generally be characterized as being at the end of their useful life. Most of the project area does not have curb with gutter. This allows water to channelize along the seam between two material types and increasing the potential of water getting under the pavement resulting in more damage from the freeze thaw cycle. Record drawings indicate 3.5 to 4 inches of bituminous material over 8 to 12 inches of compacted aggregate base. Existing pedestrian ramps do not meet current ADA Standards.

Broadway Avenue North is proposed to be a 42-foot-wide urban corridor including a sidewalk on the east side of the road. The angled parking stalls in front of local businesses and the church are proposed to be replaced. 3rd Avenue is proposed to be a 42-foot-wide corridor including sidewalks on both sides of the street. Murphy Street and Parent Street sections include a 32-foot-wide urban corridor with sidewalks on the north side of each street. The propose structural section for these streets include 3.5-inches of bituminous surfacing, 15-insches of aggregate base CL 5, and 6-inches of select granular borrow on geotextile fabric.

4th Avenue North, north of highway 23 (County Road 43), is proposed to be a 50-foot-wide urban section with sidewalks and boulevards on both sides of the road. 4th Avenue North, south of Highway 23 (County Road 20), is proposed to be a 50-foot-wide urban section with sidewalk adjacent to the curb on both sides of the road. The propose structural section for this street include 4-inches of bituminous surfacing, 15-insches of aggregate base CL 5, and 6-inches of select granular borrow on geotextile fabric.

The alley between 4th Avenue and Broadway Avenue is proposed to be replaced from Murphy Street to Penn Street. This improvement is proposed to be a 12-foot-wide rural corridor. The propose structural section for these streets include 3.5-inches of bituminous surfacing and 10-insches of aggregate base CL 5 on geotextile fabric.

See Figure 6 for the typical sections.

3.2 Storm Sewer

The project area consists of minimal existing storm sewer, which is located at the intersections of Parent Street and 4th Avenue North and Murphy Street and 4th Avenue North, and each intersection adjacent to Highway 23. These storm sewer pipes are undersized and in poor condition.

The proposed storm sewer improvements are shown on Figure 4. Road profile and cross slope adjustments will be introduced to improve the drainage in the area. New collection elements consisting of reinforced concrete pipe, catch basins, and manhole structures are proposed to be extended up 4th Avenue N and Broadway Avenue. Both systems will discharge into Stony Brook Creek.

3.3 Sanitary Sewer

The existing sanitary sewer system within the project area is the original vitrified clay pipe (VCP) gravity system. Replacement of these sewer pipes are a necessary step towards fixing the City's inflow and infiltration issues.

The proposed sanitary sewer system improvements are shown on Figure 2. An 8-inch PVC is proposed to replace the existing sewer. The proposed sanitary sewer system also includes jacking and boring underneath Highway 23 at 4th Avenue North.

Sewer services will be constructed from the sewer main to the property line (or as close to the building face as possible in the commercial areas). Residential service will be constructed of 4-inch PVC pipe and commercial service will be 6-inch PVC pipe.

Per the City inflow and infiltration (I/I) ordinance, if and when there is street reconstruction project, properties with sanitary sewer service lateral defects will need to be correct the service defect during the duration of the project.

3.4 Water Main

Most of the existing water main system within the project area consists of the original cast iron watermain. Replacement of these mains are necessary to address existing deterioration issues. These mains are also undersized and vary from 4-inch to 6-inch diameter pipe.

The proposed water main system improvements are shown on Figure 3. The existing watermains are proposed to be replaced with 8-inch ductile iron pipe (DIP). These upgrades will meet the City's water supply demand and fire protection standards.

Water services will be constructed from the water main to the property line (or as close to to the building face as possible in commercial areas). Single-family residential services will be 1-inch diameter copper pipe. Commercial services will be a 1.5-inch diameter copper pipe or 6-inch diameter DIP.

4 Opinion of Probable Costs

Itemized breakdowns of the probable cost are presented in Appendix A. The breakdowns are presented to provide insight into the cost of various items of the total project. Total project costs are summarized below.

Table 1 – Summary of Costs

	City Estimated Project Cost	County Estimated Project Cost	Total Estimated Project Cost
Construction	\$3,827,499.60	\$1,048,610.40	\$4,876,110.00
Contingency	\$382,749.96	\$104,861.04	\$487,611.00
Engineering	\$688,949.93	\$188,749.87	\$877,699.80
Geotechnical	\$38,275.00	\$10,486.10	\$48,761.10
Legal & Fiscal	\$191,374.98	\$52,430.52	\$243,805.50
Total	\$5,128,849.46	\$1,405,137.94	\$6,533,987.40

5 Financial Considerations

The proposed project is a street and utility reconstruction. Generally, this type of improvement is financed through special assessments to the benefitting properties in the area. The City must ultimately decide the method of financing and the time when City fees and charges will be collected.

The following breakdowns are provided to assist the city in determining what portion of the total project cost the City may be responsible for. These figures are estimates and final figures would be determined by city staff at the completion of the project.

5.1 Street

4th Avenue North is a County road thus, the street improvements are shown as a county cost and assumed to be paid for with County funds. Since the cost for the street improvements will be paid for by Benton County, no assessments are assumed for the street improvements for 4th Avenue North.

The remaining streets and alley are local roadways. The current City assessment policy related to street improvements states the benefitting properties may be assessed up to 30% of the total project cost on a front footage basis with the remainder being paid for by the City.

Table 2 – Summary of Street Costs

	Estimated Total
Estimated City Cost	\$1,598,547.10
Estimated Assessment	\$685,091.62
Estimated County Cost	\$1,163,428.20
Estimated Total Cost	\$3,447,066.92

5.2 Storm Sewer

Since 4th Avenue North is a County road, there will be a cost share for the storm sewer based on what percentage of the drainage area is from the County right-of-way versus what percentage is from the City side streets and private property. For this report, it is assumed the County will be paying for 60 percent of the storm sewer costs associated with 4th Avenue North. The actual split between the City and County will be determined during the final design process.

In conformance with current City assessment policy for street reconstruction, it is assumed that all property within the drainage area, benefited by the proposed storm sewer, will be assessed 30 percent of the City's storm sewer cost. The city would pay the remaining storm sewer cost.

The 30 percent assessment would be applied to only the City’s portion of the storm sewer cost.

Table 3 – Summary of Storm Sewer Costs

	Estimated Total
Estimated City Cost	\$365,405.03
Estimated Assessment	\$156,602.16
Estimated County Cost	\$241,709.74
Estimated Total Cost	\$763,716.92

5.3 Sanitary Sewer

Current City sanitary sewer reconstruction assessment policy is to assess 30 percent of the mainline sanitary sewer costs and 30 percent of the sanitary sewer service cost to benefitting properties; the City would be responsible for the remaining cost.

Table 4 – Summary of Sanitary Sewer Costs

	Total
Estimated City Cost	\$628,527.54
Estimated Assessment	\$269,368.94
Estimated County Cost	\$0.00
Estimated Total Cost	\$897,896.48

5.4 Private Sanitary Service

Per the City inflow and infiltration (I/I) ordinance, if and when there is street reconstruction project, properties with sanitary sewer service lateral defects will need to be correct the service defect during the duration of the project. This report assumes the property owners elect to correct their service defect within the City project scope and 100 percent of the private sanitary sewer costs will be assessed.

Table 5 – Summary of Sanitary Sewer Costs

	Total
Estimated City Cost	\$0.00
Estimated Assessment	\$155,440.00
Estimated County Cost	\$0.00
Estimated Total Cost	\$155,440.00

5.5 Water Main

Current City water main reconstruction assessment policy is to assess 30 percent of the mainline water main costs and 30 percent of the water service cost to benefitting properties; the City would be responsible for the remaining cost.

Table 6 – Summary of Water Main Costs

	Total
Estimated City Cost	\$888,906.96
Estimated Assessment	\$380,960.12
Estimated County Cost	\$0.00
Estimated Total Cost	\$1,269,867.08

6 Financial Considerations

In summary, the totals are as follows:

Table 7 – Total Project Costs

	Total
Estimated City Cost	\$3,481,386.62
Estimated Assessment	\$1,647,462.84
Estimated County Cost	\$1,405,137.94
Estimated Total Cost	\$6,533,987.40

Figures

Figure 1 – Sanitary Sewer Layout

Figure 2 – Water Main Layout

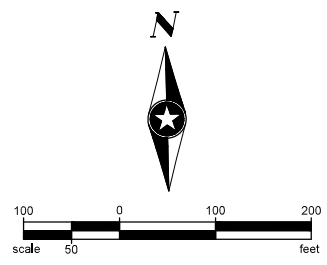
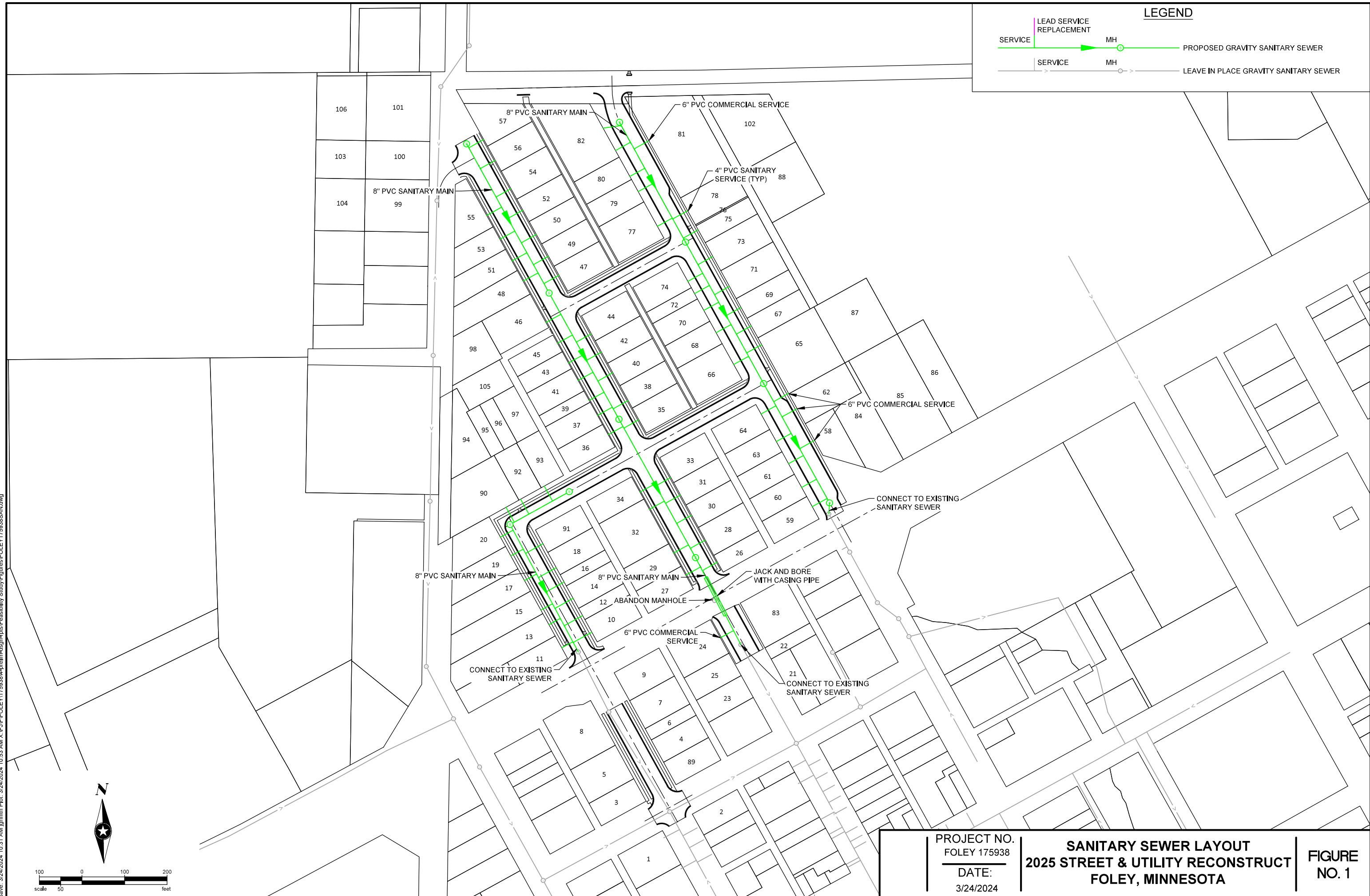
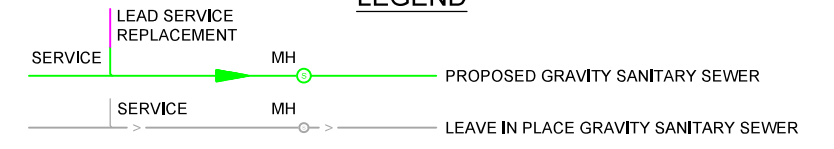
Figure 3 – Storm Sewer Layout

Figure 4 – Street and PAW Map

Figure 5 – Typical Sections

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LEGEND

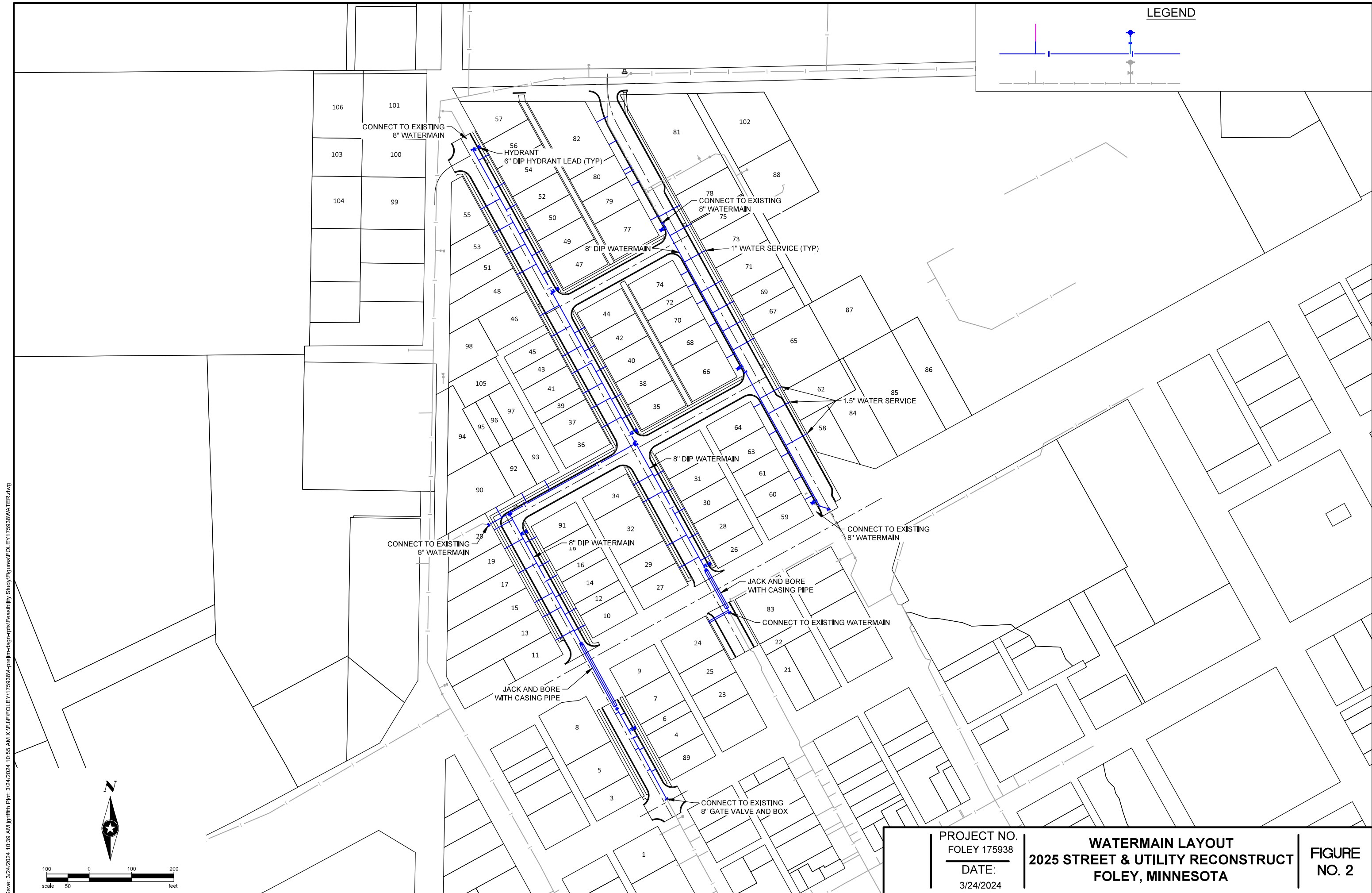
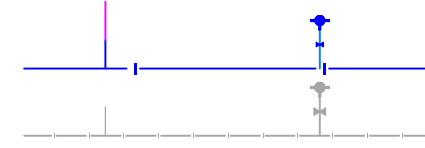


PROJECT NO.
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 3/24/2024

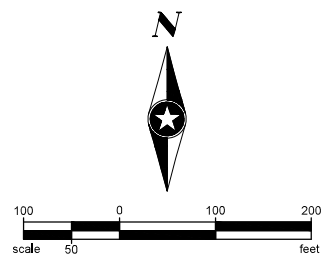
SANITARY SEWER LAYOUT
2025 STREET & UTILITY RECONSTRUCT
FOLEY, MINNESOTA

FIGURE
NO. 1

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DATE:
3/24/2024

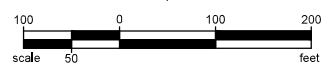
WATERMAIN LAYOUT
2025 STREET & UTILITY RECONSTRUCT
FOLEY, MINNESOTA

FIGURE
NO. 2

LEGEND



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




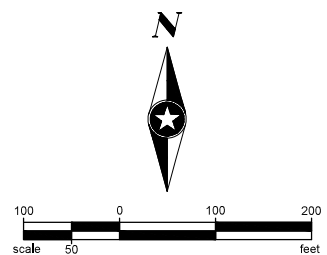
PROJECT NO.
FOLEY 175938
DATE:
3/24/2024

STORM SEWER LAYOUT
2025 STREET AND UTILITY RECONSTRUCT
FOLEY, MINNESOTA

FIGURE
NO. 3

LEGEND

-  CONCRETE SIDEWALK
-  ALLEY RECONSTRUCTION
-  STREET RECONSTRUCTION
-  PARCELS ASSESSED



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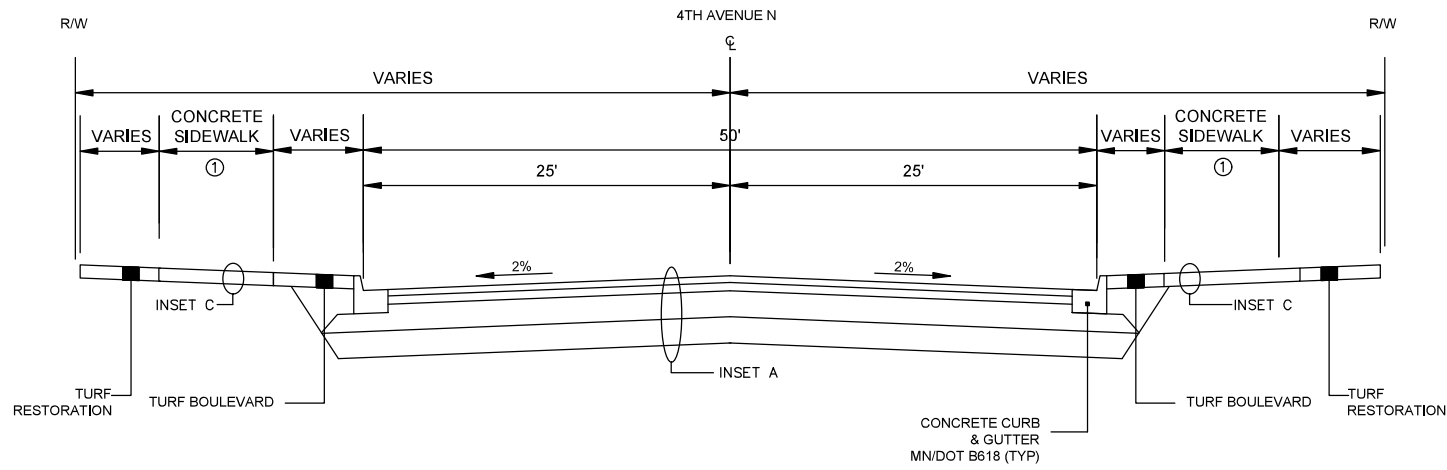
PROJECT NO.
FOLEY 175938
DATE:
3/29/2024

STREET AND PAW MAP
2025 STREET & UTILITY RECONSTRUCT
FOLEY, MINNESOTA

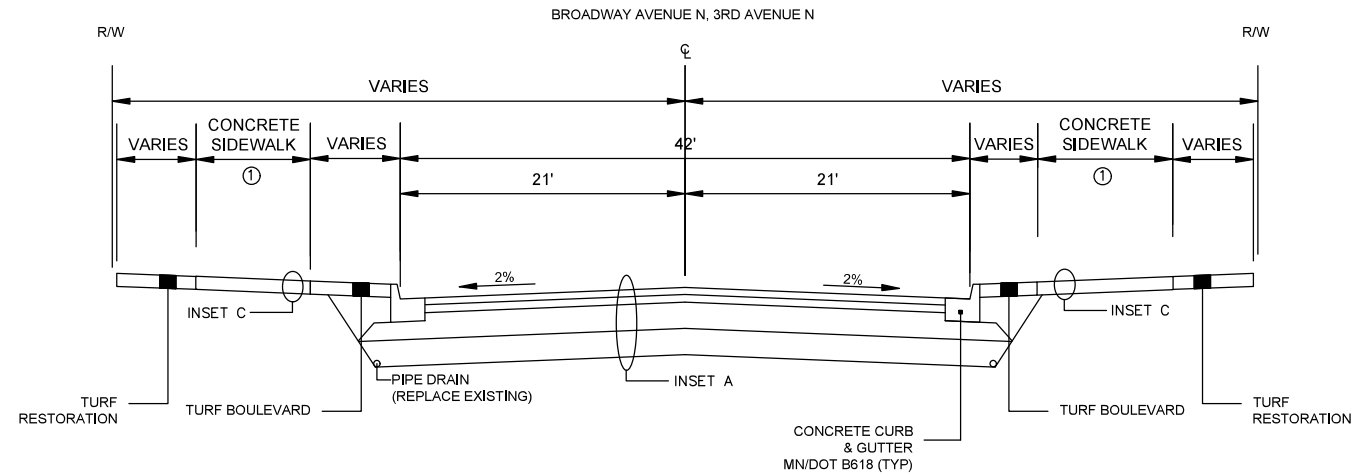
FIGURE
NO. 4

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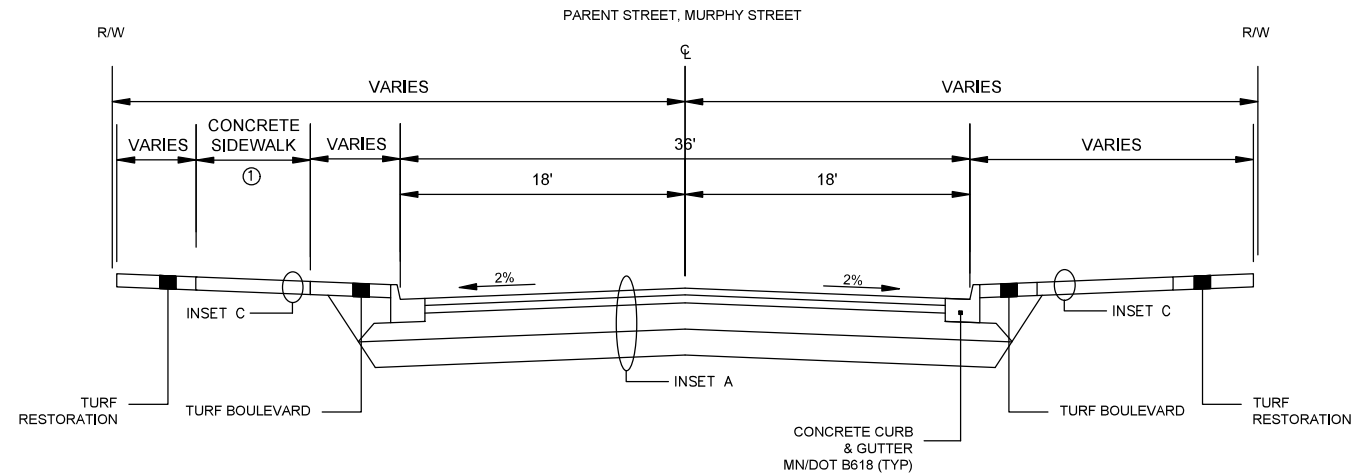
TYPICAL SECTION



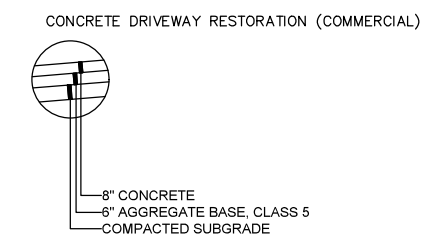
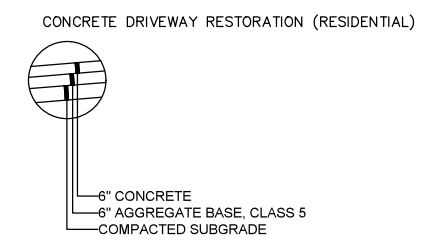
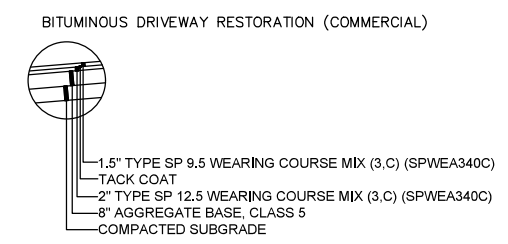
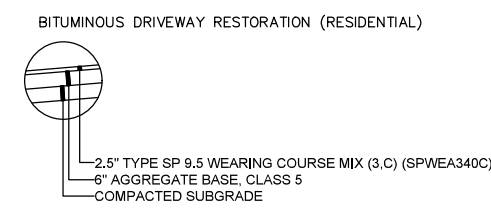
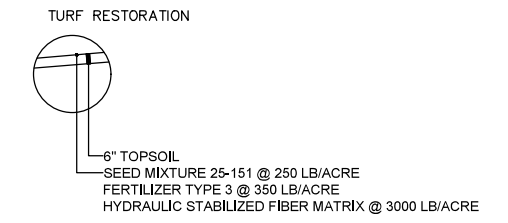
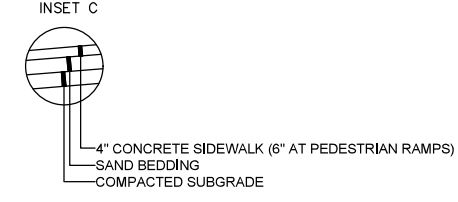
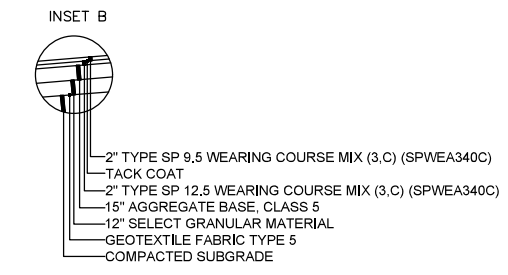
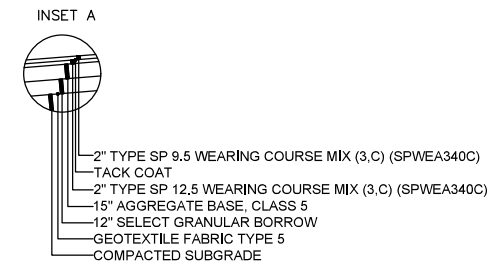
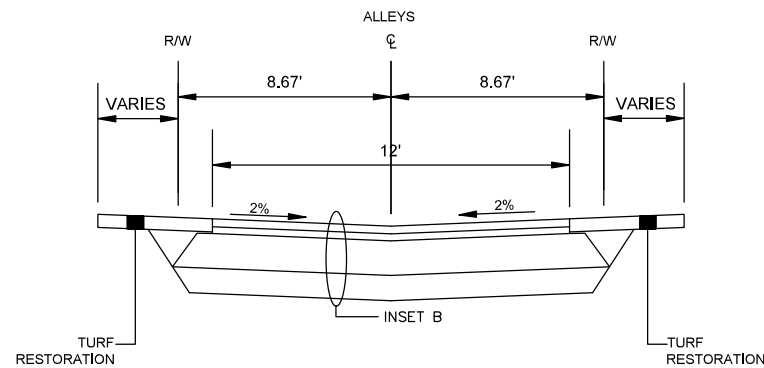
TYPICAL SECTION



TYPICAL SECTION



TYPICAL SECTION



PROJECT NO.
FOLEY 175938
DATE:
3/24/2024

TYPICAL SECTIONS
2025 STREET & UTILITY RECONSTRUCT
FOLEY, MINNESOTA

FIGURE NO. 5

Appendix A

Opinion of Probable Costs



OPINION OF PROBABLE COST

NOTES	ITEM NO.	ITEM DESCRIPTION	UNIT OF MEASUREMENT	UNIT PRICE	CITY		CITY / COUNTY		COUNTY	
					100%		40% 60%		100%	
					APPROXIMATE QUANTITY	AMOUNT	APPROXIMATE QUANTITY	AMOUNT	APPROXIMATE QUANTITY	AMOUNT
	81	18" RC PIPE SEWER DESIGN 3006 CLASS V	LN FT	\$85.00	463	\$39,355.00	353	\$30,005.00		
	82	24" RC PIPE SEWER DESIGN 3006 CLASS III	LN FT	\$100.00	616	\$61,600.00	71	\$7,100.00		
	83	30" RC PIPE SEWER DESIGN 3006 CLASS III	LN FT	\$125.00	0	\$0.00	383	\$47,875.00		
	84	36" RC PIPE SEWER DESIGN 3006 CLASS III	LN FT	\$140.00	0	\$0.00	57	\$7,980.00		
	85	CLEAN STORM SEWER	LN FT	\$3.00	1,963	\$5,889.00	1,548	\$4,644.00		
	86	CONNECT TO EXISTING STORM SEWER	EACH	\$1,300.00	1	\$1,300.00	2	\$2,600.00		
	87	CONNECT INTO EXISTING DRAINAGE STRUCTURE	EACH	\$1,500.00	3	\$4,500.00	0	\$0.00		
	88	CONST DRAINAGE STRUCTURE DESIGN H	EACH	\$3,000.00	6	\$18,000.00	5	\$15,000.00		
	89	CONST DRAINAGE STRUCTURE DES 48-4020	EACH	\$4,500.00	8	\$36,000.00	8	\$36,000.00		
	90	CONST DRAINAGE STRUCTURE DES 60-4020	EACH	\$6,200.00	4	\$24,800.00	4	\$24,800.00		
	91	CONST DRAINAGE STRUCTURE DES 72-4020	EACH	\$10,000.00	0	\$0.00	1	\$10,000.00		
	92	CONST DRAINAGE STRUCTURE DES 84-4020	EACH	\$12,000.00	0	\$0.00	1	\$12,000.00		
	93	CONST DRAINAGE STRUCTURE DES SPECIAL	EACH	\$13,000.00	0	\$0.00	1	\$13,000.00		
WATER										
	94	REMOVE WATER MAIN	LN FT	\$8.00	3104	\$24,832.00				
	95	REMOVE HYDRANT	EACH	\$600.00	7	\$4,200.00				
	96	REMOVE GATE VALVE & BOX	EACH	\$250.00	11	\$2,750.00				
	97	4" INSULATION	SQ YD	\$60.00	378	\$22,680.00				
	98	HYDRANT	EACH	\$7,000.00	9	\$63,000.00				
	99	8" GATE VALVE AND BOX	EACH	\$2,500.00	9	\$22,500.00				
	100	8" GATE VALVE AND BOX	EACH	\$3,500.00	16	\$56,000.00				
	101	8" WATERMAIN DUCTILE IRON CL 52	LN FT	\$80.00	129	\$10,320.00				
	102	8" WATERMAIN DUCTILE IRON CL 52	LN FT	\$90.00	3184	\$286,560.00				
	103	1" CORPORATION STOP	EACH	\$600.00	75	\$45,000.00				
	104	1" CURB STOP & BOX	EACH	\$650.00	75	\$48,750.00				
	105	1" COPPER SERVICE	LN FT	\$50.00	2614	\$130,700.00				
	106	1.5" CORPORATION STOP	EACH	\$850.00	4	\$3,400.00				
	107	1.5" CURB STOP & BOX	EACH	\$900.00	4	\$3,600.00				
	108	1.5" COPPER SERVICE	LN FT	\$55.00	224	\$12,320.00				
	109	6" TEE	EACH	\$1,100.00	1	\$1,100.00				
	110	6" GATE VALVE & BOX	EACH	\$2,500.00	1	\$2,500.00				
	111	8" DIP SERVICE	LN FT	\$90.00	53	\$4,770.00				
	112	DUCTILE IRON FITTINGS	POUND	\$15.00	912	\$13,680.00				
	113	CONNECT TO EXISTING WATER MAIN	EACH	\$3,000.00	6	\$18,000.00				
	114	CONNECT TO EXISTING WATER SERVICE	EACH	\$300.00	80	\$24,000.00				
	115	DIRECTIONAL DRILL 18" STEEL CASING	LN FT	\$600.00	245	\$147,000.00				
TOTALS						\$3,707,246.00		\$300,634.00		\$868,230.00

	City	County	Total
Construction	\$3,827,499.60	\$1,048,610.40	\$4,876,110.00
Contingency	\$382,749.96	\$104,861.04	\$487,611.00
Engineering	\$688,949.93	\$188,749.87	\$877,699.80
Geotechnical	\$38,275.00	\$10,486.10	\$48,761.10
Legal, Fiscal, & Admin	\$191,374.98	\$52,430.52	\$243,805.50
PROJECT TOTAL	\$5,128,849.46	\$1,405,137.94	\$6,533,987.40

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Appendix B

Preliminary Assessment Worksheet (PAW)

ASSESSMENT RATES (20%)	
STREET	\$175.28 / LF
ALLEY	\$16.31 / LF
SANITARY SEWER	\$34.65 / LF
4" SANITARY SERVICE	\$1,269.27 / EACH
6" SANITARY SERVICE	\$1,681.67 / EACH
WATER MAIN	\$56.89 / LF
1" WATER SERVICE	\$1,323.65 / EACH
1.5" WATER SERVICE	\$2,062.26 / EACH
6" WATER SERVICE	\$3,485.34 / EACH
STORM SEWER	\$0.25 / SF
ASSESSMENT RATES (100%)	
PRIVATE SANITARY SERVICE	\$2,680.00 / EACH

ITEM NO.	PROPERTY OWNER	PROPERTY ADDRESS	MAILING ADDRESS	SHAPE	LOCATION	STREET		ALLEY		SANITARY SEWER		4" SANITARY SERVICE		6" SANITARY SERVICE		WATER MAIN		1" WATER SERVICE		1.5" WATER SERVICE		6" WATER SERVICE		STORM SEWER		PRIVATE SANITARY SERVICE		TOTAL ASSESSMENT		
						FRONTAGE	ASSESSMENT	FRONTAGE	ASSESSMENT	FRONTAGE	ASSESSMENT	EACH	ASSESSMENT	EACH	ASSESSMENT	FRONTAGE	ASSESSMENT	EACH	ASSESSMENT	EACH	ASSESSMENT	EACH	ASSESSMENT	EACH	ASSESSMENT	SQUARE FEET	ASSESSMENT		EACH	ASSESSMENT
87	BENTON COUNTY	581 HWY 23 FOLEY MN 56329	PO BOX 129 FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
88	CITY OF FOLEY	581 HWY 23 FOLEY MN 56329	251 4TH AVE N PO BOX 709 FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
89	BERNADETTE J STANGLER	301 JOHN ST FOLEY MN 56329	301 JOHN ST PO BOX 834 FOLEY MN 56329	RECTANGULAR	CORNER	60	\$10,516.65	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	60	\$3,341.68	1	\$1,323.65	0	\$0.00	0	\$0.00	0	\$0.00	7200	\$1,822.69	1	\$2,680.00	\$19,684.68
90	SUSANNE M JANNEY	301 MURPHY ST FOLEY MN 56329	PO BOX 153 FOLEY MN 56329	IRREGULAR	INTERIOR	97	\$17,001.82	0	\$0.00	97	\$3,361.48	1	\$1,269.27	0	\$0.00	97	\$5,402.38	1	\$1,323.65	0	\$0.00	0	\$0.00	0	\$0.00	1957	\$495.42	0	\$0.00	\$28,854.12
91	BENJAMIN NEWSON	310 MURPHY ST FOLEY MN 56329	310 MURPHY ST FOLEY MN 56329	RECTANGULAR	CORNER	120	\$21,033.31	0	\$0.00	60	\$2,079.26	1	\$1,269.27	0	\$0.00	60	\$3,341.68	1	\$1,323.65	0	\$0.00	0	\$0.00	0	\$0.00	7200	\$1,822.69	1	\$2,680.00	\$33,548.66
92	DEREK A GUELDER & ANGELA M SWEET-GUELDER	311 MURPHY ST FOLEY MN 56329	311 MURPHY ST FOLEY MN 56329	RECTANGULAR	INTERIOR	60	\$10,516.65	0	\$0.00	60	\$2,079.26	1	\$1,269.27	0	\$0.00	60	\$3,341.68	1	\$1,323.65	0	\$0.00	0	\$0.00	0	\$0.00	7200	\$1,822.69	1	\$2,680.00	\$23,033.21
93	KORBEN BRIAN WEIDENBORNER	321 MURPHY ST FOLEY MN 56329	321 MURPHY ST FOLEY MN 56329	RECTANGULAR	INTERIOR	60	\$10,516.65	0	\$0.00	60	\$2,079.26	1	\$1,269.27	0	\$0.00	60	\$3,341.68	1	\$1,323.65	0	\$0.00	0	\$0.00	0	\$0.00	7200	\$1,822.69	1	\$2,680.00	\$23,033.21
94	RICHARD F POLSFUSS & LINDA M POLSFUSS	534 NORMAN AVE N FOLEY MN 56329	534 NORMAN AVE N FOLEY MN 56329	IRREGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
95	KENNETH POSCH	544 NORMAN AVE N FOLEY MN 56329	544 NORMAN AVE N FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	2415	\$611.36	0	\$0.00	\$611.36
96	SANDRA QUELLETTE	554 NORMAN AVE N FOLEY MN 56329	554 NORMAN AVE N PO BOX 715 FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	2415	\$611.36	0	\$0.00	\$611.36
97	ANGELA M MONROE	564 NORMAN AVE N FOLEY MN 56329	PO BOX 556 FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	5055	\$1,279.68	0	\$0.00	\$1,279.68
98	BENJAMIN LARSON	610 NORMAN AVE N FOLEY MN 56329	610 NORMAN AVE N PO BOX 489 FOLEY MN 56329	IRREGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
99	BRUCE D LATTERELL & ROSEANN LATTERELL	661 NORMAN AVE N FOLEY MN 56329	661 NORMAN AVE N PO BOX 128 FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
100	MAVERICK M WOLF	671 NORMAN AVE N FOLEY MN 56329	671 NORMAN AVE N FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
101	REBECCA A HOWARD & THOMAS J HOWARD	681 NORMAN AVE N FOLEY MN 56329	681 NORMAN AVE N FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
102	GUSTAVUS ADOLPHUS EVNG LUTH CH	490 PENN ST FOLEY MN 56329	PO BOX 545 FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
103	MAVERICK M WOLF		671 NORMAN AVE N FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
104	BRUCE D LATTERELL & ROSEANN LATTERELL		661 NORMAN AVE N PO BOX 128 FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
105	BENJAMIN LARSON		610 NORMAN AVE N FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
106	REBECCA A HOWARD & THOMAS J HOWARD		681 NORMAN AVE N FOLEY MN 56329	RECTANGULAR	INTERIOR	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	\$0.00
TOTAL						3770	\$660,796.34	1490	\$24,295.27	6006	\$173,479.88	69	\$87,679.72	6	\$8,308.34	4847	\$289,951.84	75	\$99,273.90	4	\$8,249.04	1	\$5,485.34	618609	\$156,602.16	88	\$155,440.00	\$1,647,462.84		

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We're confident in our ability to balance these requirements.

JOIN OUR SOCIAL COMMUNITIES



Resolution #2024-0401-1
Resolution Receiving Report and Calling for Hearing on
Improvement
For the City of Foley, Benton County, State of Minnesota

WHEREAS, pursuant to resolution of the council, a report has been prepared by Short Elliott Hendrickson Inc. with reference to the improvement of 3rd Avenue from John Street to Murphy Street, 4th Avenue North from 200 feet south of the south right of way of Highway 23 to Norman Avenue North, Broadway Avenue North from Highway 23 to Penn Street, Murphy Street from 3rd Avenue to Broadway Avenue North, Parent Street from 4th Avenue North to Broadway Avenue North, 4th Avenue North Alley from Murphy Street to Penn Street; by Reconstruction of the Streets, Sidewalks, Drainage System, Water Main, and Sanitary Sewer; and the report was received by the Council on April 2nd, 2024, and,

WHEREAS, the report provides information regarding whether the proposed project is necessary, cost- effective, and feasible.

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

1. The council will consider the improvement of such streets in accordance with the report and the assessment of abutting and non-abutting property to be served by the improvements, for all or a portion of the cost of the improvement pursuant to Minnesota Statutes, Chapter 429 at an estimated total cost of the improvement of \$6,533,987.40.
2. A public hearing shall be held on such proposed improvement on the 21st day of May, 2024, in the council chambers of the city hall at 5:40 PM., and the clerk shall give mailed and published notice of such hearing and improvement as required by law.

Passed by the City Council of Foley, Minnesota this _____ day of _____ 2024.

Jack M. Brosh, Mayor Date

Sarah A. Brunn, City Administrator Date

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA
RESOLUTION 2024 – 09

A RESOLUTION RECEIVING REPORT AND CALLING FOR HEARING ON IMPROVEMENT
FOR THE CITY OF FOLEY, BENTON COUNTY, STATE OF MINNESOTA

WHEREAS, pursuant to resolution of the council, a report has been prepared by Short Elliott Hendrickson Inc. with reference to the improvement of 3rd Avenue from John Street to Murphy Street, 4th Avenue North from 200 feet south of the south right of way of Highway 23 to Norman Avenue North, Broadway Avenue North from Highway 23 to Penn Street, Murphy Street from 3rd Avenue to Broadway Avenue North, Parent Street from 4th Avenue North to Broadway Avenue North, 4th Avenue North Alley from Murphy Street to Penn Street; by Reconstruction of the Streets, Sidewalks, Drainage System, Water Main, and Sanitary Sewer; and the report was received by the Council on April 2nd, 2024, and,

WHEREAS, the report provides information regarding whether the proposed project is necessary, cost-effective, and feasible.

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

1. The council will consider the improvement of such streets in accordance with the report and the assessment of abutting and non-abutting property to be served by the improvements, for all or a portion of the cost of the improvement pursuant to Minnesota Statutes, Chapter 429 at an estimated total cost of the improvement of \$6,533,987.40.
2. A public hearing shall be held on such proposed improvement on _____, in the council chambers of the city hall at 5:40 PM., and the clerk shall give mailed and published notice of such hearing and improvement as required by law.

PASSED AND ADOPTED by the City Council of the City of Foley, Minnesota, this 2nd day of April, 2024.

Jack Brosh, Mayor

ATTEST:

Sarah A. Brunn, City Administrator

**WASTEWATER TREATMENT SYSTEM USE AGREEMENT BETWEEN THE
CITY OF ST. CLOUD, MINNESOTA AND CITY OF INSERT CONTRACT USER
NAME HERE, MINNESOTA.**

This Agreement, made and entered into this _____ day of _____, 2024, by and between the City of St. Cloud, Minnesota, hereinafter referred to as the “City,” acting as the provider of wastewater conveyance and treatment services and as the holder of the National Pollutant Discharge Elimination System (NPDES) Permit and State Disposal System Permit (SDS), in accordance with Section 402 of the Clean Water Act, whereas the United States Environmental Protection Agency (EPA) authorizes the Minnesota Pollution Control Agency (MPCA) to issue this permit, and City of Contract User, Minnesota, hereinafter referred to as the “Contract User.”

RECITALS

- A. The City owns and operates the St. Cloud Nutrient, Energy & Water Recovery Facility (NEWRF) and the Wastewater Conveyance System (WWCS). The NEWRF and WWCS together comprise the St. Cloud Wastewater Treatment System (SCWWTS or WWTS). The purpose of the WWTS is to provide for the conveyance and treatment of domestic, commercial and industrial wastewater.
- B. The existing NEWRF began operation in June 1976, replacing the St. Cloud Wastewater Treatment Facility that began operation in April 1956. The WWTF cost approximately \$16,000,000 to construct and was partially funded through state and federal grants made available through the 1972 Clean Water Act.
- C. The City received a construction grant for the WWTF and in compliance with that grant, the requirements of the Clean Water Act of 1972, and the regulations issued pursuant to said Act, has adopted a Sewer Use Ordinance regulating the discharge of wastewater into the City’s wastewater system. The City has adopted a System of User Charges to assure that recipients of wastewater conveyance and treatment services pay the proportionate share of the cost of operation, maintenance, improvement, expansion and replacement of the WWTS.
- D. The City and the cities of St. Augusta, St. Joseph, Sartell, Sauk Rapids and Waite Park had previously entered into Cooperative Construction Agreements and Sewer Use Agreements that establish wastewater treatment charges, flow allocations and discharge limitations for the Sewer Interceptor System (SIS) and the NEWRF. The City of Foley entered into a wastewater treatment use agreement with the City in July 2021. The flow allocations and discharge limitations for the NEWRF are set forth in Article II, Section H of this Agreement. The established flow allocations and discharge limitations for the

SIS are set forth in EXHIBIT A of this Agreement. The above-referenced cities collectively comprise the membership of the St. Cloud Area Wastewater Advisory Commission (SCAWAC). The goal of SCAWAC is to promote the continued equitable and efficient distribution of wastewater conveyance and treatment facility costs and services.

- D. In August 2003, the SCAWAC requested the City complete a Wastewater Treatment Facilities Plan to evaluate current and future growth needs and ensure there is adequate wastewater treatment capacity in the future. SCAWAC reviewed the Wastewater Treatment Facilities Plan and approved recommendations for the rehabilitation, upgrade and expansion of the WWTF. The Rehabilitation, Upgrade & Expansion (RUE) Project, along with the Nutrient Reuse & Recovery (NR2) Project were components of the Facilities Plans completed and approved by the MPCA.
- E. Subsequent to the adoption of the Wastewater Treatment Facilities Plan, the cities of St. Augusta, St. Cloud, St. Joseph, Sartell, Sauk Rapids and Waite Park entered into a Cooperative Design and Construction Agreement with the City dated May 8, 2008, setting forth the financial participation of the parties in the design, upgrade, expansion and rehabilitation of the facility and related improvements through planning year 2030 and identified in the Facilities Plan.
- F. The City of Foley entered into a WWTS Use Agreement with the City in July 2021. Foley's Pool Capacity purchase was determined based upon their 2040 capacity need of 0.453 MGD as outlined in Foley's 2019 Wastewater Treatment Facility Plan.

ARTICLE I DEFINITIONS

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

“Base Capacity” is the total NEWRF treatment capacity of seventeen point nine million gallons per day (17.9 MGD) as a biological phosphorus (Bio-P) removal facility less Pool Capacity. The total original Pool Capacity constructed in the WWTF expansion project was 1,350,000 gallons per day (1.35 MGD), with a remaining “Base Capacity” of 16.55 MGD. With the addition of Foley by means of a Pool Capacity transfer, Pool Capacity was reduced to 0.897 MGD and Base Capacity increased to 17.003 MGD.

“Carbonaceous Biochemical Oxygen Demand (cBOD₅)” means the quantity of oxygen utilized in the biochemical oxidation of organic matter, in the presence of a nitrification inhibitor, under standard laboratory procedures in five (5) days at twenty degrees (20°) Centigrade expressed in terms of weight and concentration (milligrams per liter or mg/L).

“Categorical Industrial User” means any and all Industrial Users subject to categorical pretreatment standards under 40 C.F.R. 403.6 and 40 C.F.R. Chapter I, Subchapter N.

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

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

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

“EPA” means the United States Environmental Protection Agency.

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

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

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

“Industrial User” (IU) means any establishment that discharges wastewater from an industrial process into the SCWWTS.

“MGD” means million gallons per day.

“MPCA” means the Minnesota Pollution Control Agency.

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

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

“**Pool Capacity**” is the reserve of wastewater treatment capacity constructed in the NEWRF but not initially allocated to any of the Contract Users. The total Pool Capacity constructed in the NEWRF was 1.35 MGD. With the transfer of Pool Capacity to the City of Foley, Pool Capacity was reduced to 0.897 MGD.

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

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

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

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

“**St. Cloud Wastewater Treatment System (SCWWTS or WWTS)**” means the combined Publicly Owned Treatment Works (POTW) or Nutrient, Energy & Water

Recovery Facility (NEWRF) described herein, together with the Wastewater Conveyance System (WWCS) which includes the Sewer Interceptor System (SIS).

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

“Significant Industrial User (SIU)” means any and all Industrial Users subject to categorical pretreatment standards under 40 C.F.R. 403.6 and 40 C.F.R. Chapter I, Subchapter N and any other Industrial User that discharges an average of 25,000 gallons per day or more of process wastewater to the WWTF (excluding sanitary, noncontact cooling and boiler blowdown wastewater), contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the WWTF, or is designated as such by the control authority as defined in 40 C.F.R. 403.12(a) on the basis that the Industrial User has a reasonable potential for adversely affecting the WWTF operation or for violating any pretreatment standard or requirement in accordance with 40 C.F.R. 403.8(f)(6).

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

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

“Nutrient, Energy & Water Recovery Facility (NEWRF)” has the same meaning as “Publicly Owned Treatment Works (POTW),” defined above. The terms may be used interchangeably.

ARTICLE II SERVICE CONDITIONS

A. Purpose

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

B. Rights of Use

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

C. Compliance with Applicable Laws

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

D. Operation and Maintenance

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

E. Ordinance Amendments

- a. The parties recognize that the City and the Contract User are subject to regulations promulgated by the EPA and the MPCA.

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

F. Pretreatment Program Requirements

- a. The City and Contract User shall work cooperatively on all pretreatment program requirements to ensure WWTS performance and regulatory compliance.
- b. The Contract User agrees to provide Industrial Discharge Monitoring Reports (IDMR) at the frequency listed in the individual industrial user permit.
- c. The Contract User agrees to provide the City a copy of its Annual Pretreatment Program Report by January 15th of each year.
- d. The Contract User shall identify new or existing potential SIUs on an annual basis and provide a final report to the City no later than January 15th of each year.
- e. The Contract User shall permit all SIUs and CIUs within the community that meet applicable requirements, and are not exempt under Minn. R.7049, reference Article I for criteria.
- f. The Contract User will enforce the requirements and conditions contained in all Pretreatment permits and/or agreements that are in effect in the Contract User's service area.
- g. The Contract User shall conduct confirmatory sampling and inspection of all permitted SIUs and CIUs at least one per year, as per the Federal Pretreatment Regulations, 40 CFR Part 403. Sampling shall be unannounced to the Industrial User. Records shall be submitted to the City

within thirty (30) days of the sampling and inspection prior to October 31st of each year.

- h. The Contract User, or a commercial or industrial user within the Contract User's service area, may be required to complete sampling for unregulated pollutants regardless of its inclusion in local limits, if a new effluent standard, Water Quality Standard, or prohibition is established and adopted under the Federal or Minnesota State Pretreatment Standards for an unregulated pollutant which is present in the Contract User's discharge. Source identification and reduction efforts may be required.
- i. The City shall provide the Contract User a copy of the annual MPCA Pretreatment Program Audit/Inspection and Annual Pretreatment Report.

G. Infiltration and Inflow Prevention

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

H. Regulation of Flows

- a. Wastewater Treatment Facility Discharge Limitations
The quantity of wastewater discharged by the Contract User to the WWTS is defined in Table 1, below. Discharges to the WWTS by the Contract User in excess of its assigned capacity, except in conditions acknowledged by the City as significantly abnormal, shall be considered a violation of this Agreement under Section H, paragraph (c), below.
- b. Phase 1 of work identified in the Facilities Plan was completed in 2010-2013. The NEWRF has a treatment capacity of fifteen million gallons per day (15.0 MGD) as a full biological nutrient removal (BNR) facility designed for removal of both phosphorus and nitrogen and a treatment capacity of seventeen point nine million gallons per day (17.9 MGD) as a biological phosphorus (Bio-P) removal facility. A reserve of wastewater treatment capacity, termed "Pool Capacity" was included in the new capacity at the NEWRF, but not initially allocated to any of the Contract Users. The total Pool Capacity constructed in the WWTF expansion project was 1,350,000 gallons per day (1.35 MGD), with a remaining "Base Capacity" of 16.55 MGD. With the addition of Foley, Pool Capacity was reduced to 0.897 MGD and Base Capacity increased to 17.003 MGD.

Table 1. Flow Allocations

User	Base Capacity (MGD)	Pool Capacity (MGD)	Total Flow Allocation (MGD)	Total Flow Allocations (%)
St. Cloud	8.450	0.350	8.80	49.16%
Sartell	2.885	0.097	2.982	16.66%
Sauk Rapids	1.735	0.225	1.960	10.95%
St. Joseph	1.495	-	1.495	8.35%
Waite Park	1.205	0.225	1.430	7.99%
St. Augusta	0.780	-	0.780	4.36%
Foley	0.453	-	0.453	2.53%
TOTAL	17.003	0.897	17.900	100%

c. Violations

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

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

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

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

I. Flow Monitoring Devices

- a. The Contract User agrees to provide, install and maintain at its cost and expense, at points of discharge agreed upon by the City and Contract User into the City's WWTS, an automatic flow monitoring and recording device with an integrator-totalizer for the purpose of accurately measuring the Contract User's flow.
- b. The records and reports from such monitoring devices shall be maintained by the Contract User and made available to the City for auditing and billing procedures.
- c. In the event of failure of the Contract User's monitoring device(s) for the purpose of determining billing amounts pursuant to this Agreement, it will be assumed that during any period when the measuring device is inoperable for the entirety of the month, the flow total will be the calculated average of the monthly flow totals of the same time period during the three preceding years. If the most recent three-year flow record is unavailable, or if flows have changed significantly over the preceding three years, then an alternate method as mutually agreed upon by the parties will be used to determine the flow during periods of monitoring device measurement disruption. If the measuring device is inoperable for a maximum of up to seven days within the reporting month, then the average of the rest of the measured days for the month may be used for the days of missing flow data, if agreed upon by both parties.
- d. The Contract User shall coordinate the inspection, testing and calibration of flow measuring devices. The coordination shall include the Contract User retaining the services of an independent testing agency certified in wastewater flow measurement calibration services to inspect and calibrate the flow-metering device to maintain the accuracy of that device to within manufacturer's specification. Inspection of the flow monitoring devices shall occur at least twice per year and be calibrated at least annually or at a frequency outlined by the equipment manufacturer as required to maintain regulatory compliance.
- f. A certified copy of the inspection and test results shall be provided to the City promptly after completion. The Contract User will not make adjustments to the certified calibration of the flow metering device without prior written notice to the City. Permission from the City is not required to perform prescribed or routine maintenance of the flow monitoring system.
- g. The City may inspect such metering devices at any reasonable time and in the event such a device fails and is not repaired within ten (10) days by the Contract User, the City may repair the same. When the City performs such repairs, the City shall provide the Contract User with an itemized invoice of its reasonable costs and expenses prior to reimbursement by the Contract User. If the invoice is undisputed, the Contract User shall pay the invoice within thirty (30) days of receipt. If the invoice is disputed, the parties may pursue any of the remedies provided in Article IV of this Agreement.

J. Wastewater Sampling

- a. The Contract User shall sample and analyze all required parameters and flows at its cost at each entry point, unless otherwise agreed, into the City's WWTS on a frequency based upon the sampling schedule included in EXHIBIT B or as otherwise requested by the City. Additional samples may be collected by the City for the purpose of verifying the accuracy of the information reported by the Contract User. The analysis results from any sample collected by either party shall be shared with the other party. The City may issue or approve variances or exemptions for specific entry points and/or testing parameters in situations where there is limited value of previous data collected to minimize collection and testing costs.
- b. The Contract User shall collect and record the continuous flow data from the flow monitoring devices owned by the Contract User.
- c. Samples collected for carbonaceous biochemical oxygen demand (cBOD₅), total suspended solids (TSS), and total phosphorus (TP) analysis shall be twenty-four (24) hours flow composite. Samples collected for fats, oil and grease (FOG) or pH analysis shall be a grab sample. Time composite samples may be used in lieu of flow composite samples in the event of maintenance, operational, or laboratory difficulties. A series of grabs (minimum of four) composited into one sample may be used in lieu of time composites for similar cause and with notice give to the City.
- d. The Contract User or the City shall have the opportunity to split samples collected by the other party.
- e. Monthly flow data, along with all representative wastewater sampling results, shall be reported to the City monthly before the 15th of the following month, for the purpose of verifying compliance and for preparation of monthly billing.
- f. Samples found to be unrepresentative of the actual flow by mutual agreement shall not be used in calculations of charges. Split samples varying by more than twenty percent (20%) for cBOD₅ and TSS will not be used in the calculations for determining loadings or charges.
- g. Both parties will cooperate in performing additional analysis and sampling required for regulatory compliance.
- h. If a new effluent standard, Water Quality Standard, or prohibition is established and adopted under the Federal or Minnesota State Pretreatment Standards for an unregulated pollutant which is present in the Contract User's discharge and such standard or prohibition is more stringent than any limitations upon such pollutant in EXHIBIT B, the Director may revise or modify this Agreement in accordance with the effluent standard, Water Quality standard, or prohibition and so notify the Contract User. The City may require additional sampling for unregulated pollutants regardless of its inclusion in EXHIBIT B. Required sampling of unregulated pollutants may be conducted by either the Contract User or the City. The cost of the sampling and analysis may be billed separately to the Contract User.

- i. In addition, the City shall have the right at any time to inspect, examine and/or sample the Contract User's collection system or wastewater.

K. Laboratories

All samples, unless otherwise mutually agreed upon, shall be collected and preserved using procedures as found in the most current edition of Standard Methods for the Examination of Water and Wastewater and analyzed by a laboratory certified in the State of Minnesota.

ARTICLE III REPORTS AND PAYMENTS

A. Scope

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

B. Measurement of Flow, cBOD₅ and TSS

For the purposes of reporting and for calculating charges as described in this Agreement, the flow shall be the totalized measurement from the flow meter at the Contract User's Point of Discharge into the City's WWTS, in accordance with Article II, Section J of this Agreement. cBOD₅ and TSS shall be sampled as described above and analyzed by a laboratory certified in the State of Minnesota.

C. Charges and Payments

- a. St. Cloud shall conduct an annual cost of service review for the purpose of Contract User annual rate setting consistent with past practice. The rate setting process fairly and equitably allocates annual rate revenue requirements to Contract Users of the WWTS based on the proportional benefit to each Contract User determined by flow and strength contributed to the WWTS relative to all flow.
- b. The annual rate revenue requirements will be based upon the most recent City of St. Cloud Wastewater Budget and will include items such as operation and maintenance expense, cash funded capital and debt service charges.
- c. The charges for the Contract User shall be calculated using unit costs established under the rate setting process, multiplied by the actual flow, cBOD₅ and TSS loadings of wastewater discharged from the Contract User into the City's WWTS, as measured in accordance with this Agreement for any given billing period. If the concentrations of the cBOD₅ or TSS are less than the concentrations used to determine the annual unit charges, then the monthly billing charges period will be based on the cBOD₅ and TSS used to calculate the unit charges in Article III, Section C, paragraph (a) of this Agreement.
- d. The charges computed shall be billed to the Contract User following the last day of each month and shall be payable within thirty (30) days, after which time the City Late Fee Policy will be applied.

- e. All rate adjustments under the terms of this Agreement shall become effective on January 1 of the following year. The parties agree that the rate setting process may be subject to adjustment during the term of the agreement due to changing circumstances associated with the underlying basis for the rates such as new regulatory requirements or other unforeseen circumstances that may affect the rate basis in the future.
- f. The City will provide copies of the annual rate setting to the Contract User by November of each year or when the City approves the following year's budget. The Contract User shall have reasonable access to the books and records of the WWTS.
- g. The Contract User shall have thirty (30) days from receipt of the rate setting results to review and provide written comments to the City on the proposed rates for the following year and their calculation. The parties shall utilize the remedies provided in Article IV to address any disputes as to the proposed rates or their calculation.
- h. If a dispute regarding the proposed rates cannot be resolved by February 1 of the following year, the current year's rates shall continue in effect until the dispute has been resolved in accordance with Article IV of this Agreement. If the resolved rates for the following year differ from the current year's rates, the party that overpaid according to the resolved rates is entitled to reimbursement from the party that underpaid within sixty (60) days after a final determination on the rates has been made.

D. Financial Reporting

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

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

E. Reporting Requirements

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

the Contract User. If the Contract User disputes the surcharge, the Contract User may pursue the remedies provided in Article IV.

F. Billing and Payment

On or before the fifteenth (15th) day of the month next succeeding completion of the first full month following the effective date of this Agreement, and on or before the fifteenth (15th) day of each month thereafter, the Contract User agrees to provide the City with requisite flow data and sampling results monitored as part of EXHIBIT B for the prior month's usage. Upon receipt of such data, the City shall calculate the charges to the Contract User and shall issue a bill to the Contract User. Such bill shall become due and payable within thirty (30) days from the billing date. Any balance remaining unpaid thirty (30) days from the date issued shall be considered delinquent and accrue a Late Payment fee a detailed in City Ordinance, Section 575.99. If the Contract User disputes a bill from the City, the Contract User may pursue the remedies provided in Article IV.

ARTICLE IV

DISPUTES AND REMEDIES

A. Dispute Resolution

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

B. Request for Clarification

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

C. Negotiation

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

D. Mediation/Arbitration

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

E. Adjudication

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

F. Waiver

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

ARTICLE V
ADDITIONAL CONDITIONS

A. Governing Law

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

B. Term and Termination

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

C. Modification/Amendment of this Agreement

Except as otherwise provided herein, this Agreement shall not be modified, amended, or altered except upon the written agreement of the City and the Contract User, duly executed and adopted by the city council of each municipality. In the event that a party hereto requests to meet regarding a proposed modification or amendment of this Agreement, the request shall be made to the other party in writing and the parties shall thereafter meet at least one time at a mutually agreed upon time and place to discuss the proposed modification or amendment within sixty (60) days of the date of receipt by the

non-requesting party of the written request. The written request shall state the reason for the meeting. The Contract User and the City agree to continue to work cooperatively in development and review of Sewer Use Agreements and Wastewater Services Master Plans as well as the procedures, methods or systems used to administer the provisions of this Agreement, including all exhibits attached hereto, at the request of either party.

D. Modification/Amendment of Ordinances and/or Rules

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

E. No Rights to Third Parties

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

F. Exhibits

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

G. Severability

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

H. Headings and Captions

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

I. Entire Agreement

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

J. Notice

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

If to St. Cloud:
City Administrator
St. Cloud City Hall
1201 7th Street South
St. Cloud, MN 56301-3622

If to Sauk Rapids:
City Administrator
Sauk Rapids City Hall
115 2nd Avenue North
Sauk Rapids, MN 56379

EXHIBIT A – Wastewater Conveyance System (WWCS)

EXHIBIT B – Sampling and Testing Schedule

EXHIBIT C – Pool Capacity Agreement

EXHIBIT D – Cooperative Design and Construction Agreement

EXHIBIT E – Base Capacity Transfer Provisions

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

CITY COUNCIL OF THE
CITY OF ST. CLOUD, MINNESOTA

CITY COUNCIL OF THE
CITY OF SAUK RAPIDS, MINNESOTA

Dave Kleis, Mayor

Kurt Hunstinger, Mayor

ATTEST:

ATTEST:

Seth Kauffman, City Clerk

Dana Furman, City Clerk

CORPORATE SEAL FOR
THE CITY OF ST. CLOUD

CORPORATE SEAL FOR
THE CITY OF CONTRACT USER

EXHIBIT A

OF THE WASTEWATER TREATMENT SYSTEM USE AGREEMENT

WASTEWATER CONVEYANCE SYSTEM

INTRODUCTION

The St. Cloud Sewer Wastewater Conveyance System (WWCS) is owned and maintained by the City of St. Cloud. The Cities of Waite Park, Sauk Rapids, Sartell, St. Joseph, and Foley discharge wastewater from each city's service area into the St. Cloud WWCS. Due to their direct connection to the headworks of the NEWRF, EXHIBIT A is not applicable to the City of St. Augusta.

PURPOSE

The purpose of this EXHIBIT is to define the components of the WWCS and segments of the Sewer Interceptor System (SIS) and outline flow allocations for the WWCS. A revised allocation approach for the WWCS was established and documented in the 2023 Wastewater Conveyance System Allocation Methodology memorandum (Wastewater Conveyance System Allocation Methodology, August 7, 2023, AE2S Nexus).

OPERATION, MAINTENANCE and REPAIR

The City of St. Cloud owns, operates and maintains the St. Cloud WWCS. Operation and maintenance costs are distributed proportionately by each city's capacity allocation. The costs are included in the annual rate review as stated in the Wastewater Treatment System Use Agreement. It is understood and agreed by the Contract User that the charges set forth in Article III of the Wastewater Treatment System (WWTS) Use Agreement do not include unanticipated or emergency capital repairs to the WWCS.

The City shall, in consultation with SCAWAC, develop a regular monitoring and maintenance schedule for the WWCS. The schedule shall, at minimum, require a periodic rotation of inspections of the interceptors, lift stations, force mains and sewer mains that constitute the WWCS. The City shall be responsible for implementation of the schedule and a copy of the schedule shall be provided to the Contract User. The schedule shall be reviewed by SCAWAC at a minimum of every two (2) years, and changes recommended if appropriate.

The parties to this Agreement are responsible for their proportionate share of the costs related to the operating, maintenance and replacement of the WWCS. All costs are distributed proportionately based on the flow capacity allocations as shown in this EXHIBIT.

ST. CLOUD SEWER INTERCEPTOR SYSTEM COMPONENTS

METRO INTERCEPTOR

- **(UPPER METRO and LOWER METRO)**
- **METRO PUMP STATION**
- **METRO FORCEMAINS (30" and 42")**

The locations of the Upper and Lower Metro Interceptor, the Metro Pumpstation and the 30" and 42" Force mains that discharge into the St. Cloud Nutrient, Energy and Water Recovery Facility (NEWRF) located at 525 60th Street South, St. Cloud, MN are illustrated in **Figure 1**.

PAN INTERCEPTOR

- **(UPPER PAN and LOWER PAN)**

The locations of the Upper and Lower Pan Interceptor are illustrated in **Figure 1**.

The Pan Interceptor System is divided at the intersection of Cooper Avenue and Division Street, the sewer upstream of this location is designated the Upper Pan Interceptor and the sewer downstream of this intersection is designated the Lower Pan Interceptor.

TRI-CITY INTERCEPTOR

- **TRI-CITY PUMPSTATION**
- **FORCEMAIN (16") to TRI-CITY INTERCEPTOR**
- **SAUK RIVER CROSSING**

The locations of the Tri-City Interceptor, the Tri-City Pumpstation, Sauk River Crossing and the 16" Force main from the Pumpstation to the Interceptor is illustrated in **Figure 1**.

LINCOLN AVENUE INTERCEPTOR

The Lincoln Avenue Interceptor is divided into ten (10) sections as stated in the 1987 Lincoln Avenue Cooperative Construction Agreement and is illustrated in Figure 1.

INTERCEPTOR TRUNK SYSTEM COMPONENTS

QUEBECOR

The location of the Quebecor Trunk Sewer System is illustrated in **Figure 1**.

38TH AVENUE and 54TH AVENUE SEWER TRUNK SYSTEM

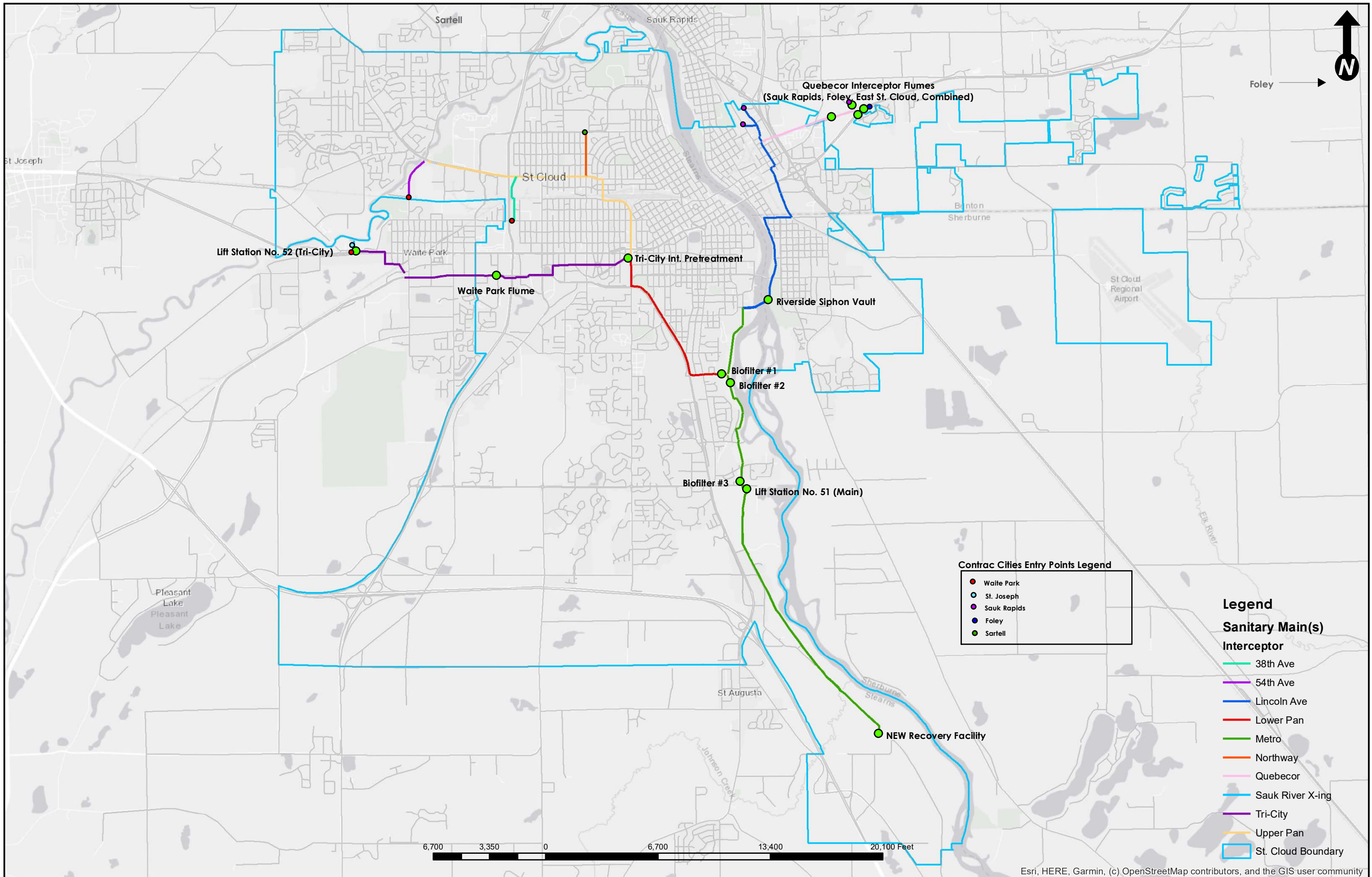
The location of the 38th Avenue and 54th Avenue Sewer Trunk Systems are illustrated in **Figure 1**.

FLOW ALLOCATIONS

All WWCS components will be allocated based on the percentages outlined in the below table. The allocations are based on each Contract City's Base System Capacity as defined in the WWTS Use Agreement and as outlined in the Wastewater Conveyance System Allocation Methodology Memorandum, August 7, 2023, AE2S Nexus.

Community	Base System Capacity (MGD)	WWCS Allocation % (%)
St. Cloud	8.450	52.1%
Sartell	2.885	17.8%
Sauk Rapids	1.735	10.7%
St. Joseph	1.495	9.2%
Waite Park	1.205	7.4%
Foley	0.453	2.8%
Total	16.223	100.00%

Sanitary Interceptor System Overview - 2023



Contrac Cities Entry Points Legend

- Waite Park
- St. Joseph
- Sauk Rapids
- Foley
- Sartell

Legend

Sanitary Main(s)

- 38th Ave
- 54th Ave
- Lincoln Ave
- Lower Pan
- Metro
- Northway
- Quebecor
- Sauk River X-ing
- Tri-City
- Upper Pan
- St. Cloud Boundary

SUMMARY MEMORANDUM

To: Tracy Hodel, Public Services Director
City of St. Cloud, MN

From: Shawn Gaddie, PE - Project Manager
Nicole Jacobi – Lead Analyst

Re: **Wastewater Conveyance System Allocation Methodology**

Date: August 7, 2023

INTRODUCTION

The City of St. Cloud (the City) owns and operates the Nutrient, Energy, & Water Recovery Facility (NEWRF) and the Wastewater Conveyance System (WWCS). The NEWRF and WWCS together comprise the St. Cloud Wastewater Treatment System (WWTS). The City and the cities of St. Augusta, St. Joseph, Sartell, Sauk Rapids and Waite Park (Contract Users) had previously entered into Cooperative Construction Agreements and WWTS Use Agreements that establish wastewater treatment charges, flow allocations and discharge limitations for the WWCS and the NEWRF. The City of Foley entered into a WWTS Use Agreement with the City in July 2021.

The City updated its WWTS Use Agreement in conjunction with the addition of the City of Foley as a Contract User. Considering the significant amount of time passed from original agreements (with some Cooperative Construction agreements dating back over 30 years ago) and associated allocations, the existing Wastewater Conveyance System (WWCS) allocation approach was reviewed for potential modification. Alternative WWCS allocation approaches were analyzed for equitability, potential simplification, and ease of administration. In addition, consideration of a common approach and consistency across all regional assets (i.e. NEWRF and WWCS) was evaluated.

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Re: Wastewater Conveyance System Allocation Methodology

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EXISTING SYSTEM OVERVIEW

WWCS Components

The cities of Waite Park, Sauk Rapids, Sartell, and St. Joseph discharge from each Cities service area into the St. Cloud WWCS (The WWCS is not applicable to St. Augusta due to their dedicated forcemain connection to the NEWRF). The St. Cloud Sewer Interceptor System (SIS) components of the WWCS are outlined below and presented in Figure 1:

- Metro Interceptor
 - Upper Metro Interceptor
 - Lower Metro Interceptor
 - Metro Forcemains
- Pan Interceptor
 - Upper Pan Interceptor
 - Lower Pan Interceptor
- Tri City Interceptor
 - Tri-City Interceptor
 - Tri-City Forcemain
 - Sauk River Crossing
- Lincoln Avenue (Sections 1-10) Interceptor
- Interceptor Trunk System Components
 - Quebecor
 - 38th Avenue
 - 54th Avenue
 - Northway

Currently, each of the SIS components has varying cost allocation factors, depending upon capacity, users, etc. and are primarily based on the final design peak capacity for each system component/segment. Conversely, the cost allocation for the NEWRF outlined in the WWTS Use Agreement is based upon future average daily flow projections. The Discharge limitations and WWCS flow allocations are provided in the most current Sewer Use Agreements and Cooperative Construction Agreements. Specifically, allocation factors can be found in Exhibit A of the current WWTS Use Agreement.

NEWRf Flow Allocations

The total NEWRF treatment capacity is 17.9 MGD as a biological phosphorus (Bio-P) removal facility. The total original Pool Capacity constructed in the WWTF expansion project was 1,350,000 gallons per day (1.35 MGD), with a remaining "Base Capacity" of 16.55 MGD. With the addition of Foley by means of a Pool Capacity transfer to Base Capacity, Pool Capacity was

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reduced to 0.897 MGD and Base Capacity increased to 17.003 MGD. The breakdown of Base Capacity, Pool Capacity, and Total Capacity by Contract User is provided in Table 1.

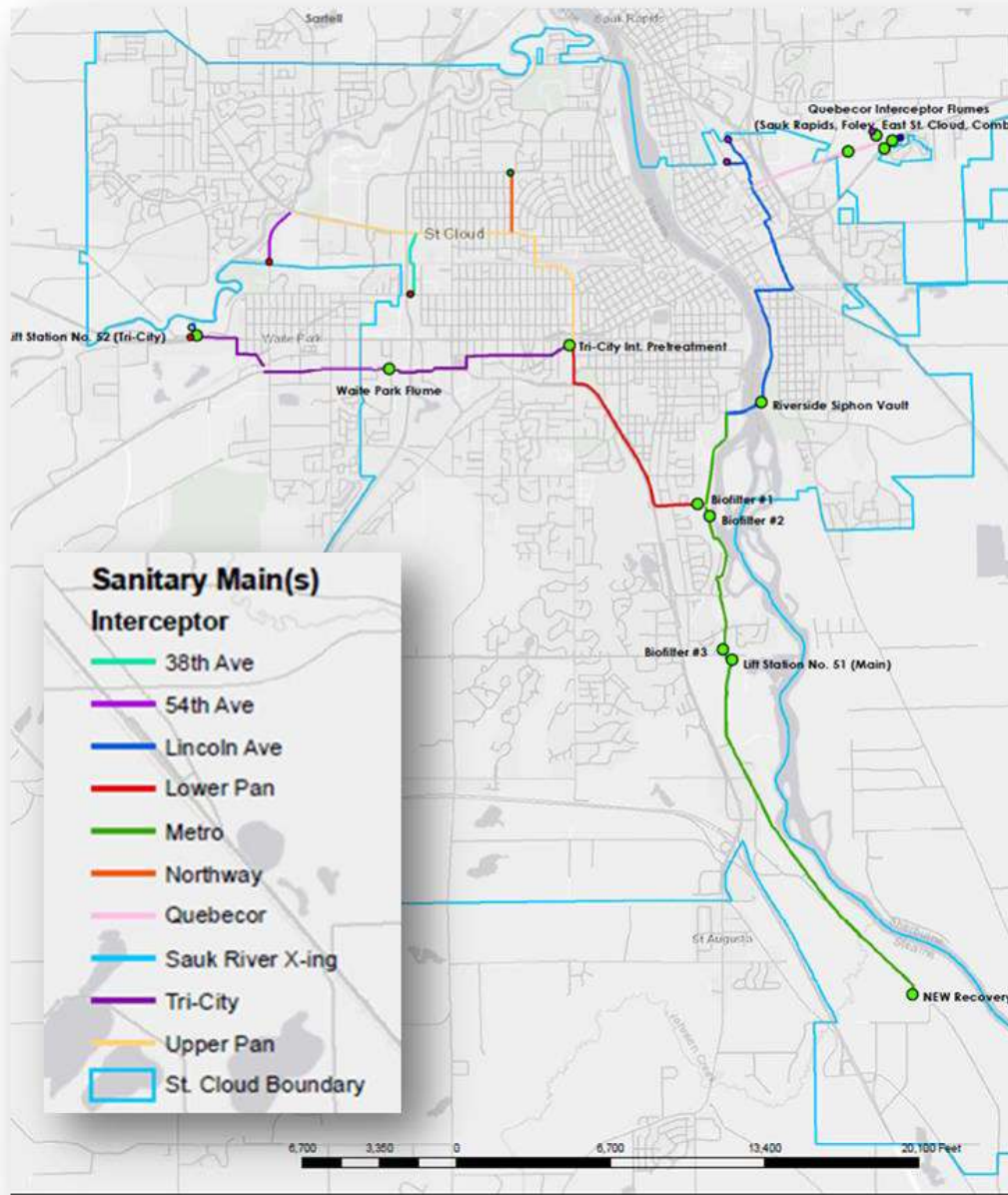


Figure 1: Existing Regional WWCS

Table 1: Flow Allocations

City	Base System Capacity (MGD)	Pool Capacity	Total Capacity
St. Cloud	8.450	0.350	8.80
Sartell	2.885	0.097	2.982
Sauk Rapids	1.735	0.225	1.960
St. Joseph	1.495	-	1.495
Waite Park	1.205	0.225	1.430
St. Augusta	0.780	-	0.780
Foley	0.453	-	0.453
Total	17.003	0.897	17.900

The flow allocations provided above provide the basis for allocation of treatment rehabilitation, upgrade, and expansion (RUE) costs. The original cost allocation methodology is outlined in the 2009 Pool Capacity and Cost Allocation memorandum (Pool Capacity and Cost Allocation, March 4, 2009, Black & Veatch Corporation) and results in the allocation percentages provided in Table 2 (modified for the addition of the City of Foley).

Table 2: Treatment Upgrade, Expansion, and Rehabilitation Cost Allocation

City	Allocation %
St. Cloud	34.47%
Sartell	26.06%
Sauk Rapids	11.99%
St. Joseph	7.65%
Waite Park	7.96%
St. Augusta	6.26%
Foley	5.61%
Total	100%

OVERVIEW OF COMMON ALLOCATION APPROACHES

Common goals for allocation of cost associated with rehabilitation and replacement of regional collection system assets primarily include:

- Ensure allocations use industry accepted methodology.
- Confirm that allocations are equitable and reflective of cost of service.
- Verify that allocations reflect the policies and objectives of system participants.

Outlined below is a summary of the common approaches further evaluated for allocation of the City of St. Cloud WWCS asset costs.

1. **Postage Stamp:** Equitably allocates (i.e. flow based) the entire regional system across all customers, regardless of the location of the customer discharge point to the system (i.e. postage stamp perspective). This approach has the least information needs and is the easiest to administer with a goal of balancing total benefit of regional system use and cost over time. **Results in common allocation factors across all assets.**
2. **Sub-Regional Segregation:** System is divided based on technical cost of service variables (i.e. facilities used, inch-dia-mi of interceptor maintained by system branch, etc.) then allocated to applicable users based on flow. This approach drives toward more accurate consideration of system usage benefit and cost by location, while simplifying the information needs and administrative demands long-term. **Results in common aggregated allocation factors derived from a detailed evaluation of sub-system asset usage.**
3. **Specific Allocation:** Allocation is based on specific facilities used, specific capacity of each facility, and contributed average and/or peak flows of each user at each location/component. This approach is the most detailed and may be perceived as the most accurate, but also requires the most information and has the greatest administrative demand to maintain accuracy over time. **Results in multiple unique allocation factors for all sub-system assets.**

The methodology and results for calculation of allocation factors under each of these alternative approaches is presented in the following sections.

POSTAGE STAMP

As discussed above, under the Postage Stamp approach, the entire regional system is allocated across all customers, regardless of the location of the customer discharge point to the system. Therefore, the Postage Stamp allocation factors are consistent across all system components/assets. Multiple potential approaches to establishing the basis for these allocation

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Re: Wastewater Conveyance System Allocation Methodology
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factors were discussed with the City throughout the analysis, however, in an effort to maintain consistency with treatment system allocation factors, each applicable Contract Users Base System Capacity (as shown in Table 1 and as included to the WWTS Use Agreement) was used as the basis for Postage Stamp allocation. Resulting Postage Stamp allocation factors are presented in Table 3.

Table 3: Postage Stamp Approach

City	Base System Capacity (MGD)	Allocation Percent
St. Cloud	8.450	52.1%
Sartell	2.885	17.8%
Sauk Rapids	1.735	10.7%
St. Joseph	1.495	9.2%
Waite Park	1.205	7.4%
Foley	0.453	2.8%
Total	16.223	100%

SUB-REGIONAL SEGREGATION

The Sub-Regional Segregation approach calculates total share of each WWCS sub-system for each Contract User by establishing estimated total inch-diameter-miles of pipe used by each Contract User and then allocating the proportional share of each pipeline based on pipe diameter and allocated flows. The steps of this process include:

1. Establish contributing Contract Users for each pipe segment.
2. Establish size/capacity based on end-of-pipe area for each pipeline segment.
3. Distribute size/capacity of each pipeline segment to each Contract user based on proportional share of contributed flows (per base capacity values within the WWTS Use Agreement).
4. Calculate the total inch-diameter-miles of each pipeline segment.
 - a. $\text{Inch-Dia-Miles} = \text{Length of Pipeline in Miles} \times \text{Diameter of Pipeline}$
5. Calculate the proportional share of inch-dia-miles for each pipeline segment attributable to each Contract City based on proportional share of distributed flows from step 3.

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6. Sum the proportional share of inch-dia-miles for all pipeline segments for each Contract City.
7. Establish allocation factors for the WWCS for each Contract City by dividing results of step 6 by the sum of inch-dia-miles for the entire regional WWCS.

The results of step 7 establish common aggregated allocation factors derived from sub-system asset usage for all Contract Cities. The distributed flow in million gallons per day (MGD) and resulting percentage share of flow are shown in Table 4 and Table 5, respectively. Each Contract Cities proportional share of inch-dia-miles for each pipeline segment is shown in Table 6, with the aggregated allocation factors shown at the bottom of Table 6.

Table 4: Allocated WWCS Flow (MGD)

Segment	St. Cloud	Sartell	Sauk Rapids	St. Joseph	Waite Park	Foley
Upper Metro	5.07	-	1.74	-	-	0.45
Lower Metro	8.45	2.89	1.74	1.50	1.21	0.45
Metro FM	8.45	2.89	1.74	1.50	1.21	0.45
Upper Pan	1.99	2.89	-	-	0.74	-
Lower Pan	3.38	2.89	-	1.50	1.21	-
Tri-City Interceptor	1.39	-	-	1.50	0.50	-
Tri-City FM	1.39	-	-	1.50	0.50	-
Sauk River Crossing	0.23	-	-	1.50	-	-
Lincoln Avenue	5.07	-	1.74	-	-	0.45
Quebecor	1.00	-	1.45	-	-	0.45
38th Ave	0.34	-	-	-	0.29	-
54th Ave	0.49	-	-	-	0.42	-
Northway	1.17	2.89	-	-	-	-

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Table 5: Allocated WWCS Percent of Flow

Segment	Inch-Dia-Mi	St. Cloud	Sartell	Sauk Rapids	St. Joseph	Waite Park	Foley
Upper Metro	50.69	69.9%	-	23.9%	-	-	6.2%
Lower Metro	108.02	52.1%	17.8%	10.7%	9.2%	7.4%	2.8%
Metro FM	240.09	52.1%	17.8%	10.7%	9.2%	7.4%	2.8%
Upper Pan	116.19	35.6%	51.7%	-	-	12.7%	-
Lower Pan	116.19	37.7%	32.2%	-	16.7%	13.4%	-
Tri-City Interceptor	8.36	41.1%	-	-	44.3%	14.7%	-
Tri-City FM	8.66	41.1%	-	-	44.3%	14.7%	-
Sauk River Crossing	125.06	13.3%	-	-	86.7%	-	-
Lincoln Avenue	103.43	69.9%	-	23.9%	-	-	6.2%
Quebecor	31.19	34.4%	-	50.0%	-	-	15.6%
38 th Ave	8.36	53.7%	-	-	-	46.3%	-
54 th Ave	9.84	53.7%	-	-	-	46.3%	-
Northway	0.05	28.8%	71.2%	-	-	-	-

Table 6: Distributed Inch-Dia-Mi and Weighted Share of System

Segment	Inch-Dia-Mi	St. Cloud	Sartell	Sauk Rapids	St. Joseph	Waite Park	Foley
Upper Metro	50.69	35.4	-	12.1	-	-	3.2
Lower Metro	108.02	56.3	19.2	11.6	10.0	8.0	3.0
Metro FM	240.09	125.1	42.7	25.7	22.1	17.8	6.7
Upper Pan	116.19	41.4	60.0	-	-	14.8	-
Lower Pan	116.19	43.8	37.4	-	19.4	15.6	-
Tri-City Interceptor	8.36	3.4	-	-	3.7	1.2	-
Tri-City FM	8.66	3.6	-	-	3.8	1.3	-
Sauk River Crossing	125.06	16.6	-	-	108.5	-	-
Lincoln Avenue	103.43	72.3	-	24.7	-	-	6.5
Quebecor	31.19	10.7	-	15.6	-	-	4.9
38 th Ave	8.36	4.5	-	-	-	3.9	-
54 th Ave	9.84	5.3	-	-	-	4.6	-
Northway	0.05			-	-	-	-
Total In-Dia-Mi	942.4	429.6	159.4	93.5	167.5	67.2	25.2
Allocation %		45.59%	16.91%	9.93%	17.77%	7.13%	2.68%

REVISED SPECIFIC ALLOCATION

The Specific Allocation approach is consistent with St. Cloud’s current approach, and therefore is termed “Revised Specific Allocation” for the purpose of this memo. The Revised Specific Allocation approach develops allocation factors based on specific facilities/pipe segments used, specific capacity of each facility/pipe segment, and contributed average and/or peak flows of

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August 7, 2023

each user at each location/component. This results in a unique set of allocation factors for each system component.

Similar to the Sub-Regional Segregation approach, estimated flow for each pipe segment was distributed amongst Contract Users considering contributed users of each segment and each Contract User’s Base System Capacity (Total Capacity less Pool Capacity). Table 4 above presents the distributed flow in MGD (same as Sub-Regional Segregation), with the percent of flow and ultimate allocation factor for each pipe segment restated in Table 7 below.

Table 7: Allocated WWCS Percent of Flow and Revised Specific Allocation Factors

Segment	St. Cloud	Sartell	Sauk Rapids	St. Joseph	Waite Park	Foley
Upper Metro	69.9%	-	23.9%	-	-	6.2%
Lower Metro	52.1%	17.8%	10.7%	9.2%	7.4%	2.8%
Metro FM	52.1%	17.8%	10.7%	9.2%	7.4%	2.8%
Upper Pan	35.6%	51.7%	-	-	12.7%	-
Lower Pan	37.7%	32.2%	-	16.7%	13.4%	-
Tri-City Interceptor	41.1%	-	-	44.3%	14.7%	-
Tri-City FM	41.1%	-	-	44.3%	14.7%	-
Sauk River Crossing	13.3%	-	-	86.7%	-	-
Lincoln Avenue	69.9%	-	23.9%	-	-	6.2%
Quebecor	34.4%	-	50.0%	-	-	15.6%
38 th Ave	53.7%	-	-	-	46.3%	-
54 th Ave	53.7%	-	-	-	46.3%	-
Northway	28.8%	71.2%	-	-	-	-

Summary Memorandum

Re: Wastewater Conveyance System Allocation Methodology

August 7, 2023

CONTRACT CITIES OUTREACH, FEEDBACK, AND PREFERRED ALTERNATIVE

Each of the outlined approaches is considered consistent with industry best practice. When selecting a preferred alternative, prioritization of goals and objectives for migrating to an alternative approach should be considered, including:

- Equitability
- Consistency
- Simplification
- Ease of administration
- Balance of benefit over time

The outlined approaches (Postage Stamp, Sub-Regional Segregation, and Revised Specific Allocation) were discussed in detail during a review meeting with participating Contract Cities. The information presented in this meeting is attached to this memo as Exhibit 1. Based on the information provided in that meeting and select additional follow-up communications, feedback was solicited from each Contract City regarding its preferred alternative allocation approach.

Based on feedback received from each Contract City, the consensus was to proceed with the Postage Stamp approach. The primary reasons for selecting this approach is the benefits offered as follows:

- Minimizes information needs relative to current and other alternative approaches.
- Provides the least complicated administration of process.
- Expected to achieve the goal of balancing total benefit of regional system use and cost over time, while still being recognized as an industry accepted methodology.
- Determined to be equitable and reflective of cost of service.

The final recommended Postage Stamp WWCS allocation factors are presented in Table 8.

Table 8: Preferred Alternative WWCS Allocation Factors – Postage Stamp

City	Base System Capacity (MGD)	Allocation Percent
St. Cloud	8.450	52.1%
Sartell	2.885	17.8%
Sauk Rapids	1.735	10.7%
St. Joseph	1.495	9.2%
Waite Park	1.205	7.4%
Foley	0.453	2.8%
Total	16.223	100%

EXHIBIT B

OF THE WASTEWATER TREATMENT SYSTEM USE AGREEMENT

Flow Monitoring, Sampling and Testing Schedule

Sampling Frequency	Parameters to be Analyzed	Reporting
Daily	Flow (at all discharge points)	Monthly <i>(by 15th day of following month)</i>
Twice Monthly ¹	cBOD ₅ - Carbonaceous Biochemical Oxygen Demand TSS - Total Suspended Solids pH - (grab sample)	Monthly <i>(by 15th day of following month)</i>
Monthly	TP - Total Phosphorus O&G - Oil & Grease (grab sample or composite sample) ² Sulfide - total sulfide	
Bi-Annually	Flowmeter Verification/Calibration	Bi-Annually
Bi-Annually	Mercury (Total & Dissolved) ³	Bi-Annually

1. Samples shall be collected on two non-consecutive 24 hour days on two non-consecutive weeks each month. The City may require one sample per quarter be collected from a period consisting primarily of a Saturday or Sunday.
2. Composite and Grab samples shall be collected in the manner defined by the latest edition of Standard Methods.
3. Mercury samples shall be collected in two separate quarters.

EXHIBIT C

OF THE WASTEWATER TREATMENT SYSTEM USE AGREEMENT

WWTF POOL CAPACITY

ARTICLE I DEFINITIONS

Pool Capacity (PC): Pool Capacity is the reserve of wastewater treatment capacity to be constructed in the WWTF expansion project, but not to be initially allocated to any of the Contract Users. The total Pool Capacity to be constructed in the WWTF expansion project is 1,350,000 gallons per day (1.35 MGD).

Pool Capacity Unit (PCU): A PCU is a unit of wastewater treatment capacity equal to 25,000 gallons per day (0.025 MGD) of domestic strength wastewater.

Contract Users: Includes all of the parties to this Agreement (i.e. - the cities of St. Cloud, St. Augusta, St. Joseph, Sartell, Sauk Rapids and Waite Park) who are working together cooperatively to provide for the rehabilitation, upgrade and expansion of the St. Cloud Area Wastewater Treatment Facilities (WWTF).

Review Committee: The purpose/role of this committee shall be to review and decide requests to purchase, sell, or reallocate Pool Capacity and to take related actions as necessary to fulfill the terms of this Agreement. This committee shall consist of the following members: The St. Cloud Public Utilities Director or her/his designee, the St. Cloud Public Services Director or her/his designee, a St. Cloud City Council Member, and one representative each to be appointed by the City Councils of St. Augusta, St. Joseph, Sartell, Sauk Rapids and Waite Park. The St. Cloud Public Utilities Director or designee (Director) shall act as chair of the Review Committee. Review Committee proceedings shall be governed by Roberts Rules. A simple majority vote of the full committee (i.e.- five affirmative votes) shall be required for approval of Committee actions.

Wet Weather Period (WWP): A WWP is a time when the total monthly wastewater flow to the WWTF is elevated by ten percent (10%) or more above the average flow rate due to inflow and/or infiltration as determined by the St. Cloud Public Utilities Director and presented to the Review Committee.

ARTICLE II POOL CAPACITY

Initial Responsibility for Payment: Contract Users shall be responsible for the payment of a portion of the initial cost to construct Pool Capacity in accordance with the following table:

TABLE "A"
Initial Responsibility for Payment of Pool Capacity Construction Costs

<u>City</u>	**Initial Share of Pool Capacity Costs**		
	<u>Gals./day</u>	<u>PCU's</u>	<u>Percent</u>
St. Cloud	350,000	14	25.92%
Sartell	225,000	9	16.67%
Sauk Rapids	225,000	9	16.67%
St. Joseph	225,000	9	16.67%
Waite Park	225,000	9	16.67%
St. Augusta	<u>100,000</u>	<u>4</u>	<u>7.40%</u>
Total:	1,350,000	54	100.00%

The payments to be made by each Contract User for its proportionate share of Pool Capacity are included in the overall payments for expansion and rehabilitation of the WWTF as provided elsewhere in this Agreement.

Value of Pool Capacity Units: The cost/value of each PCU shall be based on the actual bid prices and construction costs for the WWTF Rehab, Upgrade and Expansion (RUE). In addition to the RUE, any applicable additions to treatment facility capital value (i.e. future improvement or expansion projects) that benefit the Contract User will be valued as a cost per PCU to be considered in addition to the RUE. The value of the PCU shall be formally set by the Review Committee following receipt of bids and construction of each applicable treatment facility project. The PCU value for each applicable project thusly set by the Review Committee shall be known as the "Initial PCU Value". The Initial PCU Value for the WWTF RUE had been determined at \$135,073.343 in 2010 dollars. The PCU value will be adjusted on January 15th of each year by application of the below formula. The adjustment formula shall be applied separately to each Initial PCU Value for each applicable project.

Adjusted PCU Value = Initial PCU Value multiplied by the ratio of the Engineering News Record (ENR) Construction Cost Index at the time of adjustment divided by the ENR Construction Cost Index at the time of construction.

Adjusted PCU Value = Initial PCU Value x (ENR2 / ENR1)

Where ENR1 = ENR Minneapolis Construction Cost Index, General Purpose, at time of construction

and ENR 2 = ENR Minneapolis Construction Cost Index, General Purpose, at time of adjustment

Qualifying Criteria to Apply for Pool Capacity: A Contract User may, under any of the following circumstances, make application to purchase Pool Capacity:

1. *Ordinary Growth* - In the event that a Contract User's monthly average flow during any period of six consecutive months, exclusive of WWP periods, exceeds 90% of the Contract User's allocated capacity.
2. *Annexation of Existing Developed Areas* - In the event that a Contract User is about to enter an annexation agreement that involves the provision of wastewater collection services to an existing developed area and the resultant increase in wastewater flow is expected to cause the Contract User's monthly average flow to exceed 90% of that Contract User's allocated capacity within the subsequent 24-month period. This provision does not apply to orderly annexation areas that exist as of the date of this Agreement.
3. *Pending Commercial or Industrial Development* - In the event that a Contract User is about to enter an agreement that involves the provision of wastewater collection services to a proposed significant commercial or industrial development and the resultant wastewater flow increase is expected to cause the City's monthly average flow to exceed 90% of that Contract User's allocated capacity within the subsequent 24-month period.

Sale of Pool Capacity to New Contract User: If the City of St. Cloud receives a request from an entity that is not currently a Contract User to receive conveyance and treatment of wastewater, Pool Capacity may be sold by any one, or a combination of, existing Contract User(s) to meet the capacity request of the potential new Contract User. Pool Capacity for each Contract User choosing to sell will be reduced by the amount of each Contract User's respective sale amount, reducing total Pool Capacity available in reserve. Determination of selling Contract Users will be based on Contract User's desire to sell, in consideration of desire to sell of all Contract Users. Contract Users with a desire to sell agree to offer a sale amount and convene in the interest of determining the sale distribution amongst willing sellers. If a sale distribution cannot be agreed upon, and if the quantity of PCUs desired to be sold from all Contract Users exceeds the total purchase request, the sale will be proportioned amongst all selling Contract Users based on existing PCU units available.

Submission of Applications:

1. Applications to purchase Pool Capacity Units must be made in writing and submitted to the Director of Public Utilities for the City of St. Cloud (Director). Applications shall include background and supporting information as necessary to allow for the fair evaluation of the Application, or as requested by the Director or the Review Committee.
2. PCU requests shall be in units rounded to the nearest hundredth. Multiple PCU allocations may be requested/considered, however, if necessary to meet near term needs of existing developed areas that are in the process of being annexed and/or the needs of pending commercial or industrial development areas.
3. Applications for Pool Capacity will not be accepted unless PC is available. If PC is not available, qualifying Contract User's may apply for Lease Capacity, if available, as provided under another section of this Agreement.

Consideration of Applications:

1. The Director shall, within 30 days of receipt, convene a meeting of the Review Committee to consider applications for Pool Capacity. This will include a review of available PCUs, existing capacity utilization, determination of willing sellers, and distribution of sale amounts amongst willing sellers. The applicant will be invited to the Review Committee meeting to present information and answer questions.
2. If the Review Committee finds that an Application meets the qualifying criteria set forth herein, and the cumulative amount of this and all previous PCU's requested for purchase by the applicant is less than or equal to that it's initial cost share of PCU's as shown in Table "A", then the Review Committee shall approve the Application without additional payment.
3. If the Review Committee finds that an Application is consistent with the terms of this Agreement, but the cumulative amount of this and all previous PCU's requested for purchase by the applicant exceeds that it's initial cost share of PCU's as shown in Table "A", then the Review Committee shall approve the Application subject to the payment of the amount indicated in the "Payment" section below.
4. If an Application is approved, PC will ordinarily be allocated in units rounded to the nearest hundredth. If the Review Committee approves only a portion of such request, it shall be in units rounded to the nearest hundredth and accompanied by a written statement stating the reasons for such action.
5. If the Review Committee finds that an Application does not meet the qualifying criteria or does not otherwise comply with the terms of this Agreement, then the Committee shall deny the request. In this event the Review Committee shall prepare a written statement indicating the reasons for the denial.

PCU Payment, Debt Service Redistribution, and Reimbursement Methodology

An applicant shall be required to make payment for PCU requests in the form of an **Upfront Payment** as well as participation in remaining debt service. The value of the **Upfront Payment** will be dependent upon applicable project debt principal paid down at the time of the sale versus debt principal remaining on each underlying project component of the established PCU value. Selling Contract Users will be reimbursed based on the percentage of the sale applicable to each Contract User less any outstanding debt service to be offset by purchasing Contract User's new debt allocation percent. A PCU purchase request will involve determining the **Upfront Payment** for the purchasing Contract User, redistributing any remaining debt service based on revised debt service allocations due to redistribution of PCU units, and calculating reimbursements for selling Contract Users. The steps for determining each of these components are outlined below with an example calculation included in Attachment A.

Upfront Payment Calculation for Purchasing Contract User

Steps for calculation of the **Upfront Payment** are as follows:

1. Determine **Value of Sale**: **Value of Sale** will be equal to approved number of PCU units being sold multiplied by the value of each PCU, defined herein.
2. Recalculate Debt Service Allocation Percentages: Existing Debt Service allocation percentages will be revised using cost allocation methodology within the existing contract user agreements, considering reallocation of PCU units due to purchase request. The original cost allocation methodology is outlined in the 2009 Pool Capacity and Cost Allocation memorandum (*Pool Capacity and Cost Allocation, March 4, 2009, Black & Veatch Corporation*) included as Attachment B.
3. Determine **Change in Debt Allocation Percent** for Purchasing Contract User: **Change in Debt Allocation Percent** equals **New Debt Allocation Percent** less **Existing Debt Allocation Percent**.
4. Identify **Outstanding Principal**: **Outstanding Principal** equals principal remaining on applicable debt service as of date of sale.
5. Determine **Change in Debt Allocation Value** for Purchasing Contract User: Purchasing Contract User's **Change in Debt Allocation Value** is equal to **Change in Debt Allocation Percent** multiplied by **Outstanding Principal**.
6. Determine **Upfront Payment**: **Upfront Payment** is equal to **Value of Sale** less **Change in Debt Allocation Value** for purchasing Contract User.

Debt Service Redistribution

The recalculated debt service allocation percentages for the WWTF RUE as well as recalculated debt service allocation for any applicable additions to treatment facility PCU value will be used to redistribute remaining debt service payments for each project component.

Reimbursements for Selling Contract User

The **Contract User Reimbursements** are a distribution of the **Total Upfront Payment**. Steps for calculation of **Contract User Reimbursements** are as follows:

1. Calculate Reimbursements for Selling Contract Users without Debt Outstanding: For Selling Contract Users without debt outstanding (i.e. project cost share was prepaid), Contract User Reimbursement equals PCU Value multiplied by PCUs sold.
2. Calculate Reimbursements for Selling Contract Users with Debt Outstanding: For Selling Contract Users with debt outstanding, Contract User Reimbursement equals Total Upfront Payment less reimbursements calculated under Step 1, multiplied by proportion of remaining PCUs sold, excluding PCUs accounted for in Step 1.

Payment Timing: The amount required herein shall be paid in full within 60 days of the date of approval by the Review Committee. Payment shall be made to the City of St. Cloud Public Utilities for reimbursement to selling Contract Users. If payment is not received within the time specified, the Review Committee's action to allocate PCU to the applicant shall be considered

null and void. If applicant cannot meet specified timeline, a written request to adjust the payment timing can be submitted to the Review Committee for consideration.

Capacity Report: The Director shall annually provide a written report to the Contract Users summarizing the wastewater flow rates, allocated WWTF capacity, and allocated Pool Capacity for each Contract User, and the status of the Pool Capacity reserve.

ARTICLE III LEASE CAPACITY

Application for Lease Capacity: If a Contract User meets the qualifying criteria to apply for Pool Capacity, but all 54 PCU's have been allocated, then that Contract User may make application to lease Unused Capacity, if available.

Unused Capacity: In the event that a Contract User makes application to lease Unused Capacity from other Contract Users, then the Review Committee shall review the existing flow rates for all Contract Users. If at that time the Review Committee finds that the average flow for any Contract User during any period of six consecutive months, exclusive of WWP periods, is less than 90% of that Contract User's allocated capacity, then the Review Committee may declare a portion of that Contract User's allocated capacity to be Unused Capacity

The maximum amount of a City's allocated capacity that may be declared to be Unused Capacity shall be determined by multiplying a City's total allocated capacity by ninety percent (90%) and then subtracting that City's average monthly flow during the preceding six consecutive month period exclusive of WWP periods, and then rounding PCU's to the nearest hundredth.

Unused Capacity will be removed from the City's allocated capacity until additional plant capacity is made available by expansion or other means and shall be assigned to the Unused Capacity Pool as described below. Unused capacity will be returned to a City when additional plant capacity is made available to all lease holders.

A City may opt not to allow the reassignment of any portion of its allocated capacity to the Unused Capacity Pool, however, in this event, that City shall agree to work proactively with the other Contract Users in good faith to expand the capacity of the WWTF.

Unused Capacity Pool: The Unused Capacity thusly determined from all Cities shall be assigned to the Unused Capacity Pool. Unused Capacity may then be subject to the Lease provisions set forth herein if so determined by the Review Committee.

Lease of Unused Capacity:

1. If Unused Capacity from one or more cities has been declared by the Review Committee and a City meets the qualifying criteria to apply for Pool Capacity then that City is eligible to lease Unused Capacity from the Unused Capacity Pool.
2. Unused Capacity will be allocated by the Review Committee in PCU's rounded to the nearest hundredth whenever possible up to the number of PCU's that exceeds the applicant's

demonstrated need according to the qualifying criteria for Pool Capacity. Unused Capacity thusly allocated to an applicant shall also be known as Lease Capacity.

3. If the Review Committee finds that an Application does not meet the qualifying criteria or does not otherwise comply with the terms of this Agreement, then the Committee shall deny the request. In this event the Review Committee shall prepare a written statement indicating the reasons for the denial.

Lease Terms:

1. Once allocated, Lease Capacity shall be assigned to the applicant City until any of the following events occur: a) the WWTF is expanded, b) the Review Committee determines that the applicant no longer needs or qualifies for Lease Capacity, or c) this Agreement is otherwise lawfully terminated.
2. An applicant shall be required to make annual payment in the following amount in consideration for Lease Capacity:

Annual Lease Payment = Number of leased PCU's multiplied by the most recently determined PCU value for each applicable project multiplied by a factor of .05 (5.0%).

Annual Lease Payment = Number of PCU's x Adjusted PCU Value for each applicable project x .050

3. The lease payment shall be made in a lump sum within 30 days of the approval of the lease by the Review Committee, and shall thereafter be paid annually within 30 days of receipt of invoice which will follow after the January 15th PCU value adjustment. The initial lease payment will be pro-rated from the date of approval of the Lease Capacity to the end of the year.
4. Payments shall be made directly to the City of St. Cloud Public Utilities and deposited in the Lease Capacity Account. If payment is not received within the time specified, the Review Committee may take action to revoke the lease.

Distribution of Lease Capacity Account Funds:

The distribution of lease capacity account funds will be made annually. Funds will be distributed to those Cities for which an Unused Capacity determination has been made in proportionate to each Contract User's share of the Total Unused Capacity Pool. Distributions shall be made within 30 days after the Lease Capacity Payments are due.

**ARTICLE IV
DISPUTES AND REMEDIES**

In addition to the remedies provided in this Exhibit and Article IV of Wastewater Treatment System Use Agreement and those normal remedies provided by law for breach of contract, the parties specifically agree that this Agreement may be enforced in a Court of competent jurisdiction by an action to require specific performance.

POOL CAPACITY AGREEMENT – AMENDMENT NO. 1 – SIGNATURE PAGE

CITY OF ST CLOUD

DocuSigned by:
Mayor Dave Kleis
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Mayor

5/4/2021

Date
DocuSigned by:
[Signature]
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City Clerk

5/4/2021

Date

CITY OF WAITE PARK

DocuSigned by:
Mayor Richard E. Miller
716A5938E74D48E...
Mayor

5/4/2021

Date
DocuSigned by:
Karla Vinning - Deputy Clerk
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City Clerk

5/4/2021

Date

CITY OF SARTELL

DocuSigned by:
Ryan Fitzhugh
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Mayor

5/4/2021

Date
DocuSigned by:
Anna Gruber - City Administrator
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City Clerk

5/4/2021

Date

CITY OF ST JOSEPH

DocuSigned by:
Mayor Rick Schultz
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Mayor

5/4/2021

Date
DocuSigned by:
Kayla Klein - City Clerk
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City Clerk

5/4/2021

Date

CITY OF SAUK RAPIDS

[Signature]
Mayor

6-24-2021

Date
DocuSigned by:
Ross Olson - City Administrator
91108E084955439...
City Clerk

5/4/2021

Date

CITY OF ST AUGUSTA

DocuSigned by:
Mayor Michael G Jensen
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Mayor

5/7/2021

Date
DocuSigned by:
Bill McCabe - Administrator
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City Clerk

5/4/2021

Date

**COOPERATIVE DESIGN AND CONSTRUCTION AGREEMENT
BETWEEN THE CITIES OF ST. AUGUSTA, ST. CLOUD,
ST. JOSEPH, SARTELL, SAUK RAPIDS, AND WAITE PARK**

Relating to:

Participation by St. Augusta, St. Cloud, St. Joseph, Sartell, Sauk Rapids, and Waite Park in the costs to design and construct Phase 1 Rehabilitation, Upgrade and Expansion Improvements at the St. Cloud Wastewater Treatment Facility (WWTF)

THIS AGREEMENT is made and entered into by and between the City of St. Augusta, Minnesota, acting by and through its City Council, hereinafter referred to as "St. Augusta," the City of St. Joseph, Minnesota, acting by and through its City Council, hereinafter referred to as "St. Joseph," the City of Sartell, Minnesota, acting by and through its City Council, hereinafter referred to as "Sartell," the City of Sauk Rapids, Minnesota, acting by and through its City Council, hereinafter referred to as "Sauk Rapids," the City of Waite Park, Minnesota, acting by and through its City Council, hereinafter referred to as "Waite Park," and the City of St. Cloud, Minnesota, acting by and through its City Council, hereinafter referred to as "St. Cloud." The above-named Cities shall hereinafter be collectively referred to as "the parties."

RECITALS

In 2004, representatives of the parties participated in a process to select a consultant to provide professional services related to the expansion and rehabilitation of the St. Cloud Wastewater Treatment Facility (WWTF). At the conclusion of this process the representatives recommended selection of Black & Veatch Corporation (B&V) to provide facilities planning, design, bidding, and construction phase services. The St. Cloud City Council subsequently approved a contract with B&V to provide professional services in conjunction with the facilities planning process.

Following selection of B&V, representatives of the parties participated in a three-year process to develop a Facilities Plan for the upgrade, expansion, and rehabilitation of the WWTF. The completed Facilities Plan has been approved by the parties and has been submitted to the Minnesota Pollution Control Agency for review and approval.

The Facilities Plan provides for the upgrade, expansion and rehabilitation of the WWTF in two phases, with the Phase 1 work to commence after necessary State authorizations are received, tentatively scheduled for 2009 (hereinafter referred to as the "Phase 1 Improvements"), and for Phase 2 work to commence in 2017, or as warranted.

The purpose of this Agreement is to set forth the responsibilities of the parties with respect to implementation of the Phase 1 Improvements to the WWTF, including the cost allocations to be paid by each of the parties and the manner of payment.

The estimated costs of the Phase 1 Improvements, and the distribution of those costs, as set forth in the Facilities Plan, are as follows:

Table 1
Estimated Phase 1 WWTF Improvement Costs

City	Design Cost	Construction Cost	Total Improvement Cost	% of Total
Sartell	\$786,518	\$13,269,883	\$14,056,401	27.64
St. Cloud	\$980,613	\$16,544,619	\$17,525,232	34.47
Sauk Rapids	\$341,032	\$5,753,798	\$6,094,830	11.99
St. Joseph	\$296,972	\$5,010,424	\$5,307,396	10.44
St. Augusta	\$213,274	\$3,598,302	\$3,811,576	7.50
Waite Park	\$226,591	\$3,822,974	\$4,049,565	7.96
TOTALS	\$2,845,000	\$48,000,000	\$50,845,000	100.00

Table 2
Estimated Cost Allocations for the Phase 1 Construction Costs

City	Upgrade ¹ Cost	Expansion ¹ Cost	Rehabilitation ² Cost	Total Construction Cost
Sartell	\$2,420,055	\$8,265,397	\$2,584,432	\$13,269,883
St. Cloud	\$9,231,757	\$0	\$7,312,862	\$16,544,619
Sauk Rapids	\$1,727,039	\$2,397,985	\$1,628,774	\$5,753,798
St. Joseph	\$979,022	\$2,602,069	\$1,429,332	\$5,010,424
St. Augusta	\$418,009	\$2,449,006	\$731,286	\$3,598,302
Waite Park	\$1,155,026	\$1,479,608	\$1,188,340	\$3,822,974
TOTALS	\$15,930,909	\$17,194,066	\$14,875,025	\$48,000,000

¹Costs are based on year 2017 flow projections for each City.

²Costs are based on year 2030 flow projections for each City.

The estimated cost allocations shown in Table 1 and Table 2 are for Phase 1 only and are based on the population and flow projections previously determined by each City as set forth in the Facilities Plan, and on January 2, 2010 mid-point of construction cost estimates.

Facility needs and associated cost allocation methodology will be re-evaluated as necessary for the Phase 2 Expansion Project. It is anticipated that the planning process for Phase 2 will commence in year 2015.

AGREEMENT

It is, therefore, mutually agreed as follows:

ARTICLE I - DESIGN

St. Cloud shall enter into an agreement with B&V to provide professional services in conjunction with the design of the Phase 1 Improvements at the WWTF as identified under the Facilities Plan process as previously adopted and approved by the parties. St. Cloud shall perform all acts and functions necessary to cause said design work to be completed in a timely and satisfactory manner in accordance with local and State MPCA requirements, and the parties' timetable for completion of the Phase 1 Improvements. It is anticipated that the design phase work will commence in January 2008, and will be completed by December 31, 2008.

Prior to the commencement of design phase work, all parties shall deposit with the City of St. Cloud an amount equal to their respective estimated cost shares for design phase work as shown in Table 1 for the Phase 1 Improvements. St. Cloud shall deposit such funds in an interest bearing account (Design Phase Account). St. Cloud shall pay all design phase costs from this account. Upon completion of the design phase work St. Cloud shall prepare a final tabulation of design phase costs and cost-shares based on the actual design phase costs incurred. If the amount of funds including accrued interest is found to be in excess of the final design phase costs, then St. Cloud shall distribute the surplus funds to the parties in proportion to each parties contributions to the Design Phase Account. If the amount of funds, including accrued interest, is found to be less than the final design phase costs, then St. Cloud shall invoice the parties for their respective proportionate share of the shortfall. In this event, the parties agree to pay their proportionate share of the shortfall to St. Cloud within 30 days of receipt of the invoice. The estimated cost of the design phase work for the Phase 1 Improvements at the WWTF is \$2,845,000. St. Cloud shall enter into an agreement with B&V which contains a not to exceed clause for the design phase consistent with the foregoing estimate.

Concurrently with the design phase work, St. Cloud shall prepare new Sewer Use Agreements (SUA) to replace the SUAs and Addenda that currently exist between St. Cloud and the other parties. The new SUAs are subject to individual review, negotiation, and approval by each of the parties. A city reviewing a draft new SUA shall be responsible for the city's cost of review and negotiation, including each city's respective individual costs for legal counsel. The new SUAs, subject to negotiation, may incorporate all or portions of the provisions of the existing SUAs and Addenda, and may include new conditions as negotiated with the individual city participants or as required by current State and Federal regulations. The new SUAs shall include, subject to review and negotiation, all or portions of the draft Pool Capacity provisions previously developed by the St. Cloud Wastewater Advisory Commission (SCAWAC). In developing the new SUAs, the parties shall consider and may include provisions based upon the Facility Plan dated May 2006 for the WWTF. When completed, the new SUAs shall be submitted to the parties individually for review and approval by the respective City Councils of the parties. The new SUAs shall be fully approved by all parties to this agreement and executed before award of the construction contract as described in Article II below. The parties shall not unreasonably withhold approval of the new SUAs.

ARTICLE II - CONSTRUCTION BY ST. CLOUD

Following completion and approval of the design phase work, receipt of all necessary local (i.e. SUAs) and state authorizations and permits, including authorization from the MPCA, and the approval of new SUAs with each individual city participant, St. Cloud intends to let a contract for construction of the Phase 1 Improvements.

St. Cloud is willing to finance the cost of construction of the Phase 1 Improvements under the terms and conditions set forth hereinafter.

St. Cloud shall, in conjunction with the award and administration of the construction and engineering contracts for the WWTF Phase 1 Improvements, do and perform the following:

(Item 1A) Duly advertise, receive bids, tabulate bid results and prepare a recommendation to award the contract to the lowest responsible bidder.

(Item 1B) Distribute the bid results and the recommendation to award the contract to all parties for review and approval.

(Item 1C) The parties shall be asked to demonstrate concurrence with the decision to award the contract through adoption of appropriate "Resolutions of Support" by their respective City Councils. The parties shall not unreasonably withhold such approval.

(Item 1D) After approval by all parties, St. Cloud shall award the contract.

(Item 2) Direct and cause the supervision and inspection of all construction and engineering functions necessary for the satisfactory construction of said Phase 1 Improvements; and

(Item 3) Make such changes in plans or in the character of the work for said Phase 1 Improvements which are reasonably necessary to cause said Improvements to be in all things performed and completed in a satisfactory manner, in accordance with MPCA standards and other applicable codes and regulations, and to that end enter into any change orders or supplemental agreements for the performance of any extra work or work occasioned by any necessary, advantageous or desirable changes in plans. However, SCAWAC will establish during the design phase of the project a Wastewater Treatment Facility Project subcommittee whose purpose is to facilitate project communication and develop procedures for providing comments and recommendations on change orders; and

(Item 4) Do and perform all other acts and functions necessary to cause said Phase 1 Improvements to be completed in a satisfactory manner in accordance with MPCA requirements and other applicable codes and regulations.

ARTICLE III- FUNDING OF CONSTRUCTION COSTS

St. Cloud agrees to finance the cost of the Phase 1 construction improvements under the following terms and conditions:

(Item 1) Each party shall be responsible for its proportionate share of costs related to the construction of the Phase 1 Improvements including construction engineering, testing, inspection and the cost of any change orders or supplemental agreements which may be necessary to complete the construction and also including the cost of any settlements of claims made with St. Cloud's contractors in connection with such construction.

(Item2) The estimate of Phase 1 construction costs and cost allocations, as shown in Table 1, shall be updated following completion of the design phase work and again following receipt of construction bids. A final schedule of construction costs and cost allocations will be prepared following completion of construction.

(Item 3) *Prepay Option* - Each party shall be given an opportunity to pre-pay all or a portion of its estimated cost share. Parties who intend to pursue this option shall notify St. Cloud of their intentions, including the dollar amount that they intend to prepay, at least 90 days prior to the date that construction funding is scheduled to be put in place. Pre-pay amounts shall be due and payable to St. Cloud on the same date that the construction bond is scheduled to be sold and/or construction loan is scheduled to be established.

(Item 4) St. Cloud agrees to secure construction phase funding for Phase 1 construction needs, less any prepay amounts received from the parties. Towards this end St. Cloud shall pursue financing via a below-market rate loan under the revolving fund program for public wastewater facilities administered by the Minnesota Public Facilities Authority (PFA) together with the Minnesota Pollution Control Agency (MPCA). St. Cloud shall use said revolving loan fund to the extent that it may be available and advantageous. St. Cloud shall pursue and apply, to the extent available, any grant dollars available from the state and federal governments for projects of this nature. Any low-interest loans of grants received shall be offered to each party in the same proportion as each party's total phase one construction cost. The parties acknowledge and agree that this grant and loan sharing formula shall apply even if one or more grants or loans are designated exclusively for a particular category of cost (e.g. upgrade cost, expansion cost, or rehabilitation cost). St. Cloud shall issue a Utility Revenue Bond to finance any costs not covered by the revolving loan and grant dollars. Debt service on construction funding shall be structured over a 20-year period.

(Item 5) *Debt Service Payments* - Each party shall be responsible for the repayment of its proportionate share of construction phase funding to be secured by St. Cloud, including a proportionate share of bond issuance costs, finance fees and expenses and net interest costs. Debt service payments to St. Cloud shall be made in semi-annual installments over a 20-year period. St. Cloud shall calculate and distribute a schedule of payments at the time that the construction phase funding is put in place. This schedule may be revised upon completion of construction if necessary to account for differences, if any, between the estimated and final schedule of construction phase costs and debt.

(Item 6) *Acceptance* - After approval by all parties of the construction contract, it is understood and agreed that the aforesaid computation and determination of the amount due from the parties for construction of the Phase 1 Improvements shall be final, binding and conclusive. It is further agreed that the acceptance by St. Cloud of the completed construction work shall be final, binding and conclusive upon the parties as to the satisfactory completion of said work.

ARTICLE IV – GENERAL PROVISIONS

Section A. Governing Law

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

Section B. Disputes and Remedies

The parties agree as follows:

- a. Negotiation. When a disagreement over interpretation of any provision of this Agreement shall arise, the parties in dispute will direct staff members, as they deem appropriate, to meet at least one (1) time at a mutually convenient time and place to attempt to resolve the dispute through negotiation.
- b. Mediation/Arbitration. When the parties to this Agreement are unable to resolve disputes, claims or counterclaims, or are unable to negotiate an interpretation of any provision of this Agreement, the parties hereto may mutually agree in writing to seek relief by submitting their respective grievances to mediation and/or binding arbitration.
- c. Adjudication. When the parties to this Agreement are unable to resolve disputes, claims or counterclaims, are unable to negotiate an interpretation of any provision of this Agreement or are unable to agree to submit their respective grievances to mediation or binding arbitration, or such action has not otherwise resolved the matter in dispute, either party to the dispute may seek relief through initiation of an action in a court of competent jurisdiction. In addition to the remedies provided for in this Agreement and any other available remedies at law or equity, in the case of a violation, default, or breach of any provision of this Agreement, the non-violating, non-defaulting, or non-breaching party may bring an action for specific performance to compel the performance of this Agreement in accordance with its terms.

Section C. Modification/Amendment

This Agreement shall not be modified, amended, or altered except in writing duly executed and adopted based upon the resolution of the participating city councils.

Section D. Severability

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

Section E. Headings and Captions

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

Section F. Scope of Agreement

The terms, covenants, conditions and provisions of this Agreement do not constitute the entire agreement between the parties as they remain subject to subsequent approvals of the parties with respect to new SUAs and the award of a construction contract for the Phase 1 Improvements.

Section G. Agreement Approval

Before this Agreement shall become binding and effective, it shall be approved by resolution of the City Councils of each of the parties.

Section H. Termination

This Agreement shall be of indefinite term. It shall be terminated only by the mutual consent of the parties given in writing.

IN TESTIMONY WHEREOF, the parties have duly executed this Agreement by their duly authorized officers and caused their respective seals to be hereunto affixed.

(City Seal)



CITY OF ST. AUGUSTA

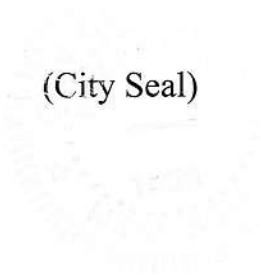
By: B. J. Kroll
Mayor

Date: 4/19/08

By: William R. McLoe
City Clerk

Date: 4/19/08

(City Seal)



CITY OF ST. CLOUD

By: Dan Klein
Mayor

Date: 5-8-08

By: Steph G. Gurd
City Clerk

Date: 5-8-08

(City Seal)



CITY OF ST. JOSEPH

By: Alan Kasper
Mayor


Date: 4-27-08

By: Judy Weyens
City Clerk

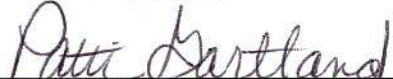
Date: 4-19-08

(City Seal)

CITY OF SARTELL

By: 
Mayor

Date: 4-21-08

By: 
City Clerk

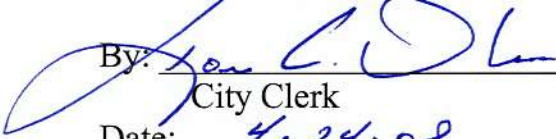
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(City Seal)

CITY OF SAUK RAPIDS

By: 
Mayor

Date: 4-24-08

By: 
City Clerk

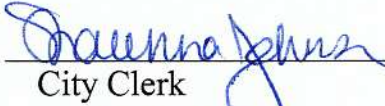
Date: 4-24-08

(City Seal)

CITY OF WAITE PARK

By: 
Mayor

Date: 4-16-08

By: 
City Clerk

Date: 4-16-08

EXHIBIT E

OF THE WASTEWATER TREATMENT SYSTEM USE AGREEMENT

BASE CAPACITY TRANSFER PROVISIONS

When Pool Capacity, as outlined in Exhibit C, is unavailable from another Contract User, a Contract User in need of additional capacity may make application to purchase Base Capacity from a Contract User with excess Base Capacity as determined from the most recently adopted WWTS flow projections (see *WWTS Flow Projections, March 25, 2022, AE2S, Inc.* included as Attachment A).

Value of Base Capacity: The cost/value of Base Capacity (“Base Capacity Value”) shall be based on the actual bid prices and construction costs for the WWTF Rehab, Upgrade and Expansion (RUE). In addition to the RUE, any applicable additions to treatment facility capital value (i.e. future improvement or expansion projects) that benefit the Project Partners will be valued as a cost per MGD to be considered in addition to the RUE. The value of the Base Capacity shall be formally set by the Review Committee following receipt of bids and construction of each applicable treatment facility project. The value per MGD for each applicable project thusly set by the Review Committee shall be known as the “Initial Base Capacity Value”. The Initial Base Capacity Value for the WWTF RUE had been determined as follows (in 2010 dollars):

Project Partner	RUE Initial Base Capacity Value per MGD
St. Cloud	\$1,554,667
Sartell	\$3,756,593
Sauk Rapids	\$2,311,629
St. Augusta	\$3,497,625
St. Joseph	\$2,231,067
Waite Park	\$1,872,903
Foley	\$5,403,157

The Base Capacity Value will be adjusted on January 15th of each year by application of the formula below. The adjustment formula shall be applied separately to each Initial Base Capacity Value for each applicable project.

Adjusted Base Capacity Value = Initial Base Capacity Value multiplied by the ratio of the Engineering News Record (ENR) Construction Cost Index

at the time of adjustment divided by the ENR Construction Cost Index at the time of construction.

Adjusted Base Capacity Value = Initial Base Capacity Value x (ENR2 / ENR1)

Where ENR1 = ENR Minneapolis Construction Cost Index, General Purpose, at time of construction

and ENR 2 = ENR Minneapolis Construction Cost Index, General Purpose, at time of adjustment

Qualifying Criteria to Purchase Base Capacity: When Pool Capacity is unavailable from another Contract User, a Contract User in need of additional capacity may, under any of the following circumstances, make application to purchase Base Capacity from a Contract User with excess Base Capacity as determined from the most recently adopted WWTS flow projections:

1. *Realized Ordinary Growth* - In the event that a Contract User's monthly average flow during any period of six consecutive months, exclusive of WWP periods, exceeds 90% of the Contract User's allocated capacity.
2. *Projected Ordinary Growth:* In the event that flow projections are adopted by the City and Contract Users that indicate a Contract User is expected to exceed current available Base or Pool Capacity for the planning period of the flow projections.
3. *Annexation of Existing Developed Areas* - In the event that a Contract User is about to enter an annexation agreement that involves the provision of wastewater collection services to an existing developed area and the resultant increase in wastewater flow is expected to cause the Contract User's monthly average flow to exceed 90% of that Contract User's allocated capacity within the subsequent 24-month period. This provision does not apply to orderly annexation areas that exist as of the date of this Agreement.
4. *Pending Commercial or Industrial Development* - In the event that a Contract User is about to enter an agreement that involves the provision of wastewater collection services to a proposed significant commercial or industrial development and the resultant wastewater flow increase is expected to cause the City's monthly average flow to exceed 90% of that Contract User's allocated capacity within the subsequent 24-month period.

Sale of Base Capacity to New Contract User: If the City of St. Cloud receives a request from an entity that is not currently a Contract User to receive conveyance and treatment of wastewater, Base Capacity may be sold by any one, or a combination of, existing Contract User(s) to meet the capacity request of the potential new Contract User. Base Capacity for each Contract User choosing to sell will be reduced by the amount of each Contract User's respective sale amount. Determination of selling Contract Users will be based on Contract User's desire to sell, in consideration of desire to sell of all Contract Users. Contract Users with a desire to sell agree to offer a sale amount and convene in the interest of determining the sale distribution amongst willing sellers. If a sale distribution cannot be agreed upon, and if the quantity of Base Capacity desired to be sold from all Contract Users exceeds the total purchase request, the sale will be proportioned amongst all selling Contract Users based on excess Base Capacity.

Submission of Applications:

1. Applications to purchase Base Capacity must be made in writing and submitted to the Director of Public Utilities for the City of St. Cloud (Director). Applications shall include background and supporting information as necessary to allow for the fair evaluation of the Application, or as requested by the Director or the Review Committee.
2. Base Capacity requests shall be rounded to the nearest thousand. Multiple Base Capacity allocations may be requested/considered, however, if necessary to meet near term needs of existing developed areas that are in the process of being annexed and/or the needs of pending commercial or industrial development areas.
3. Applications for Base Capacity will not be accepted unless Pool Capacity is unavailable from other Contract Users and a determination of excess Base Capacity has been made by the review committee.

Consideration of Applications:

1. The Director shall, within 30 days of receipt, convene a meeting of the Review Committee to consider applications for Base Capacity. This will include a review of available Base Capacity, existing capacity utilization, determination of willing sellers, and distribution of sale amounts amongst willing sellers. The applicant will be invited to the Review Committee meeting to present information and answer questions.
2. If the Review Committee finds that an Application is consistent with the terms of this Agreement, then the Review Committee shall approve the Application subject to the payment of the amount indicated in the "Payment" section below.
3. If an Application is approved, Base Capacity will ordinarily be allocated in units rounded to the nearest thousand. If the Review Committee approves only a portion of such request,

it shall be in units rounded to the nearest thousand and accompanied by a written statement stating the reasons for such action.

4. If the Review Committee finds that an Application does not meet the qualifying criteria or does not otherwise comply with the terms of this Agreement, then the Committee shall deny the request. In this event the Review Committee shall prepare a written statement indicating the reasons for the denial.

Payment

Base Capacity Payment, Debt Service Redistribution, and Reimbursement Methodology

An applicant shall be required to make payment for Base Capacity requests in the form of an **Upfront Payment** as well as participation in remaining debt service. The value of the **Upfront Payment** will be dependent upon applicable project debt principal paid down at the time of the sale versus debt principal remaining on each underlying project component of the established Adjusted Base Capacity Value. Selling Contract Users will be reimbursed based on the percentage of the sale applicable to each Contract User less any outstanding debt service to be offset by purchasing Contract User's new debt allocation percent. A Base Capacity purchase request will involve determining the **Upfront Payment** for the purchasing Contract User, redistributing any remaining debt service based on revised debt service allocations due to redistribution of Base Capacity, and calculating reimbursements for selling Contract Users. The steps for determining each of these components are outlined below with an example calculation included in Attachment B.

Upfront Payment Calculation for Purchasing Contract User

Steps for calculation of the **Upfront Payment** are as follows:

1. Determine **Value of Sale**: **Value of Sale** will be equal to approved capacity being sold in million gallons per day (MGD) multiplied by the Adjusted Base Capacity Value per MGD for selling Contract User, defined herein. If there are multiple selling Contract Users, a Weighted Adjusted Base Capacity Value per MGD will be calculated.
2. Recalculate Debt Service Allocation Percentages: Existing Debt Service allocation percentages will be revised using cost allocation methodology within the existing Contract User agreements, considering reallocation of Base Capacity due to purchase request. The original cost allocation methodology is outlined in the 2009 Pool Capacity and Cost Allocation memorandum (*Pool Capacity and Cost Allocation, March 4, 2009, Black & Veatch Corporation*) included as Attachment B to Exhibit C of the WWTS Use Agreement.
3. Determine **Change in Debt Allocation Percent** for Purchasing Contract User: **Change in Debt Allocation Percent** equals **New Debt Allocation Percent** less **Existing Debt Allocation Percent**.

4. Identify **Outstanding Principal: Outstanding Principal** equals principal remaining on applicable debt service as of date of sale.
5. Determine **Change in Debt Allocation Value** for Purchasing Contract User: Purchasing Contract User's **Change in Debt Allocation Value** is equal to **Change in Debt Allocation Percent** multiplied by **Outstanding Principal**.
6. Determine **Upfront Payment: Upfront Payment** is equal to **Value of Sale** less **Change in Debt Allocation Value** for purchasing Contract User.

Debt Service Redistribution

The recalculated debt service allocation percentages for the WWTF RUE as well as recalculated debt service allocation for any applicable additions to treatment facility **Base Capacity Value** will be used to redistribute remaining debt service payments for each project component.

Reimbursements for Selling Contract User

The **Contract User Reimbursements** are a distribution of the **Total Upfront Payment**. Steps for calculation of **Contract User Reimbursements** are as follows:

1. Calculate Reimbursements for Selling Contract Users without Debt Outstanding: For Selling Contract Users without debt outstanding (i.e. project cost share was prepaid), Contract User Reimbursement equals Selling User's Adjusted Base Capacity Value multiplied by capacity sold in MGD.
2. Calculate Reimbursements for Selling Contract Users with Debt Outstanding: For Selling Contract Users with debt outstanding, Contract User Reimbursement equals Total Upfront Payment less reimbursements calculated under Step 1, multiplied by proportion of remaining capacity in MGD sold, excluding capacity accounted for in Step 1.

In the event a selling Contract User had any portion of their prior Base Capacity allocation paid for by outside grant funds, an additional calculation shall be performed to determine adjustments to reimbursements for the selling Contract User. The calculation shall also determine the distribution of the benefit of prior grant funds to the City and all other Contract Users from the proceeds of a Base Capacity Sale from a purchasing Contract User.

Payment Timing: The amount required herein shall be paid in full within 60 days of the date of approval by the Review Committee. Payment shall be made to the City of St. Cloud Public Utilities for reimbursement to selling Contract Users. If payment is not received within the time specified, the Review Committee's action to allocate Base Capacity to the applicant shall be considered null and void. If applicant cannot meet specified timeline, a written request to adjust the payment timing can be submitted to the Review Committee for consideration.



TECHNICAL MEMORANDUM

To: Tracy Hodel - Public Services Director
City of St. Cloud, MN

From: Scott Schaefer, P.E.
Shawn Gaddie, P.E.
AE2S

Re: **Flow Projections**

Date: March 25, 2022

INTRODUCTION

The City of St. Cloud (the City) owns and operates the Nutrient, Energy, & Water Recovery Facility (NEWRF) and the Wastewater Conveyance System (WWCS). The NEWRF and WWCS together comprise the St. Cloud Wastewater Treatment System (WWTS). The City and the cities of St. Augusta, St. Joseph, Sartell, Sauk Rapids and Waite Park had previously entered into Cooperative Construction Agreements and WWTS Use Agreements that establish wastewater treatment charges, flow allocations and discharge limitations for the WWCS and the NEWRF. The City of Foley entered into a WWTS Use Agreement with the City in July 2021.

The City is updating its WWTS Use Agreement in conjunction with the addition of the City of Foley as a Contract User. The purpose of this memo is to re-establish flow projections and capacity allocations for all Contract Users to be incorporated into the revised WWTS Use Agreement. In addition, the City is in the process of developing Facilities Plans for Metro Force Main Improvements as well as its Wastewater Energy and Equipment Improvements Project. The City requested from the Contract Users projections of future peak hourly flow projections in consideration of average daily flow projections provided herein for inclusion to these Facilities Plans.

AVERAGE DAILY FLOW PROJECTIONS

Average daily flow projections are being established to determine future capacity utilization of the WWTS, for the City, collectively and for all Contract Users individually. The process and methodology for establishing revised average daily flow projections consisted of:

1. Establishing population forecasts based on historical population growth rates;

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Re: Flow Projections

March 25, 2022 (DRAFT)

2. Calculating historical gallons per capita per day (GPCD);
3. Developing flow projections based on application of GPCD estimates to population forecasts.

The existing permitted capacity of the St. Cloud NEWRF is 17.9 MGD. The Minnesota Pollution Control Agency (MPCA) permits facilities based upon Average Wet Weather Flow (maximum month flow). Existing capacity allocations for each Contract User are presented in Table 1. These allocations reflect capacity allocations after sale of Pool Capacity to the City of Foley. "Pool Capacity" in the context of the Contract User agreements is reserve capacity that has not yet been "purchased" by a Contract User. The methodology and results for establishing revised average daily flow projections is presented herein.

Table 1: Existing Capacity Allocations

Contract User	Current Base Allocated Capacity	Pool Capacity	Total Capacity
St. Cloud	8.45	0.35	8.80
Sartell	2.89	0.10	2.98
Sauk Rapids	1.74	0.23	1.96
St. Joseph	1.50	0.00	1.50
Waite Park	1.21	0.23	1.43
St. Augusta	0.78	0.00	0.78
Foley	0.45	0.00	0.45
Total	17.00	0.90	17.90

Population Forecasts

Historical Population Growth

Historical population and population growth was used as a metric for projecting future population growth. Four historical population growth rates were reviewed, including:

1. 30-Year Growth Rate (1990-2020)
2. 20-Year Growth Rate (2000-2020)
3. 15-Year Growth Rate (2005-2020)
4. St. Cloud Area Planning Organization (APO) Forecastⁱ

ⁱ St. Cloud Area Planning Organization (APO), *St. Cloud APO Regional Transportation Planning Assistance Element 2 -Population Forecast*, 2017

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Re: Flow Projections

March 25, 2022 (DRAFT)

U.S. Census populations were used for 1990, 2000, and 2020 population. Annual estimate data from the U.S. Census Bureau was used for 2005 population estimatesⁱⁱ. Historical Populations are presented in Table 2 with population growth rates for the four scenarios above presented in Table 3. The APO Forecast growth rate is based on the growth rate from the 2020 Census to the 2045 APO projected population for each Contract User.

Table 2: Historical Population

Contract User	Census 1990	Census 2000	Estimated 2005	Census 2010	Census 2020
St. Cloud	48,812	59,108	63,237	65,842	68,881
Sartell	5,393	9,641	13,017	15,876	19,351
Sauk Rapids	7,825	10,213	11,903	12,773	13,862
St. Joseph	3,294	4,681	5,741	6,534	7,029
Waite Park	4,020	6,568	6,644	6,715	8,341
St. Augusta	2,657	3,065	3,011	3,317	3,983
Foley	1,854	2,154	2,451	2,603	2,693
Total	74,855	95,430	106,044	113,660	124,140

Table 3: Population Growth Rates

Contract User	30-Year Growth Rate (1990-2020)	20-Year Growth Rate (2000-2020)	15-Year Growth Rate (2005-2020)	APO Growth Rate Forecast
St. Cloud	1.2%	0.8%	0.6%	0.4%
Sartell	4.4%	3.5%	2.7%	1.7%
Sauk Rapids	1.9%	1.5%	1.0%	0.4%
St. Joseph	2.6%	2.1%	1.4%	0.2%
Waite Park	1.7%	1.2%	1.5%	1.1%
St. Augusta	1.4%	1.3%	1.9%	1.0%
Foley	1.3%	1.1%	0.6%	NA

Selected Population Growth Scenario

Each of the historical growth rates were reviewed with Contract Users and, based on feedback received, varying growth rates were individually selected and ultimately used as the basis for population and flow projections. The selected growth rate scenario for each Contract User is presented in Table 4. The resulting population projections through 2050 for each Contract User are presented in Table 5.

ⁱⁱ U.S. Census Bureau, Population Division, *Annual Estimates of the Resident Population for Incorporated Places in Minnesota*

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Re: Flow Projections

March 25, 2022 (DRAFT)

It should be noted that the City of St. Augusta’s total population is not currently serviced by the City of St. Cloud WWTS, with some households still on private well and septic systems. St. Augusta provided an estimate of 470 connected households out of 1,260 total households. With approximately 37% of households connected, a 2020 service population of 1,486 was estimated as compared to the total 2020 Census population of 3,983. Therefore, in addition to overall population growth, assumptions were developed regarding additional service connections within the existing population. It was assumed that 50% of the remaining 790 households still on private well or septic systems would be connected by 2050. This would equate to 865 connected households out of 1,260 households by 2050. This growth was combined with overall population growth to establish the total service population growth rate for the City of St. Augusta.

Table 4: Selected Growth Rate Scenario

Contract User	Selected Scenario	Annual Growth Rate
St. Cloud	20-Year Growth Rate	0.8%
Sartell	15-Year Growth Rate	2.7%
Sauk Rapids	Consume Base Capacity by 2050 (~20-year Growth Rate)	1.4%
St. Joseph	Between APO and 20-Year Growth Rate (~15-Year Growth Rate)	1.3%
Waite Park	APO Growth Rate	1.1%
St. Augusta	Service Population Considerations + 20 Year Growth Rate	3.9%
Foley	20-Year Growth Rate	1.1%

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Re: Flow Projections

March 25, 2022 (DRAFT)

Table 5: Population Forecast – 2020 to 2050

Contract User	Census 2020	2025	2030	2035	2040	2045	2050
St. Cloud	68,881	71,681	74,594	77,626	80,781	84,605	87,481
Sartell	19,351	22,108	25,259	28,848	32,969	37,667	43,034
Sauk Rapids	13,862	14,844	15,896	17,023	18,229	19,520	20,904
St. Joseph	7,029	7,498	7,998	8,532	9,101	9,708	10,356
Waite Park	8,341	8,810	9,305	9,828	10,381	10,965	11,581
St. Augusta*	1,486	1,910	2,370	2,867	3,405	3,988	4,619
Foley	2,693	2,844	3,004	3,173	3,352	3,540	3,739
Total	121,643	129,696	138,426	147,907	158,218	169,453	181,715

*St. Augusta adjusted to estimated service population

Flow per Capita

Historical 2018 to 2020 Average Daily Flows combined with 2018 to 2020 population estimates were used to calculate gallons per capita per day (GPCD) for St. Cloud, Sartell, Sauk Rapids, St. Joseph and Waite Park. The average of these values was used for future flow projections. St. Augusta's calculated GPCD is based on 2020 average daily flows over an estimated 2020 service population of 1,486. Foley's GPCD was calculated based on a provided average daily flow of 242,000 gallons per day over 2020 Census population of 2,693.

Table 6: Gallons per Capita per Day (GPCD)

Contract User	2018 GPCD	2019 GPCD	2020 GPCD	Average GPCD
St. Cloud	94	106	95	98
Sartell	70	80	70	73
Sauk Rapids	79	87	83	83
St. Joseph	52	51	49	51
Waite Park	97	105	94	99
St. Augusta	NA	NA	54	54
Foley	NA	NA	91	91

Flow Projections

Projected GPCD for each Contract City was applied to the population forecasts in Table 5 to determine flow projections through 2050. The resulting Average Daily Flow Projections for each Contract User are presented in Table 7.

Table 7: Average Daily Flow Projections (MGD)

Contract User	2020	2025	2030	2035	2040	2045	2050
St. Cloud	6.54	7.02	7.31	7.61	7.92	8.24	8.57
Sartell	1.35	1.61	1.84	2.11	2.41	2.75	3.14
Sauk Rapids	1.16	1.23	1.32	1.41	1.51	1.62	1.74
St. Joseph	0.34	0.38	0.41	0.44	0.46	0.50	0.53
Waite Park	0.78	0.87	0.92	0.97	1.03	1.09	1.15
St. Augusta	0.08	0.10	0.13	0.16	0.19	0.22	0.25
Foley	0.24	0.26	0.27	0.29	0.31	0.32	0.34
Total	10.50	11.49	12.21	12.98	13.82	14.73	15.72

Summary

The total projected 2050 average daily flow for all contract users of 15.72 MGD is still under the total WWTS capacity of 17.90 MGD. Projected 2050 flows for each Contract User as compared to current capacity allocation are presented in Table 8. In summary:

- **St. Cloud:** Projected to reach current base capacity between 2045 and 2050, surpassing it by 2050. Total flow still under Total Capacity (with Pool Capacity) by 2050.
- **Sartell:** Projected to reach current base capacity and Total Capacity between 2045 and 2050, surpassing Total Capacity by 2050.
- **Sauk Rapids:** Projected to reach current base capacity by 2050. Total projected flow still under Total Capacity (with Pool Capacity) in 2050.
- **St. Joseph:** Existing Capacity expected to be sufficient through 2050.
- **Waite Park:** Existing capacity expected to be sufficient through 2050.
- **St. Augusta:** Existing capacity expected to be sufficient through 2050.
- **Foley:** Existing capacity expected to be sufficient through 2050.

Table 8: 2050 Average Day Flow Projections versus Current Capacity (MGD)

Contract User	2050	Current Base Capacity	Pool Capacity	Total Capacity
St. Cloud	8.57	8.45	0.35	8.80
Sartell	3.14	2.89	0.10	2.98
Sauk Rapids	1.74	1.74	0.23	1.96
St. Joseph	0.53	1.50	0.00	1.50
Waite Park	1.15	1.21	0.23	1.43
St. Augusta*	0.25	0.78	0.00	0.78
Foley	0.34	0.45	0.00	0.45
Total	15.72	17.00	0.90	17.90

PEAK HOURLY FLOW PROJECTIONS

The City is in the process of developing Facilities Plans for Metro Force Main Improvements as well as its Wastewater Energy and Equipment Improvements Project. The City requested projections of future peak hourly flow projections in consideration of the 2050 average daily flow projections provided herein for inclusion to these Facilities Plans.

A series of data sources were reviewed and analyzed to ultimately develop Peak Hourly flow projections. Data included:

- Historical peak flow events
- SCADA output from three historical storm events
- NOAA radar-derived data
- Diurnal patterns and flow rates from draft Metro Force Main(s) Evaluation Memo by Apex Engineering Group, Inc.ⁱⁱⁱ

ⁱⁱⁱ Apex Engineering Group, *Metro Forcemain(s) Evaluation*, 2021

Technical Memorandum

Re: Flow Projections

March 25, 2022 (DRAFT)

- 2050 average day flow outlined herein

The analysis included a review of historical high flow events and determination of resulting infiltration and inflow (I/I), development of Peak Hourly flow scenarios in consideration of multiple variables, including Base I/I, Future Average Day Flow, Diurnal Flow Factor, and I/I growth to ultimately develop a reasonable estimate of future peak hourly flow.

High Flow Storms

City of St. Cloud staff provided SCADA data from three peak instantaneous flow events, which are summarized in Table 9. SCADA data was used to determine time of peak flows relative to diurnal flow patterns. The rainfall depths and recurrence intervals along with snapshots of the NOAA radar-derived data showing storm total precipitation for these three storms was also reviewed. The 2016 storm was determined to be the most severe out of the three storms reviewed, which had a recurrence interval in the 25-50-year range for that duration (about 2 days). The 2015 storm was about a 5-10-year storm, and the 2019 storm was relatively mild (1-2-year storm).

Based on a review of storm depth and timing of peak flow relative to diurnal system peaking, the 2016 storm was determined to generate the maximum I/I out of the historical storm events reviewed. The 2016 storm was selected as a basis for future peak hourly flow projections. For this storm, an approximation of actual peak flow needed to be made due to SCADA data showing flow surges caused by a defective control panel. The timing of the issue was a coincidence to the significant weather event. Figure 1 shows the flow surges as well as an approximation of more typical peak flow patterns during the significant weather event (shown as red, yellow and green curves on Figure 1). The green curve on Figure 1, with a peak hourly flow for this event of 22 MGD, was selected based on discussions with staff and review of other historical peak flow patterns. Using this curve, I/I was estimated at 18.4 MGD for this event. Note that the peak hourly flow experienced during the July 11, 2016 event was lower due to the peak occurring at a low point in the diurnal flow pattern.

Table 9: Historical Peak Flow Events

Date	Event Type	Peak Flow
7/12/2015	Rain – 1.7 inches	20 MGD
7/11/2016	Rain – 5.3 inches	28 MGD (Corrected to 22 MGD)
6/27/2019	Rain – 2.0inches	23 MGD

Technical Memorandum

Re: Flow Projections

March 25, 2022 (DRAFT)

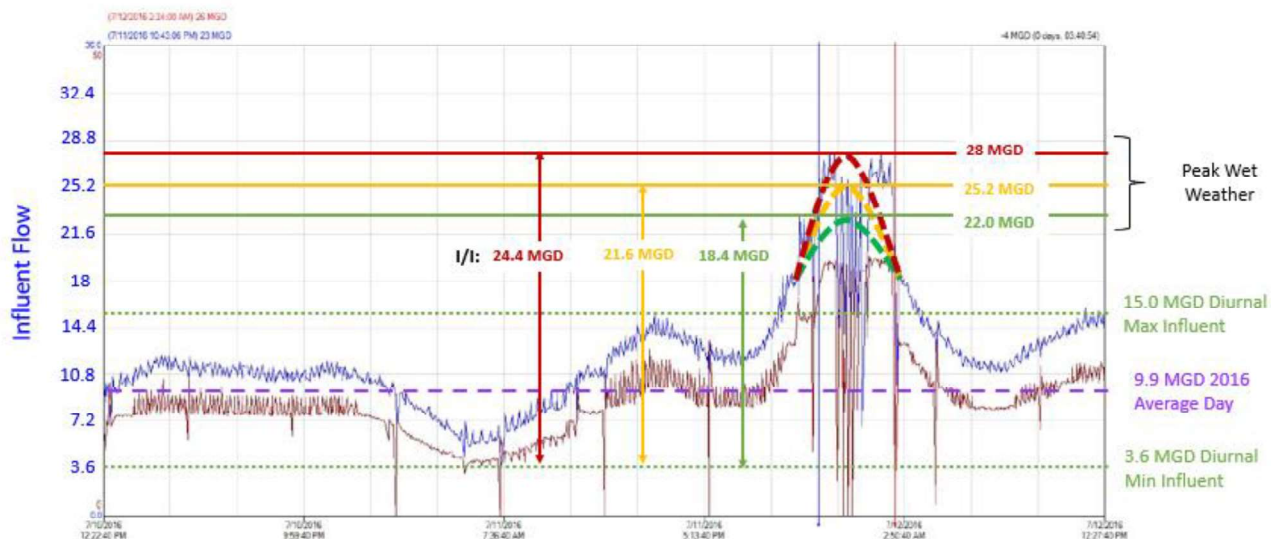


Figure 6 July 11, 2016 Storm Event

Peak Hourly Flow Scenarios

Multiple scenarios were constructed and reviewed with City staff to determine probability and risk of each scenario and to ultimately develop a reasonable estimate of future peak hourly flow. Variables are outlined below and included in Table 10.

- **I/I Growth:** Estimate of future I/I mitigation potential combined with potential increase in I/I as collection system expands to accommodate growth into the future. Analysis considered growth rates ranging from zero percent to projected annual growth in average daily flow (1.3%).
- **Diurnal Flow Factor:** Diurnal flow factors were used to approximate risk of peak I/I simultaneously occurring on top of the diurnal peaks. Based on data reviewed in Apex Engineering Group Metro Force Main Evaluation Memo, a peak dry weather diurnal flow factor over average day flow of 1.6 was used as the maximum. A factor of 1.0 was used on the low end, with 1.3 used as a mid-point diurnal flow factor.
- **Future Average Day Flow:** As discussed herein and shown in Table 7, 2050 average daily flow under the selected scenario is projected at 15.72 MGD. Peak hourly flow was also analyzed under average daily flow at the low end of projections (average daily flow of 13.46 MGD under APO scenario) and the high end of projections (average daily flow of 19.53 MGD under 30-year growth scenario).
- **Base I/I Flow:** All scenarios included the current base I/I of 18.4 MGD as discussed above

The variables in Table 10 were analyzed in several combinations to develop a range of potential peak hourly flow outputs. Based on review of peak flow outputs with staff in conjunction with consideration for current known peaks, I/I reduction potential from future mitigation efforts, and

Technical Memorandum

Re: Flow Projections

March 25, 2022 (DRAFT)

determination for likelihood of coincidental I/I diurnal peaking, the scenario outlined in Table 11 was selected as the recommended future peak hourly flow planning value, resulting in an estimated peak hourly flow of 39 MGD. As shown in Figure 2, the scenarios analyzed resulted in peak hourly flow outputs ranging from 32 MGD on the low end to 60 MGD on the high end, with a current peak hourly flow of 22 MGD.

Table 10: Peak Hourly Flow Scenario Variables

Resultant Peak Hourly Flow Projection	Low	Medium	High
I/I Growth	None (0%)	Half of Average Flow Growth (0.7%)	Average Flow Growth (1.3%)
Diurnal Flow Factor	1.0	1.3	1.6
Future Average Day Flow	APO (13.34 MGD)	Selected Scenario (15.59 MGD)	30-Year (19.58 MGD)
Base I/I Flow	18.4 MGD		

Table 11: Selected Peak Hourly Flow Scenario

Resultant Peak Hourly Flow Projection	39 MGD
I/I Growth	Half of Average Flow Growth (0.7%)
Diurnal Flow Factor	1.0
Future Average Day Flow	Hybrid (15.59 MGD)
Base I/I Flow	18.4 MGD

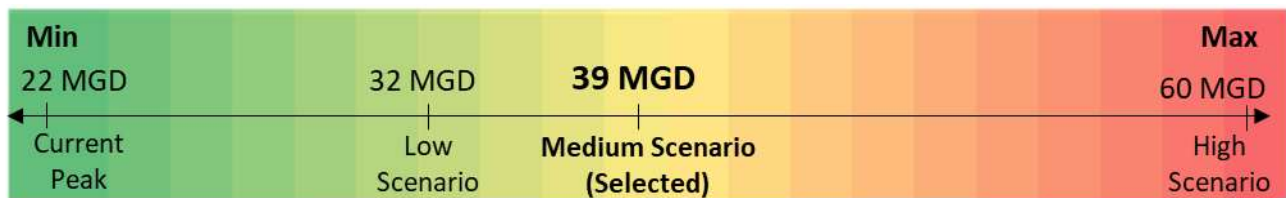


Figure 2 Peak Hourly Flow Scenario Range

**ATTACHMENT B to EXHIBIT E
BASE CAPACITY TRANSFER, DEBT SERVICE REDISTRIBUTION, AND REIMBURSEMENT METHODOLOGY**

Inputs

BASE CAPACITY TRANSFER DETAILS

Sale Overview

Purchasing User - "New" or Existing Contract User Name	St. Cloud
Purchase Amount - MGD	0.120
Purchase Date - Month and Year	December 2023

Sale Distribution

	Existing Base Capacity		Sale Distribution
	Available	Sale - MGD	
St. Cloud	8.450	0.000	0%
Sartell	2.885	0.000	0%
Sauk Rapids	1.735	0.000	0%
St. Augusta*	0.780	0.042	35%
St. Joseph	1.495	0.078	65%
Waite Park	1.205	0.000	0%
Foley	0.453	0.000	0%
Total	17.00	0.120	100%

Sale Value

ENR CCI - Project Cost Year	10,086.5	13,127.9
ENR CCI- Sale Month and Year	14,408.0	14,408.0
Percent Increase	43%	10%

Project Cost Year	RUE		NR2	
	2010		2018	
Value per MGD- Project Cost Year				
St. Cloud	\$ 1,554,667	\$ 631,904		
Sartell	\$ 3,756,593	\$ 1,526,891		
Sauk Rapids	\$ 2,311,629	\$ 939,576		
St. Augusta*	\$ 3,497,625	\$ 1,421,632		
St. Joseph	\$ 2,231,067	\$ 906,832		
Waite Park	\$ 1,872,903	\$ 761,253		
Foley	\$ 5,403,017	\$ 2,196,091		

Value per MGD- Sale Year				
St. Cloud	\$ 2,220,759	\$ 693,519		
Sartell	\$ 5,366,094	\$ 1,675,773		
Sauk Rapids	\$ 3,302,039	\$ 1,031,191		
St. Augusta*	\$ 4,996,172	\$ 1,560,251		
St. Joseph	\$ 3,186,961	\$ 995,254		
Waite Park	\$ 2,675,342	\$ 835,481		
Foley	\$ 7,717,922	\$ 2,410,224		

Selling Users Value per MGD - Project Cost Year				
St. Cloud	\$ -	\$ -		
Sartell	\$ -	\$ -		
Sauk Rapids	\$ -	\$ -		
St. Augusta*	\$ 3,497,625	\$ 1,421,632		
St. Joseph	\$ 2,231,067	\$ 906,832		
Waite Park	\$ -	\$ -		
Foley	\$ -	\$ -		
Weighted Value per MGD - Project Cost Year	\$ 2,674,362	\$ 1,087,012		
Weighted Value per MGD - Sale Year	\$ 3,820,184	\$ 1,193,003		

UPFRONT PAYMENT CALCULATION FOR PURCHASING CONTRACT USER

Step 1: Determine Value of Sale

Value of Sale will be equal to approved capacity sale in MGD units being sold multiplied by the value per MGD.

	RUE		NR2	
	0.120		0.120	
Purchase Amount - MGD				
Weighted Value per MGD - Project Cost Year	\$ 2,674,362	\$ 1,087,012		
Value of Sale - Project Cost Year	\$ 320,923	\$ 130,441		
Weighted Value per MGD - Sale Year	3,820,184	1,193,003		
Value of Sale - Sale Year	\$ 458,422	\$ 143,160		

ATTACHMENT B to EXHIBIT E
BASE CAPACITY TRANSFER, DEBT SERVICE REDISTRIBUTION, AND REIMBURSEMENT METHODOLOGY

Inputs

Step 2: Recalculate Debt Service Allocation Percentages

Debt Service Allocation Percentages are revised using cost allocation methodology within the existing contract user agreements, considering reallocation of Capacity due to purchase request. The original cost allocation methodology is outlined in the 2009 Pool Capacity and Cost Allocation memorandum (Pool Capacity and Cost Allocation, March 4, 2009, Black & Veatch Corporation).

RUE Debt Service Allocation

Contract User	Existing Allocation %	Revised Allocation %
St. Cloud	37.26%	37.69%
Sartell	28.17%	28.17%
Sauk Rapids	12.96%	12.96%
St. Augusta	0.00%	0.00%
St. Joseph	8.27%	7.84%
Waite Park	8.61%	8.61%
Foley	4.73%	4.73%
Total	100.00%	100.00%

NR2 Debt Allocation

Contract User	Existing Allocation %	Revised Allocation %
St. Cloud	34.47%	35.20%
Sartell	26.06%	26.06%
Sauk Rapids	11.99%	11.99%
St. Augusta	6.26%	5.92%
St. Joseph	7.65%	7.25%
Waite Park	7.96%	7.96%
Foley	5.61%	5.61%
Total	100.00%	100.00%

Step 3: Determine Change in Debt Allocation Percent for Purchasing Contract User

Change in Debt Allocation Percent equals New Debt Allocation Percent less Existing Debt Allocation Percent.

	RUE	NR2
Purchasing Contract User - Existing Debt Allocation Percent	37.26%	34.47%
Purchasing Contract User - New Debt Allocation Percent	37.69%	35.20%
Purchasing Contract User - Change in Debt Allocation Percent	0.43%	0.74%

Step 4: Identify Outstanding Principal

Principal Remaining on applicable projects as of date of sale.

	RUE	NR2
Remaining Debt Principal (12/31/2023)	\$ 16,095,000	\$ 12,352,000

Step 5: Determine Change in Debt Allocation Value for Purchasing Contract User

Change in Debt Allocation Value equals Change in Debt Allocation Percent multiplied by Outstanding Principal

Purchasing Contract User - Change in Debt Allocation Percent	0.43%	0.74%
Remaining Debt Principal (12/31/2023)	\$ 16,095,000	\$ 12,352,000
Purchasing Contract User - Change in Debt Allocation Value	\$ 69,447	\$ 90,919

Step 6: Determine Upfront Payment

Upfront Payment is equal to Value of Sale less Change in Debt Allocation Value for Purchasing Contract User.

Value of Sale	\$ 458,422	\$ 143,160
Purchasing Contract User - Change in Debt Allocation Value	\$ 69,447	\$ 90,919
Purchasing Contract User - Total Upfront Payment	388,975	52,242

**ATTACHMENT B to EXHIBIT E
BASE CAPACITY TRANSFER, DEBT SERVICE REDISTRIBUTION, AND REIMBURSEMENT METHODOLOGY**

Inputs

REIMBURSEMENTS FOR SELLING CONTRACT USERS

Step 1: Calculate Reimbursements for Selling Contract Users without Debt Outstanding

For Selling Contract Users without debt outstanding, (i.e. project cost share was prepaid), Contract User Reimbursement equals users cost per MGD multiplied by MGD sold.

Contract User	RUE	NR2
St. Cloud	\$ -	\$ -
Sartell	\$ -	\$ -
Sauk Rapids	\$ -	\$ -
St. Augusta*	\$ 209,839.21	\$ -
St. Joseph	\$ -	\$ -
Waite Park	\$ -	\$ -
Total	\$ 209,839.21	\$ -

Step 2: Calculate Reimbursements for Selling Contract Users with Debt Outstanding

For Selling Contract Users with debt outstanding, Contract User Reimbursement equals Total Upfront Payment less reimbursements calculated under Step 1 multiplied by proportion of remaining MGD sold, excluding MGD accounted for in Step 1.

Remaining Contract User Reimbursements	RUE	NR2
	\$ 179,136	\$ 52,242

Contract User	RUE	NR2
St. Cloud	\$ -	\$ -
Sartell	\$ -	\$ -
Sauk Rapids	\$ -	\$ -
St. Augusta	\$ -	\$ 18,285
St. Joseph	\$ 179,136	\$ 33,957
Waite Park	\$ -	\$ -
Total	\$ 179,136	\$ 52,242

Total Reimbursement Summary

Contract User	RUE	NR2	Total
St. Cloud	\$ -	\$ -	\$ -
Sartell	\$ -	\$ -	\$ -
Sauk Rapids	\$ -	\$ -	\$ -
St. Augusta	\$ 209,839	\$ 18,285	\$ 228,124
St. Joseph	\$ 179,136	\$ 33,957	\$ 213,093
Waite Park	\$ -	\$ -	\$ -
Total	\$ 388,975	\$ 52,242	\$ 441,217

MEETING DATE: April 22, 2024

SUBJECT/TITLE: Resolution Approving the Amended Wastewater Treatment Use Agreement

SUBMITTED BY: Tracy Hodel, Public Services Director

RECOMMENDATION: Approve

BOARD/COMMISSION/COMMITTEE RECOMMENDATION:

Meetings with Contract City representatives to discuss proposed amendments were held April 2023 and November 2023.

PREVIOUS COUNCIL ACTION:

Sep 14, 2009 Approved Resolution for the 2010 Wastewater Treatment Use Agreement

Mar 22, 2021 Approved Resolution approving the amended Pool Capacity Agreement

BACKGROUND: In 2000, the St. Cloud Area Wastewater Advisory Committee (SCAWAC) was established. The goal of the committee is to promote the continued equitable and efficient cost distribution for wastewater conveyance and treatment services. From 2000 – 2010, this committee developed the 2010 Wastewater Treatment Use Agreement.

The Pool Capacity Agreement (PCA) was amended in March 2021 to provide the opportunity for the City of Foley to enter St. Cloud's Wastewater Conveyance and Treatment System. This connection is anticipated to occur in summer of 2024.

The 2010 Wastewater Treatment Use Agreement is being amended to include the following primary objectives:

- Include language related to base capacity sale procedures. This is included in Exhibit E and Attachment B.
- Updated flow projections and allocations used for capital projects at the facility and in the collection system. All flow projections were reviewed and approved by all contract users.
- Modified the allocations on how wastewater conveyance system projects are calculated. The "postage stamp" approach was the selected methodology by the SCAWAC members and is incorporated into the amended agreement.

BUDGET/FISCAL IMPACT: This agreement provides the framework for calculating wastewater treatment charges.

RELATIONSHIP TO CITY GOALS: Provide quality, cost-effective public services.

OPTIONS: Approve/Deny

NECESSARY ACTION: Adopt the attached resolution.

ATTACHMENTS:

- (1) Resolution
- (2) Amended Wastewater Treatment Use Agreement

Submitted to Council for Consideration
April 22, 2024

Resolution No. 2024 – _____

RESOLUTION APPROVING THE AMENDED WASTEWATER TREATMENT USE AGREEMENT

WHEREAS, the goal of the St. Cloud Area Wastewater Advisory Commission (SCAWAC) is to promote the continued equitable and efficient distribution of wastewater conveyance and treatment facility costs and services; and

WHEREAS, the 2010 Wastewater Treatment System Use Agreement was developed cooperatively with the Cities of St. Cloud, Sartell, Sauk Rapids, St. Joseph, St. Augusta, and Waite Park and approved by SCAWAC; and

WHEREAS, the Pool Capacity Agreement was amended by all parties in March 2021 to include the City of Foley; and

WHEREAS, the primary purpose of the amendment is to provide base capacity sales procedures, update flow projections and related allocations for capital projects and to modify the methodology for wastewater conveyance system capital projects to the postage stamp approach; and

NOW THEREFORE BE IT RESOLVED, by the Council of the City of St. Cloud, that the amendments to the Wastewater Treatment Use Agreement between the City of St. Cloud, Sartell, Sauk Rapids, St. Joseph, St. Augusta, Waite Park, and Foley is hereby approved.

Adopted this _____ day of _____, 2024

CERTIFICATION

State of Minnesota
County of Stearns
City of St. Cloud

I hereby certify that the foregoing Resolution is a true and correct copy of a resolution presented to and adopted by the City Council of St. Cloud at a meeting therefore held in the City of St. Cloud, Minnesota, on the 8th day of January 2024, as disclosed by the records of said City in my possession.

City Clerk

(SEAL)

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA

RESOLUTION 2024-08

**RESOLUTION APPROVING THE AMENDED WASTEWATER TREATMENT USE
AGREEMENT**

WHEREAS, the goal of the St. Cloud Area Wastewater Advisory Commission (SCAWAC) is to promote the continued equitable and efficient distribution of wastewater conveyance and treatment facility costs and services; and

WHEREAS, the 2010 Wastewater Treatment System Use Agreement was developed cooperatively with the Cities of St. Cloud, Sartell, Sauk Rapids, St. Joseph, St. Augusta, and Waite Park and approved by SCAWAC; and

WHEREAS, the Pool Capacity Agreement was amended by all parties in March 2021 to include the City of Foley; and

WHEREAS, the primary purpose of the amendment is to provide base capacity sales procedures, update flow projections and related allocations for capital projects and to modify the methodology for wastewater conveyance system capital projects to the postage stamp approach; and

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Foley, that the amendments to the Wastewater Treatment Use Agreement between the City of St. Cloud, Sartell, Sauk Rapids, St. Joseph, St. Augusta, Waite Park, and Foley is hereby approved.

Adopted this 2nd day of April, 2024

Jack M. Brosh, Mayor

ATTEST:

Sarah A. Brunn, City Administrator

CERTIFICATION

State of Minnesota
County of Benton
City of Foley

I hereby certify that the foregoing Resolution is a true and correct copy of a resolution presented to and adopted by the City Council of Foley at a meeting therefore held in the City of Foley, Minnesota, on the 2nd day of April 2024, as disclosed by the records of said City in my possession.

City Administrator

(SEAL)



New Service/Service Upgrade Checklist

Date: 3/12/2024

**East Central Energy
PO Box 39
Braham MN 55006
www.eastcentralenergy.com
1-800-254-7944**

Name	Service Address	Service Type	Work Order #
CITY OF FOLEY	12991 55TH ST NE (COMPOST SI	New Service Underground	202319454

State	County	City/Township	Service	Phase	Voltage	Meter Type
MN	BENTON	Foley	Overhead <input checked="" type="checkbox"/>	Single <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> 120/240 <input type="checkbox"/> 120/208	Direct <input checked="" type="checkbox"/>
			Underground <input type="checkbox"/>	Three <input type="checkbox"/>	<input type="checkbox"/> 240/480 <input type="checkbox"/> 277/480	CT <input type="checkbox"/>

The amount below is due and the items marked with a check mark must be completed before your electric service can be released for scheduling.

The amount is valid for 60 days.

	April 1 - October 31	November 1 - March 31	
Contribution to Construction	600.00	600.00	
Connect fee URD or OH	0.00	0.00	
Footage Charges	1,800.00	3,000.00	200 Feet
Road Crossing Charges	0.00	0.00	Feet
Staker Second Trip Fee	0.00	0.00	
Outdoor Light Charges	1,000.00	1,000.00	
Easement Fee	0.00	0.00	
Railroad Crossing Fee	0.00	0.00	
Other	0.00	0.00	
Crossing Permit Fee	0.00	0.00	
County/City/Township Permit Fee	0.00	0.00	
City Tax	0.00	0.00	
County Tax	0.00	0.00	
MN Sales Tax 6.875%	0.00	0.00	
Total Due	3,400.00	4,600.00	
Amount Paid	0.00		No Personal checks for amounts exceeding \$25,000.00.
Check Number			Money orders/Cashier's checks accepted.
Balance Due to ECE	3,400.00	4,600.00	
County/City/Township Permit Fee Due	0.00	0.00	Make Check Payable to:

East Central Energy requires a deposit if our credit reporting agency indicates a deposit is necessary. The deposit is twice the average monthly electric bill for the account. If no average bill is available, then the deposit is \$250 for a residential account or \$500 for a small commercial account. If a deposit is required, it will be added to your first monthly bill.

- It is your responsibility to clear/move _____ and all other obstructions _____ feet on either side of the proposed power line.
- The ground in the route of the electric service must be within six inches of final grade.
- East Central Energy must secure an easement.
- DNR Public Land/Water Crossing Permit fee to be billed when permit is issued.
- Expose where member-owned utilities are located within two feet of proposed construction route, such as gas lines, well, sewer, and/or any other underground lines.
- A \$500 non-refundable deposit towards total cost is due within 10 business days of above checklist date when service upgrade is a variance to regular vegetation management.
- Member is responsible for the underground secondary wire between the meter socket and the transformer, secondary junction box, or pole. Submit an approved inspection notice from state/city certified electrical inspector; or a copy of the electrical permit from a licensed electrical contractor.
- Your service change needs to be coordinated with your electrician through ECE for construction appointment.
- Member is responsible for the installation of the transformer pad, secondary wire from the transformer pad to the meter socket. (See Commercial Engineering Guidelines for Specifications.)
- Member is responsible for the installation of the transformer pad, secondary wire from the transformer pad to the meter socket and the installation of a CT cabinet. (See Commercial Engineering Guidelines for Specifications.)
- Member/Electrician to call ECE's Meter Technician to arrange delivery of the meter socket and CT's. Once delivered, it is the member's/electrician's responsibility to install the meter socket and CT's. (ECE's Meter Technician will make the final connections.)
- Electrician is required to submit a Certificate of Connection by Utility.

All past due balances must be paid in full before your service can be scheduled for construction. Please contact our office at 1-800-254-7944 to make payment.

Member Received Checklist

Austan Erickson
ECE Staking Engineer

BEMBOOM'S FENCE INC.
 907 15 AVE S.E.
 ST. CLOUD MN 56304
 320-255-8929
 MN LICENSE # IR731930 01/01/26

Date	03/12/24
Phone	
Phone	MARK 290-9186
Phone	
Phone	
Estimator	JIM BEMBOOM

CITY OF FOLEY

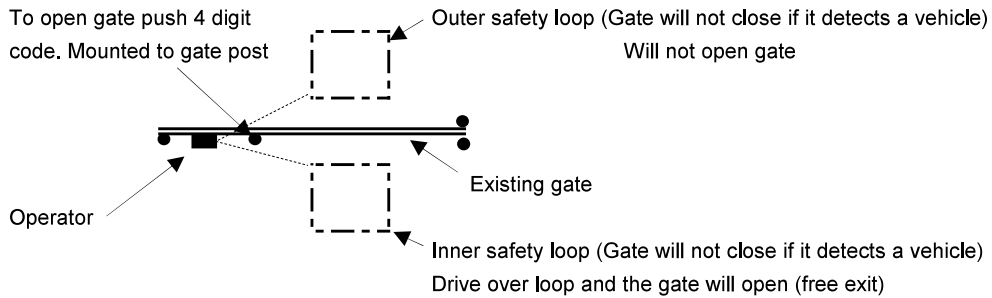
Price
Materials & Installation
\$12,850.00

Email mpappenfus@ci.foley.mn.us

Add operator to the gate with gate safety edges, Mount a 4 digit key pad to corner post.
 Inner safety / free exit loop & outer safety loop, two loop detectors & timer to close.

No electrical work or wiring included in the bid.

Add \$ 38.00 to option # 1 for each vehicle remote visor controller needed. (This will work like your garage door opener.)



Please note: Bemboom's Fence, Inc. reserves the right to revise this quotation if not accepted within 10 days. Customer is responsible to apply for, and secure and pay for all permits required for the fence to be installed. Customer hereby authorizes Bemboom's Fence, Inc. to install all fencing materials on the property as provided herein, and to pay Bemboom's Fence, Inc. for all materials and for installation upon completion. Customer hereby assumes full responsibility and all liability for the location of the property line upon which the fence is installed. Bemboom's fence, Inc. is not liable for any issues related to property lines, private underground utilities, septic systems, electrical, gas, cable TV, phone lines, pet containment system, or the like. A convenience fee of 3 % will be added to the total amount for payment with a credit card. And, if Bemboom's Fence, Inc. must take any action to collect any amount due and owed by Customer, Customer shall reimburse and all costs of collection, including but not limited to attorneys' fees and costs related to collection. Customer has read, understands and accepts the conditions set forth herein. Please sign & return one copy if you decide to accept this contract.

Date accepted _____

Customer's signature _____

Contractor's Signature _____

PROPOSAL



4807 HEATHERWOOD ROAD | P.O. BOX 1252 | ST. CLOUD, MN 56301
 PH: 320-252-1658 | FAX: 320-252-4276

PROPOSAL SUBMITTED TO: CITY OF FOLEY		PHONE	DATE 3/28/2024
STREET		JOB NAME NEW SERVICE	
CITY, STATE AND ZIP CODE		JOB LOCATION COMPOST SITE	
EMAIL	DATE OF PLANS	ATTN: MARK P	JOB PHONE

We hereby submit specifications and estimates for:

Labor and material as follows:

1 NEW ELECTRICAL SERVICE AT COMPOST SITE

- 1 NEW METER SOCKET
- 1 NEW 100 AMP PANEL
- 1 NEW GFCI AT POIND
- 1 NEW GFCI AT GATE FOR CONTROL
- 55' UNDERGROUND CONDUIT AND CONDUCTORS
- CONNECTIONS TO ECE

NOTES:

Thank you for allowing us to quote this project.

We propose hereby to furnish material and labor – complete in accordance with the above specifications, for the sum of:
THREE THOUSAND TWO HUNDRED AND SEVEN DOLLARS 00/100----- Dollars \$ 3,207.00

Payment to be made as follows: **UPON COMPLETION, NET 30 DAYS**

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance. Price above is based on standard AGC contract and insurance limits. We reserve the right to charge for any attorney fees that would be associated with collecting any money owed on this contract. **There is no bond included unless noted otherwise.**

Authorized Signature:

Nick Bischoff

Note: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature: _____

Date of Acceptance: _____

Signature: _____

Competitive Bidding Requirements in Cities

Learn what types of contracts are subject to competitive bidding requirements; the methods of best value and joint contracting; and the exemptions, exceptions, and alternatives to competitive bidding. Learn about preparing bid specifications and advertising, opening, and investigating bids. Find out about permitted changes after bid award and when a city needs to require performance and payment bonds.

RELEVANT LINKS:

[Minn. Stat. § 471.345.](#)
[Minn. Stat. § 412.311.](#)
Home rule charter cities generally have a charter provision requiring that a contract that must be competitively bid must be awarded to the lowest responsible bidder or other similar term.

[Minn. Stat. § 471.345, subd. 6.](#)
A.G. Op. 430 (Dec. 29, 1981).

[Minn. Stat. § 429.041, subd. 1.](#)
See LMC information memo, [Special Assessment Toolkit](#).

[Foley Bros., Inc. v. Marshall](#), 266 Minn. 259, 123 N.W.2d 387 (1963). [R.E. Short Co. v. City of Minneapolis](#), 269 N.W.2d 331 (Minn. 1978). [Griswold v. Ramsey County](#), 242 Minn. 529, 65 N.W.2d 647 (1954).

I. Competitive bidding law

The uniform municipal contracting law (competitive bidding law) requires cities to use the competitive bidding process for certain contracts estimated to exceed a dollar threshold. Typically, this involves the solicitation of sealed bids and the award of the contract to the “lowest responsible bidder.” The law makes no distinction based on the funds from which payments will be made. For example, a contract that will be paid from municipal liquor store revenues must be competitively bid if the estimated cost is expected to exceed the bidding threshold.

The competitive bidding law generally supersedes all inconsistent laws and charter provisions. A city may, however, need to comply with additional statutory requirements. For example, the competitive bidding process for local improvement projects that are paid for with special assessments has additional requirements. It is important to review any additional requirements that apply to a particular type of contract before beginning the competitive bidding process.

A. Purpose

The competitive bidding law serves three general purposes. First, it is intended to ensure city taxpayers receive the benefit of the lowest obtainable price from a responsible contractor. Second, competitive bidding provides contractors a level playing field on which to compete for city contracts. Third, it limits the discretion of contract-making officials in situations that are susceptible to fraud, favoritism, or other similar abuses.

B. Contracts subject to competitive bidding

When this memo uses the term “contract,” it is only describing agreements subject to the competitive bidding law.

RELEVANT LINKS:

[Minn. Stat. § 471.345, subd. 2.](#)

[Minn. Stat. § 471.345, subd. 3.](#)
See Section II. *Procedure*.

[Minn. Stat. § 471.345, subd. 4](#)

[Griswold v. Ramsey County](#),
242 Minn. 529, 65 N.W.2d
647 (1954).

[Minn. Stat. § 471.345, subd. 5.](#)

There are two elements that determine if the competitive bidding law applies to a particular contract: the type of contract and its estimated price.

1. Types of contracts

The competitive bidding law applies to:

- Contracts for the sale, purchase, or rental of supplies, materials, or equipment.
- Contracts for the construction, alteration, repair, or maintenance of real or personal property.

2. Estimated price

The estimated price of the contract also determines if the competitive bidding process is required.

a. Contracts over \$175,000

City contracts exceeding the estimated price of \$175,000 must use the competitive bidding process.

b. Contracts exceeding \$25,000 but not \$175,000

Competitive bidding is not required on contracts that exceed \$25,000 but do not exceed \$175,000. However, competitive bidding on contracts in this price range is allowed. So, the city has the option of either using the competitive bidding process or making the contract by direct negotiation. If the city chooses to use the competitive bidding process, it must likely comply with the requirements of this process even though it was not originally required. If direct negotiation is used, the city must get at least two quotations when possible and keep them on file for at least one year.

c. Contracts \$25,000 or less

If the price of the contract is estimated to be \$25,000 or less, the city has discretion to make the contract by obtaining quotations or it may simply buy or sell the item on the “open market.” If the city chooses to use quotations for the contract, it shall be based, as far as practicable, on at least two quotations which shall be kept on file for at least one year.

d. Calculating estimated contract price

Because the competitive bidding law applies to the estimated contract price, it can sometimes be difficult to determine whether a specific contract is subject to the law.

RELEVANT LINKS:

A.G. Op. 707-A-4 (Apr. 29, 1952).

A.G. Op. 707a-7 (Mar. 14, 1988).

A.G. Op. 707A-15 (Jan. 29, 1962).
[Minn. Stat. § 471.345.](#)

[Minn. Stat. Ch. 297A.](#)

(1) Splitting contracts

Generally, the competitive bidding process may not be avoided by splitting a contract into several smaller contracts, each of which is under the competitive bidding threshold. A court will probably find a contract to be void if it is split for the purpose of avoiding the competitive bidding process.

It may be appropriate, however, to enter into two separate contracts for materials or work if they involve separate transactions. An example of this might be when the services of different specialty contractors are necessary to complete a particular project. In such a case, there appears to be no reason why the work or material may not be contracted for without advertising for bids if each of the contracts does not exceed the competitive bidding threshold.

Another example might be two separate contracts for different sidewalk improvements, each involving less than the competitive bidding threshold. In this situation, it appears the contracts could be let without advertising for bids if the two contracts involve separate improvements on two different streets. It will usually be more advantageous, however, to combine like improvements in a single contract, and this will probably result in the total contract amount being large enough to require competitive bidding.

Similar considerations apply in determining whether it is possible to purchase materials and contract for labor separately. The Minnesota Supreme Court has not considered this question. Whether facts support splitting a contract in a given situation must be determined on a case-by-case basis after consulting the city attorney.

(2) Used equipment and trade-in value

Bids must be solicited if the contract's cost is estimated to exceed the competitive bidding threshold even when used items are being purchased. The competitive bidding law does not distinguish between new and used supplies, material, or equipment.

If the city will be trading in old equipment when purchasing replacement equipment, the trade-in value should not be subtracted when calculating the contract price to determine whether competitive bidding is required. In short, the contract price will be the total cash value of the new item, not the total that is paid after the trade-in is made.

(3) Sales tax

Cities should probably include the cost of sales tax when estimating the amount of a construction contract. This will result in a closer estimate of the total cost of a construction project.

RELEVANT LINKS:

[Minn. Stat. § 471.59.](#)
Handbook,
*Intergovernmental
Cooperation.*

Handbook, *Expenditures,
Purchasing, and Contracts.*

A.G. Op. 1007 (Mar. 22,
1971).

[Minnesota's Cooperative
Purchasing Venture \(CPV\).](#)

MN Dept. of Administration -
Materials Management Div.
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
(651) 201-2600.

Sales tax on materials, as well as withholdings for the contractor's workers, will be included by the bidder in the total amount for a construction contract.

Although it is unclear whether sales tax should also be included when estimating the cost of a contract to purchase equipment, cities may wish to include this amount. For example, suppose a city is going to purchase office equipment priced at exactly \$175,000 without sales tax and the city opts not to use the competitive bidding process because the amount does not *exceed* \$175,000. The addition of the sales tax, however, brings the amount to more than \$175,000. It is possible someone could argue that the contract should have been let using the competitive bidding process.

C. Joint contracting

Governmental entities may jointly contract to undertake projects and purchase services or equipment when competitive bidding is required.

1. The Joint Powers Act

Under the Joint Powers Act, any city may enter into an agreement with one or more governmental units to exercise powers common to all parties. Under such an agreement, one governmental entity may solicit bids on behalf of itself and other governmental units that are parties to the agreement.

Joint purchasing agreements should be made using a formal council action, such as a resolution. Ideally, cities wishing to make purchases under one set of bids or quotations should agree to do so before the request for bids or quotations is made. This allows bidders to know how many purchases are likely to be made.

The attorney general has advised that the competitive bidding requirements apply to the total amount of a joint contract, not to an individual participant's share. Thus, if the total amount of the contract is more than the competitive bidding threshold, and it is the type of contract that is subject to the competitive bidding law, sealed bids must be sought even if the city's share of the contract is less than the competitive bidding threshold.

2. Cooperative purchasing programs

Many cities purchase a variety of supplies and equipment through cooperative programs.

The Department of Administration operates a cooperative purchasing program (Minnesota's Cooperative Purchasing Venture (CPV)) that all cities can join. Cities that participate in this program are allowed to purchase equipment under state contracts that the state has already competitively bid.

RELEVANT LINKS:

[Minn. Stat. § 471.345, subd. 15\(a\).](#)

[Minn. Stat. § 471.345, subd. 15\(b\).](#)

[Minn. Stat. § 16C.28.](#)
[Minn. Stat. § 412.311, subd. 2.](#)
[Minn. Stat. § 429.041, subd. 2a.](#)
[Minn. Stat. § 469.015, subd. 1a.](#)
[Minn. Stat. § 469.068, subd. 1a.](#)
[Minn. Stat. § 469.101, subd. 5a.](#)
[Minn. Stat. § 471.345, subs. 3a, 4a, and 5.](#)

[Minn. Stat. § 16C.28, subd. 1b.](#)

[Rochester City Lines, Co. v. City of Rochester](#), 868 N.W.2d 655 (Minn. 2015) (holding the “unreasonable, arbitrary, or capricious” standard of review applies to a city’s best value bidding process).

[Minn. Stat. § 16C.28, subd. 1d.](#)

See Section II. A. 1. *Bids and proposals*.

[Minnesota Department of Transportation-Best Value Procurement Training](#)

Several Minnesota cities, counties, and school districts have received training through the [Performance Based Studies Research Group](#).

In fact, for contracts estimated to exceed \$25,000, a city must consider the availability, price, and quality of supplies, materials, or equipment available through the CPV before buying through another source.

Cities also have authority to engage in joint purchasing for contracts for the purchase of supplies, materials, or equipment through a national municipal association’s purchasing alliance or cooperative. The alliance or cooperative must have been created by a joint powers agreement and must purchase items from more than one source based on competitive bids or competitive quotations.

D. Best value contracting

Best value contracting provides an alternative to the competitive bidding process for certain contracts. While competitively bid contracts generally must be awarded to the “lowest responsible bidder,” cities may use best value contracting to award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the “best value.” With best value contracting, cities are authorized to consider performance factors in addition to price when awarding contracts for construction projects.

Performance criteria may include, but are not limited to:

- Quality of performance on previous projects.
- Timeliness of performance on previous projects.
- Level of customer satisfaction on previous projects.
- Record of performing projects on budget and ability to minimize cost overruns.
- Ability to minimize change orders.
- Ability to prepare appropriate project plans.
- Technical capabilities.
- Qualification of key personnel.
- Ability to assess and minimize risks.

Any staff or consultants who wish to bid out a construction project through best value contracting must first receive training in the request for proposals (RFP) process for best value contracting. The commissioner of the Department of Administration has authority to establish a training program for state and local government officials.

The law does not specify the content or amount of training required, and the training may be conducted by entities other than the Department of Administration.

RELEVANT LINKS:

Minn. Stat. § 16C.28, subd. 1(c).

See [Innovative Contracting, Minnesota Department of Transportation](#) for additional resources.

Minn. Stat. § 16C.28, subd. 1a (c).

Minn. Stat. § 471.345, subd. 2.

Hubbard Broad., Inc. v. Metro. Sports Comm'n, 381 N.W.2d 842 (Minn. 1986).

Schwandt Sanitation of Paynesville v. City of Paynesville, 423 N.W.2d 59 (Minn. Ct. App. 1988). A.G. Op. 707-A (Feb. 8, 1990).

Minn. Stat. § 471.345, subd. 4.

Minn. Stat. § 471.345, subd. 5.

Minn. Stat. § 471.345, subd. 16.

The criteria used to evaluate best value contracting proposals must be included in the RFP. The RFP must also state the relative weight of price and other selection criteria. If an interview of the vendor or contractor's personnel is a factor in the selection criteria, the relative weight of the interview must be stated in the RFP and applied accordingly.

It appears that cities are limited to using best value contracting for either one project annually or 20 percent of their projects, whichever is greater for the first three fiscal years in which best value contracting is used.

E. Exemptions, exceptions, and alternatives

While the types of contracts subject to competitive bidding are broadly defined, a number of city contracts, purchases, or related agreements are not subject to the competitive bidding law. The following are some of the most common exemptions, exceptions, or alternatives to competitive bidding:

- **Non-contracts.** An agreement that does not meet the definition of a contract under the competitive bidding law is exempt from the competitive bidding requirements. For example, an agreement in which a company supplied a special scoreboard system in exchange for the right to sell or lease advertising space on it was found to be exempt because it was not only a contract for “materials, supplies, or equipment.” Likewise, contracts for refuse hauling and janitorial services were also found to be exempt from the competitive bidding requirements.
- **Contracts below the competitive bidding threshold, but above \$25,000.** As an alternative to competitive bidding, contracts that are estimated to cost more than \$25,000, but not more than \$175,000, may be made by direct negotiation. If direct negotiation is used, the council must seek at least two quotations when possible and keep them on file for at least one year after receipt.
- **Contracts of \$25,000 or less.** If a contract is estimated to be \$25,000 or less, the city has the choice of making the contract upon quotation or in the “open market.” If the city makes the contract upon quotation, it shall be based, as far as practicable, on at least two quotations which shall be kept on file for at least one year after their receipt.
- **Electronic purchases through reverse auctions.** Cities may, regardless of costs, contract for the purchase of supplies, materials, and equipment through an electronic reverse auction process. Vendors compete to provide the requested supplies, materials, or equipment at the lowest selling price in an open and interactive electronic environment.

RELEVANT LINKS:

[Minn. Stat. § 471.345, subd. 17.](#)

[Minn. Stat. § 471.345, subds. 3a, 4a, and 5.](#)
[Minn. Stat. § 412.311, subd. 2.](#)
See Section I- D, *Best value contracting*.

[Minn. Stat. § 471.345, subd. 10.](#)

[Minn. Stat. § 471.345, subd. 11.](#)

[Minn. Stat. § 471.345, subd. 13.](#)

[Minn. Stat. § 465.035.](#) [Minn. Stat. § 471.64.](#)
A.G. Op. 59-A-15 (Mar. 30, 1965).
A.G. Op. 707a (Mar. 5, 1986).
A.G. Op. 707a-15 (Sept. 14, 1987).
Ambrozich v. City of Eveleth, 200 Minn. 473, 274 N.W. 635 (1937).

Krohnberg v. Pass, 187 Minn. 73, 244 N.W. 329 (1932). *Schwandt Sanitation of Paynesville v. City of Paynesville*, 423 N.W.2d 59 (Minn. Ct. App. 1988).
A.G. Op. 707a-7 (July 22, 1985). A.G. Op. 707-A (Feb. 8, 1990).

- **Electronic sales of surplus supplies, materials, and equipment.** Cities may, regardless of value, sell surplus, obsolete, or unused supplies, materials, and equipment using an electronic process in which purchasers compete to offer the highest purchase price in an open and interactive environment.
- **Best value contracting.** Under certain circumstances, cities may use best value contracting for construction projects. Best value contracting authorizes cities to consider performance criteria in addition to price in the selection process.
- **Shared hospital or ambulance service contracts.** Certain hospital or ambulance purchases and leases are exempt from competitive bidding if made through a shared service purchasing agreement.
- **Some fuel contracts.** Fuel purchased by municipal power plants for the generation of power may be made using either direct quotations or competitive bidding.
- **Guaranteed energy-savings contracts.** Contracts for energy conservation measures that will reduce energy consumption or operating costs are not subject to competitive bidding. There are additional procedural requirements that must be considered and satisfied.
- **Intergovernmental contracts.** Cities do not need to follow the competitive bidding requirements when contracting for the sale, lease, or purchase of real or personal property with another government entity (federal, state, or political subdivisions).
- **Real estate contracts.** The purchase or sale of real property is generally not required to be competitively bid. However, a home rule charter may require a competitive bidding process for the purchase or sale of real estate.
- **Professional services contracts.** Cities are not required to follow the competitive bidding process when contracting for professional services such as those provided by doctors, engineers, lawyers, architects, accountants, as well as other services requiring technical, scientific, or professional training.

RELEVANT LINKS:

[Minn. Stat. § 471.6161.](#)

See Section II- A-1, *Bids and proposals*.

[Minn. Stat. § 12.37.](#)

[Minn. Stat. § 12.03, subds. 2, 3.](#)

Layne Minn. Co. v. Town of Stuntz, 257 N.W.2d 295 (Minn. 1977).

See Handbook, *Expenditures, Purchasing, and Contracts*.

Village of Excelsior v. F.W. Pearce Corp., 303 Minn. 118, 226 N.W.2d 316 (1975).

[Minn. Stat. § 453.59.](#)

[Minn. Stat. § 453A.09.](#)

[Minn. Stat. § 471.345, subd. 5b.](#)

- **Insurance contracts.** Cities are not required to follow competitive bidding requirements for insurance contracts. However, group insurance coverage for 25 or more employees must be solicited through a request for proposals. The request for proposals must be in writing and must include the coverage to be provided, the criteria for evaluation of carrier proposals, and the aggregate-claims records for the appropriate period. The request for proposals must be published in a newspaper or trade journal for at least 21 days before the final day for submitting proposals.
- **Emergency contracts.** The Emergency Management Act gives cities the ability to declare an emergency for a limited period of time. During an emergency (“an unforeseen combination of circumstances that calls for immediate action to prevent a disaster from developing or occurring”) or disaster (“a situation that creates an actual or imminent serious threat to the health and safety of persons”), cities are not required to use mandated contracting procedures. If the facts of the situation do not indicate that a true emergency existed, such a contract would likely be considered void.
- **Some intergovernmental construction contracts.** Competitive bidding is not required for a cooperative agreement to construct a project with the state or with another political subdivision of the state when the other unit does the construction. This applies only where there is an agreement prior to the initial advertising for bids on the project.
- **Some municipal electric power construction contracts.** A city may contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities without advertising for bids. The facilities must be located outside of the city’s corporate limits.
- **Some municipal gas construction contracts.** A city may contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities within or without its corporate limits or may contract with the other public or private owners of such facilities to perform the functions listed above without advertising for bids.
- **Water tank service contracts.** Multi-year contracts for water tower tank maintenance work used to be an exception to competitive bidding such that professional water tank services could be negotiated on the open market. Effective for agreements entered into on or after September 1, 2018, the portion of any water tank maintenance work that includes “sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair, or maintenance of real or personal property” must go through competitive bidding or best value contracting.

RELEVANT LINKS:

[Minn. Stat. § 471.3455.](#)

[Minn. Stat. § 469.015, subd. 4.](#)

[Minn. Stat. § 462.358, subd. 2a.](#)

See Section II-F.

Coller v. City of St. Paul, 223 Minn. 376, 26 N.W.2d 835 (1947).
A.G. memorandum to public officials (Feb. 22, 1974).

Davies v. Village of Madelia, 205 Minn. 526, 287 N.W. 1 (1939).

- **Public safety equipment.** A city may acquire by purchase or lease used public safety equipment without competitive bids or proposals if the equipment is clearly and legitimately limited to a single source of supply, and the contract price may be best established by direct negotiation. “Public safety equipment” is defined as vehicles and specialized equipment used by a fire department in firefighting, ambulance, and emergency medical treatment services, rescue, and hazardous materials response.
- **HRA exceptions.** Under certain circumstances, a housing and redevelopment authority does not need to comply with competitive bidding requirements.
- **Public improvements made by a subdivider.** The construction and installation of public improvements made by a subdivider or a subdivider’s contractor do not need to comply with competitive bidding requirements.

II. Procedure

The competitive bidding process generally includes the following steps:

- Preparation of bid specifications.
- Publication of bid advertisement.
- Opening and tabulation of bids.
- Investigation of bids.
- Disposition of bids.

Cities may have additional requirements to follow, depending upon city policies, charter provisions, or the specific nature of the contract. In addition, city officials should be aware of how the information they receive is classified under the Minnesota Government Data Practices Act (MGDPA).

A. Preparation of bid specifications

Before seeking bids, the city must prepare plans and specifications. The specifications should provide bidders a basis on which to bid that attracts as many bidders as possible and treats all of them fairly. Cities should keep the following general rules in mind when preparing specifications:

- The specifications must be sufficiently definite to give prospective bidders a “reasonable basis” on which to bid. Whether specifications are sufficiently definite is determined on a case-by-case basis.

RELEVANT LINKS:

[Minn. Stat. § 471.35.](#)
[Otter Tail Power Co. v. Village of Elbow Lake](#), 234 Minn. 419, 49 N.W.2d 197 (1951).

[Minn. Stat. § 16C.02, subs. 11, 12.](#)

See Appendix A, Outline of a Request for Proposal.

[Ad for Sealed Equipment Bid](#), LMC Model Form.
For construction projects see Section II-B-1, Content – *Responsible contractor requirements*.

[Minn. Stat. § 16C.28, subd. 1\(c\).](#)

[Minn. Stat. § 16C.02, subd. 12.](#)

See Section I- D, *Best value contracting*.

[Minn. Stat. §§ 471.35-.37.](#)
[Major Indus., Inc. v. Krech, Ojard & Associates, Inc.](#), No. A04-1052 (Minn. Ct. App. Dec. 21, 2004) (unpublished opinion).

[Otter Tail Power Co. v. Village of Elbow Lake](#), 234 Minn. 419, 49 N.W.2d 197 (1951).

- The specifications may not be drawn in such a way as to exclude all but one type or kind of supplies or equipment. The specifications must permit free and unrestricted bidding. However, this does not mean the specifications must be drawn to include every possible bidder.
- In situations where drawing tight specifications would have the effect of unreasonably limiting competition, the city may draw the specifications so as to include a variety of more or less comparable equipment so officials can evaluate the resulting submissions based on overall value. If this kind of procedure is used, it is a good idea to include a statement to that effect within the specifications. This will tell bidders how the bids will be evaluated and what factors will be considered in addition to price. In this type of situation, the specifications should spell out the minimum functions the equipment must perform to be acceptable.

1. Bids and proposals

While often used interchangeably, there are differences between a request for proposals (RFPs) and a request for bids (often referred to as a “bid advertisement” or “advertisement for bids”). A bid advertisement is used to obtain sealed bids that indicate the price for which a bidder is willing to perform a contract that was specifically defined by the city. In contrast, an RFP broadly defines the scope of the contract, and asks interested persons for proposals that specifically define the services that will be offered and the amount they will cost. RFPs are commonly used for contracts that are not required to be competitively bid, such as contracts for professional services.

The best value contracting alternative uses RFPs in the solicitation and selection process. Otherwise, the competitive bidding law does not provide for the use of a “request for proposal.”

2. Noncompetitive supplies and equipment

State law makes it a gross misdemeanor to draft specifications to exclude all but one type of supplies or equipment. However, there is an exception for noncompetitive supplies and equipment. Just what would be considered “noncompetitive” supplies or equipment is not clear. Even though noncompetitive supplies or equipment are an exception from the requirement concerning specifications, they are still subject to the other competitive bidding requirements.

3. Restrictive specifications

Minnesota courts have recognized that some items are not capable of precise specifications.

RELEVANT LINKS:

Otter Tail Power Co. v. MacKichan, 270 Minn. 262, 133 N.W.2d 511 (1965).
A.G. Op. 707a-12 (May 23, 1962).

Hendricks v. City of Minneapolis, 207 Minn. 151, 290 N.W. 428 (1940).

A.G. memorandum to public officials (Feb. 22, 1974).

See LMC information memo, *Official Conflict of Interest*.

While the city will be allowed some latitude in specifying features of a complicated piece of equipment, it must have a clear reason for restrictive specifications. Where reasons for such restrictions cannot be shown, they are considered to stifle competition and will not be upheld.

A city can, within reason, require specific materials or particular methods of financing as long as the requirements are in the best interests of its inhabitants, even if such restrictions may limit the number of possible bidders.

4. Terms and conditions

The attorney general has suggested that cities should take great care in identifying the contractual obligations of both parties in the specifications. Cities should address:

- The city's right to reject all bids.
- What the city views as the most important award factors.
- The where and when of delivery.
- Any necessary patent protection.
- Liquidated damages.
- Any required maintenance and related services.
- The provisions of any warranties.
- How training on the use of equipment will be provided.
- How conflicts will be resolved if a dispute arises regarding the contract.
- Time of delivery.
- The specifics of acceptance.
- Whether the city is purchasing on a unit or lot basis, and the reasons why the plans and specifications are restrictive (if they are).
- The period of time for which the vendors bid is to be firm.
- Any other special conditions relating to the items to be purchased.

These obligations should be dealt with clearly in the plans and specifications. Spelling out the terms and conditions will give both the city and any prospective bidders a fuller understanding of their rights and responsibilities. It can also help to minimize controversies and inefficiencies in the performance of the contract.

5. Vendor assistance

Vendors often assist cities in drafting contract specifications. In these situations, cities should seek an agreement from these individuals not to bid on the project for which they have drawn the specifications. Otherwise, the vendor may have an unfair advantage when bidding on the contract.

RELEVANT LINKS:

See Section II-D,
Investigation of bids.

*Westra Constr., Inc. v. City of
Minnetonka*, No. A03-50
(Minn. Ct. App. Dec. 30,
2003) (unpublished opinion).

Minn. Stat. § 471.3457.
Minn. Stat. § 471.345.
Minn. Stat. § 375.771.

6. Pre-qualification of bidders

When preparing specifications, cities are sometimes interested in the possibility of evaluating contractors before bids are submitted. The authority of cities to require bidders to pre-qualify before allowing them to bid on a contract is unclear.

Requiring bidders to meet minimum qualifications in advance would potentially eliminate irresponsible bidders and reduce the total number of bids the city will need to consider. It also may give potential bidders an idea of the criteria the council will use to determine the responsibility of the bidders.

Although it is arguable that a pre-qualification requirement is within a city's powers, it is not possible to cite any direct authority for such a practice. However, decisions in cases from other states suggest that pre-bid criteria are permissible when established under a state policy. Cities may want to have their city attorneys consider any pre-qualification criteria that are being considered for bidders.

In an unpublished decision, the Minnesota Court of Appeals upheld the use of bid-evaluation criteria by the City of Minnetonka (a home rule charter city). The criteria were not used as true pre-qualification criteria because they were not used to exclude anyone from bidding. Instead, they were used to determine which bidders were eligible to be considered for the contract award. Bidders were given scores based on criteria including their history for doing similar projects on time and on budget. Only bidders with a 10-point minimum score were eligible to be considered for being awarded the contract.

7. Bid preference for veteran-owned small businesses

Cities may implement programs to provide designated veteran-owned small businesses with a bid preference when awarding contracts for the sale, purchase, or rental of supplies, materials, or equipment or for the construction, alteration, repair, or maintenance of real or personal property or for services.

B. Publication of bid advertisements

Cities provide public notice when they are going to award a contract through the competitive bidding process. The following discusses the minimum requirements. Cities may choose to provide additional notice. A longer period of advertising can increase the number of bidders and improve the chances of achieving better contract terms.

RELEVANT LINKS:

[LMC Marketplace.](#)

[Ad for Sealed Construction Project Bid](#), LMC Model Form.

[Ryan v. City of Coon Rapids](#), 462 N.W.2d 420 (Minn. Ct. App. 1990).

[Minn. Stat. § 16C.285.](#)

See responsible contractor clause for bid solicitation in [Ad for Sealed Construction Project Bid](#), LMC Model Form.

[Minn. Stat. § 16C.285.](#) (A “responsible contractor” must verify compliance with various state and federal requirements, including tax, workers’ compensation, unemployment insurance, wage, and safety requirements).

In addition, the city may want to mail an invitation or personally contact those contractors it thinks might be interested in submitting a bid.

The League will post, at no cost to member cities, bid advertisements on its website.

1. Content—Responsible contractor requirements

The published notice should contain the following information:

- A description of the project or purchase being sought.
- The availability and location of specifications.
- Bid requirements (such as sealed bids or accompanying security).
- Where bids must be submitted.
- The deadline for submitting bids.
- The time and place of the bid opening.
- The city officers who will be present for the opening.
- A statement indicating that the city may delay the award until certain events occur.
- A statement indicating that the city reserves the right to reject all bids submitted.

Effective Jan. 1, 2015, specific content must appear in the solicitation document for a public construction “project” that is estimated to exceed \$50,000 and is awarded pursuant to a lowest responsible bidder selection method or a best value selection method. The amount of any tax increment financing must be excluded in determining whether a construction contract exceeds \$50,000. A “project” means “building, erection, construction, alteration, remodeling, demolition, or repair of buildings, real property, highways, roads, bridges, or other construction work performed pursuant to a construction contract.”

First, the solicitation document shall state that any prime contractor, subcontractor, or motor carrier that does not meet the minimum criteria established for a “responsible contractor” as defined in Minn. Stat. § 16C.285, subd. 3 or fails to comply with the verification requirements is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project. Second, the solicitation document shall provide that a false statement under oath verifying compliance with any of the minimum criteria shall make the prime contractor, subcontractor, or motor carrier that makes the false statement ineligible to be awarded a construction project and may result in termination of a contract awarded to a prime contractor, subcontractor, or motor carrier that submits a false statement. Third, the solicitation document shall state that a prime contractor shall include in its verification of compliance a list of all of its first-tier subcontractors that it intends to retain for work on the project.

RELEVANT LINKS:

[Minn. Stat. § 16C.285.](#)

See sample [Responsible Contractor Verification and Certification of Compliance](#), Minnesota Department of Transportation.

[Minn. Stat. § 325L.02 \(h\).](#)

[Minn. Stat. § 16C.285, subd. 5.](#)

[Minn. Stat. § 16C.285, subd. 4.](#)

[Minn. Stat. § 412.311.](#)

[Minn. Stat. § 410.33.](#)

A responding contractor shall submit to the city a signed statement under oath by an owner or officer verifying compliance with the required minimum criteria at the time that it responds to the solicitation document. A city may accept a signed statement as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. A verification of compliance does not need to be notarized. An electronic verification of compliance made and submitted as part of an electronic bid shall be acceptable verification of compliance if it contains an electronic signature that complies with the definition in state law.

Before execution of a construction contract, a prime contractor shall submit a supplemental verification under oath confirming that all subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the prime contractor, through a signed statement under oath by an owner or officer, that they meet the minimum criteria for a responsible contractor. In addition, each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet the minimum criteria before execution of a construction contract with each subcontractor.

A city shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria.

2. Time

Several factors must be considered when deciding how long an advertisement for bids must be published. It is important to consider the type of contract being advertised.

Depending upon the particular city and its policies or charter requirements, there may be special advertising requirements.

a. General publication requirements

In statutory cities, bids must be solicited by notice published once in the official newspaper at least 10 days before the last day for submission of a bid.

Home rule charter cities should consult their charters for any special advertisement requirements. If the charter is silent with regard to this matter, a city may utilize the requirement for statutory cities of advertising by published notice in the official newspaper at least 10 days before the last day for submitting bids.

RELEVANT LINKS:

[Minn. Stat. § 429.031, subd. 1.](#)
[Minn. Stat. § 429.041, subd. 1.](#)
See LMC information memo, *Special Assessment Toolkit*.

[Minn. Stat. § 429.041, subd. 1.](#)

[Minn. Stat. § 331A.01, subd. 11.](#)

[Minn. Stat. § 412.311.](#)

[Minn. Stat. § 429.041, subd. 1.](#)

[Minn. Stat. § 331A.01, subd. 11.](#)

[Minn. Stat. § 429.041, subd. 1.](#)

[Minn. Stat. § 331A.03.](#)

See LMC information memo, *Newspaper Publication*.

[Minn. Stat. § 331A.03.](#)

b. Local improvement contracts

If a city is making a contract for a local improvement under the special assessment statutes, there are special public notice and hearing requirements. Since these requirements must be met prior to advertising and awarding the contract, they are not addressed in this memo.

There are two possible advertisement requirements when seeking bids for this type of contract:

- **Bids for a local improvement contract estimated to exceed \$175,000.**
The city must advertise for bids in the official newspaper or in a recognized trade journal for the length of time the council may deem advisable. (Statutory cities must still meet the 10-day minimum advertising requirement.)
- **Bids for improvement contracts estimated to exceed \$350,000.**
If the estimated cost of the contract exceeds twice the \$175,000 threshold, or \$350,000, the publication must be made at least three weeks before the last day to submit bids. The advertisement must be published at least once in the official newspaper and at least once in a newspaper that is published in a First Class city or in a recognized trade journal.

The advertisement must specify the work to be done and state the time when the council will publicly open the bids for consideration. The advertisement must require that the bids be sealed (unless the city authorizes electronic bids), filed with the clerk, and accompanied by a cashier's check, bid bond, or certified check made payable to the clerk.

3. Alternative notice

Under certain circumstances, cities are authorized to use two alternative means of providing notice for bid advertisements either in addition to, or as an alternative to, the statutory requirements for newspaper publication.

The two alternative means of providing notice are on the city's website or in a recognized trade journal.

There are conditions that must be met when a city uses an alternative means of dissemination:

- The alternative dissemination must be in substantially the same format and for the same period of time as required for newspaper publication.
- The city must simultaneously publish, either as part of its regular meeting minutes or in a separate notice, a description of all the solicitations being disseminated through alternative means.

RELEVANT LINKS:

[Minn. Stat. § 471.345, subd. 18.](#)

[Minn. Stat. § 471.345, subd. 3.](#)

- For the first six months after a city designates an alternative means of dissemination, it must continue to publish bid advertisements in the official newspaper in addition to the alternative method. The newspaper publication must indicate where to find the designated alternative method.

After the expiration of the six-month period, an alternative means of dissemination satisfies any publication requirements.

C. Opening and tabulation of bids

Bids should be kept unopened by the clerk until after the closing time for receiving them. At the time set by the council in the advertisement, the bids should be opened publicly in the presence of the officials named in the bid notice. All bids should be opened and tabulated at a public meeting by the council or in advance of the council meeting by designated officials.

Generally, bids should be opened prior to the meeting at which the council will consider them, preferably on the same day. This enables the engineer or clerk to tabulate each bid in advance, which will reduce the time spent on the matter during the council meeting.

1. Bids received electronically

Cities are authorized to allow bidders to submit bids electronically. Cities are also authorized to allow bid, performance, and payment bonds, as well as other security, to be furnished electronically. The bid advertisement should specify the form and manner required for electronic submission.

Cities should also consider adopting policies for how the “opening” of electronic bids will be handled. For example, cities may want to designate a staff person to receive the electronic bids and be responsible for printing a hard copy of them.

Cities may also want to designate a staff person to be responsible for keeping the amount and terms of the electronic bids private until the time and date specified in the solicitation that bids are due, at which time the name of the bidder and the dollar amount specified in the response become public.

2. Bids received by facsimile

It appears cities cannot accept a bid sent to them through a facsimile machine. According to the competitive bidding law, bids generally must be “sealed.” Facsimile bids would not meet this requirement.

RELEVANT LINKS:

[Minn. Stat. § 412.311, subd. 1.](#)
[Minn. Stat. § 429.041, subd. 2.](#)

[Coller v. City of St. Paul](#), 223 Minn. 376, 26 N.W.2d 835 (1947). [Foley Bros., Inc. v. Marshall](#), 266 Minn. 259, 123 N.W.2d 387 (1963).

[State v. Snively](#), 175 Minn. 379, 221 N.W. 535 (1928). [Kelling v. Edwards](#), 116 Minn. 484, 134 N.W. 221 (1912).

[Nielsen v. City of St. Paul](#), 252 Minn. 12, 88 N.W.2d 853 (1958).

[Otter Tail Power Co. v. Village of Elbow Lake](#), 234 Minn. 419, 49 N.W.2d 197 (1951).

[Otter Tail Power Co. v. Village of Wheaton](#), 235 Minn. 123, 49 N.W.2d 804 (1951).

D. Investigation of bids

After all bids have been opened, the council should investigate them. Information should be obtained to help the council evaluate each of the bidders. This may be carried out by the city engineer, purchasing agent, clerk, or other designated person. The following elements are usually considered during the evaluation process:

- The responsibility of the bidder and the probability of the bidder’s adequate performance.
- Compliance with specifications.
- Reasonableness (including how the bids compare to cost estimates).
- Any other relevant factors.

1. Lowest responsible bidder

Statutory city contracts and contracts of all cities for improvements under the local improvement code must generally go to the “lowest responsible bidder.” Most home rule city charters contain similar requirements, with terms such as “lowest bidder” or “lowest and best bidder” describing their selection process.

The phrase “lowest responsible bidder” does not mean the lowest bidder, but the lowest bidder who is most likely to do faithful, conscientious work and promptly fulfill the contract according to its letter and spirit. In determining who the lowest responsible bidder is, the courts have said that the council has reasonable discretion.

The successful bidder must be considered “responsible” to perform the proposed contract. “Responsibility” includes such things as the bidder’s financial responsibility, integrity, ability, skill, and likelihood of providing faithful and satisfactory performance.

In determining the lowest responsible bid, the council may take into consideration not only the lowest price offered, but also the actual capability of a given vendor to perform the proposed contract and whether the bidder has adequately met the terms and conditions of the bid specifications.

The council has somewhat more latitude in purchasing items of equipment that are not capable of exact specifications. In making such a purchase, a council may exercise reasonable discretion in determining the lowest responsible bidder. In addition to the bid price, it may consider the quality, suitability, and adaptability of the equipment.

In some situations, the council may decide what weight to give to various factors and accept what it deems to be the lowest responsible bid.

RELEVANT LINKS:

A.G. Op. 707a-15 (Oct. 25, 1966).

Otter Tail Power Co. v. Village of Elbow Lake, 234 Minn. 419, 49 N.W.2d 197 (1951). *Leskinen v. Pucelj*, 262 Minn. 461, 115 N.W.2d 346 (1962).

Sutton v. City of St. Paul, 234 Minn. 263, 48 N.W.2d 436 (1951). *Carl Bolander & Sons Co. v. City of Minneapolis*, 451 N.W.2d 204 (Minn. 1990).

Coller v. City of St. Paul, 223 Minn. 376, 26 N.W.2d 835 (1947). A.G. Op. 980-B (June 2, 1950). *Duffy v. Village of Princeton*, 240 Minn. 9, 60 N.W.2d 27 (1953).

Diamond v. City of Mankato, 89 Minn. 48, 93 N.W. 911 (1903). *Coller v. City of St. Paul*, 223 Minn. 376, 26 N.W.2d 835 (1947).

LeTourneau v. Hugo, 90 Minn. 420, 97 N.W. 115 (1903).

A.G. Op. 707-B-7 (May 21, 1946).

A.G. Op. 707-a-4 (June 4, 1947).

Rochon Corp. v. City of Saint Paul, 814 N.W.2d 365 (Minn. Ct. App. 2012).

Such a situation occurred when plans and specifications for the construction of a power plant demanded the consideration of several factors and no single bid was the lowest in all the factors. The court agreed the city council could use its discretion to determine which elements were the most important and said that such a contract will not be set aside without an abuse of discretion.

In awarding a contract for the purchase of an item, such as a police car, a council may be able to consider the proximity of repair and service facilities in addition to the bid's price.

In extreme situations, time and certainty of delivery may be grounds for not choosing the lowest bidder. However, when a city is awarding a contract on a basis other than the lowest bid, it should be able to justify its decision.

2. Conformity to plans and specifications

A successful bid must conform to the bid specifications. Unless the bid responds to the specifications in all material respects, it is not a bid but a new proposition and, therefore, should be rejected.

A bidder who has deviated from the specifications may still be awarded the contract if it was not a material deviation. The general rule is that a variance is material if it gives a bidder a substantial advantage or benefit over other bidders. Whether a material variance exists is a fact question that must be dealt with on a case-by-case basis. The following deviations were found to be material:

- A difference in the contract's payment date that was four months earlier than the date provided for in the specifications.
- A stipulation that the equipment sold to the city be installed according to the company's specifications instead of those of the city, and failure of the bidder to agree to pay for a city inspector during the six-month trial period as called for in the specifications.
- Modification to allow a bidder earlier payment and a change of specifications to relieve the bidder from completion penalties if the delayed performance was due to circumstances beyond the bidder's control.
- Bidder's deviation by adding a 10-percent escalation clause.
- Submission of a single bid for an entire contract when the specifications asked for separate bids for the contract's four parts.
- Allowing a bidder to increase its bid because of a mathematical error and selecting the modified bid because even after the modification the increased bid was still the lowest.

RELEVANT LINKS:

Foley Bros. v. Marshall, 123 N.W.2d 387, 390 (Minn. 1963).

Carl Bolander & Sons Co. v. City of Minneapolis, 451 N.W.2d 204, 207-08 (Minn. 1990).

Lovering-Johnson, Inc. v. City of Prior Lake, 558 N.W.2d 499, 503 (Minn. Ct. App. 1997).

Foley Bros., Inc. v. Marshall, 266 Minn. 259, 123 N.W.2d 387 (1963).
A.G. Op. 707-A-3 (May 6, 1953).

Nielsen v. City of St. Paul, 252 Minn. 12, 88 N.W.2d 853 (1958).

Griswold v. Ramsey County, 242 Minn. 529, 65 N.W.2d 647 (1954). A.G. Op. 161-A-8 (Jan. 5, 1965). *Duininck Bros., Inc. v. State*, C3-97-972 (Minn. Ct. App. Nov. 25, 1997) (unpublished opinion).
Lovering-Johnson, Inc. v. City of Prior Lake, 558 N.W.2d 499 (Minn. Ct. App. 1997). *Rochon Corp. v. City of Saint Paul*, 814 N.W.2d 365 (Minn. Ct. App. 2012).

Tunny v. City of Hastings, 121 Minn. 212, 141 N.W. 168 (1913). *Rochon Corp. v. City of Saint Paul*, 814 N.W.2d 365 (Minn. Ct. App. 2012).

- Variations that affect “price, quality, or quantity, or the manner of performance, or other things that go into the actual determination of the amount of the bid.”
- Failure to comply with specification by listing a women-owned subcontracting firm with which the bidder would use best efforts to enter into a subcontract.
- Deleting a plus sign from a defective bid so it became the lowest bid.

Alternatively, minor irregularities and deviations are generally not viewed as material. This is especially true of technical irregularities where requirements are intended for the benefit of the city and do not injure other bidders. The following were not found to be material deviations:

- Failure to submit a required non-collusion affidavit on a specified form when a similar non-collusion certificate was submitted instead.
- Submission of a personal check instead of the required certified check as bid security.
- Failure to describe bidder status properly.
- Failure to have a bid bond notarized.
- Neglect in sealing a bid.
- A few minutes delay in submitting the bid.

3. Changes and mistakes in bids

Sometimes contractors will discover that their bids contain a mistake after bids have been opened. Generally, a bidder should not be allowed to alter his or her bid substantially after the bid opening since this would give the bidder a substantial advantage over other bidders. For example, courts have found that a price term and an ambiguous contract bid price were mistakes that could not be waived. If the bidder is the low bidder because of the mistake, and the bid has been accepted before the mistake is discovered, the city may not award the contract for the corrected amount. This is unfair to the other bidders.

However, if the council chooses to reject all bids and advertise again, a bidder may submit a new, corrected bid (not knowing, of course, whether his or her new bid will be low the second time).

In general, a bidder will be relieved of the obligation to enter into a contract because of a unilateral mistake if all of the following apply:

- The mistake is so substantial that it is unreasonable to suppose the contractor would have submitted the bid.
- The mistake was not the product of the bidder’s gross negligence.
- The contractor gives prompt notice of the error to the city.

RELEVANT LINKS:

2 A.L.R.4th 991 (1980).

St. Nicholas Church v. Kropp,
135 Minn. 115, 160 N.W. 500
(1916).

Tunny v. City of Hastings,
121 Minn. 212, 141 N.W. 168
(1913).

*City of Lonsdale v. NewMech
Cos., Inc.*, Nos. A07-0105,
A07-0107, A07-0108 (Minn.
Ct. App. Jan. 22, 2008)
(unpublished decision).

[Minn. Stat. § 574.27.](#)

A.G. Op. 707-a-1 (Mar. 28,
1955).

- The city has not changed its position in reliance on the bid and has suffered no damage other than the loss resulting from the bid mistake.

The contractor must sufficiently identify the error to permit the city to determine that the contractor is entitled to relief. The contractor is given relief when the error is obvious to the city when the bid is read.

A contract may be rescinded for a unilateral mistake. The mistake may stem from a clerical error, such as transposing numerals, from forgetting to include the amount for performing a segment of the work, or from a math error. For example, a court found that the omission of the structural steel to be used in church construction was such a mistake.

The mistake may also stem from an error of judgment concerning the nature of difficulties of the work, the quality of materials required, or other judgmental factors. Such a situation occurred where a contractor mistakenly bid based on earth excavation when, in fact, a large part of the excavation was through solid rock.

Lawsuits involving mistakes in bids may arise either in actions by the city against the contractor or bid-bond surety, or both. The city may ask for the amount of the bond, or the difference between the low bid and the second lowest bid.

A contractor may also sue for the return of the bid bond. The city may relieve a mistaken bidder of the consequences of his mistake.

When a mistaken bid is superseded or abandoned by the parties, the bidder is entitled to a return of the deposit or cancellation of the security.

When a low bidder refuses to sign a contract because of a material mistake in the bid, the city must decide whether to accept the second low bid or reject all bids and re-advertise. The city should also consider the time and expense involved in rebidding, as well as the possibility of higher bids on the second attempt. The delay may result in higher costs and less competition. The delay can also result in less favorable weather during construction. Generally, it is expensive for contractors to submit bids. Some contractors, having once bid a job and disclosed their price, may refuse to bid again.

E. Disposition of bids

After investigation of the bids, the council may either accept one of the bids or reject all of them. If there are no bids, the council should re-advertise. Cities that find themselves in this type of situation may reach more potential bidders by revising the bid specifications or re-advertising in publications with a larger circulation.

RELEVANT LINKS:

[Minn. Stat. § 429.041, subd. 2.](#)

[Minn. Stat. § 429.041, subd. 2.](#)

[Elec. Unlimited, Inc. v. Village of Burnsville](#), 289 Minn. 118, 182 N.W.2d 679 (1971).

See Section II. A. *Preparation of bid specifications.*

[Minn. Stat. ch. 13.](#)

See LMC information memo, *Data Practices: Analyze, Classify, Respond.*

[Minn. Stat. § 13.591, subd. 3\(a\).](#)
[Minn. Stat. § 13.37, subd. 2.](#)

[Minn. Stat. § 13.591, subd. 3\(a\).](#)

Generally, a lack of response from bidders does not eliminate the requirement to use the competitive bidding process. However, on a local improvement project under the special assessment statutes, if there are no bidders or if the only bids exceed the engineer's estimate, the council may choose to do the work by day labor.

1. Rejecting bids

The local improvement code gives the city the right to reject any and all bids, even if the city doesn't include such a statement in the advertisement for a local improvement. The same is true of any city with a similar charter provision applying to other contracts.

In any other case, the city should reserve the right to reject any or all bids or to waive informalities or irregularities. It is possible that if the city has not reserved the right to reject any and all bids, a court action could compel the city to award the contract to the low bidder.

2. Delays in accepting bids

In the bid specifications, the city may put bidders on notice that there may be a delay in accepting a bid until certain events occur.

For example, in a project that will be paid for with special assessments, a city may wish to delay awarding a bid until the time for appealing the special assessments has passed.

F. Data practices

The Minnesota Government Data Practices Act (MGDPA) is a series of state laws that attempt to balance the public's right to know what their government is doing, individuals' right to privacy in government data created and maintained about them, and the government's need to function responsibly and efficiently. The MGDPA divides all government data into broad classifications that determine who can access the data.

1. Bid information

When cities use the competitive bidding process, sealed bids are not public until the time and date specified in the solicitation that bids are due, at which time the name of the bidder and the dollar amount specified in the response become public. All other data in a bidder's response to a bid is not public data until completion of the selection process.

"Completion of the selection process" means the city has completed its evaluation and has ranked the responses.

RELEVANT LINKS:

[Minn. Stat. § 13.37.](#)
[DPO 08-021.](#)

[Minn. Stat. § 13.591, subd. 3\(a\).](#)

[Minn. Stat. § 13.591, subd. 3\(a\).](#)

[Minn. Stat. § 13.591, subd. 3\(b\).](#)

[Minn. Stat. § 13.591, subd. 3\(b\).](#)

[Minn. Stat. § 13.591, subd. 3\(b\).](#)

[Minn. Stat. § 13.591, subd. 3\(b\).](#)

[DPO 03-014.](#)

[5 U.S.C. § 552\(b\)\(4\).](#)

After a government entity has completed the selection process, all remaining data submitted by all bidders is public (with the exception of anything that might be considered a “trade secret” under the law).

If all bids are rejected prior to completion of the selection process, all data (other than the name of the bidder and the dollar amount specified in the response) remains not public until either:

- The selection process is completed after a re-solicitation of bids.
- The city decides to abandon the purchase.

If the rejection occurs after the completion of the selection process, the data remains public. If a re-solicitation of bids does not occur within one year of the bid opening date, the remaining data becomes public.

2. Proposals

Data submitted by a business to a city in response to an RFP are not public data until the time and date specified in the solicitation that proposals are due, at which time the name of the responder becomes public. All other data in a response to an RFP are private or nonpublic data until completion of the evaluation process. “Completion of the evaluation process” means that the city has completed negotiating the contract with the selected vendor.

After the city has completed the evaluation process, all remaining data submitted by all responders are public, with the exception of trade secret data.

If all responses to an RFP are rejected prior to completion of the evaluation process, all data, other than the names of the responders, remains not public until either:

- The selection process is completed after a re-solicitation of proposals.
- The city decides to abandon the purchase.

If the rejection occurs after the completion of the evaluation process, the data remains public. If a re-solicitation of proposals does not occur within one year of the proposal opening date, the remaining data becomes public.

A business submitting a proposal may give written consent to the release of non-trade secret data prior to the opening of all proposals, so long as a city informs the business of the possibility that such data could be released during the time that the statute classifies the data as not public.

3. Proprietary information

A statement that data submitted in support of a bid or proposal is copyrighted, “proprietary,” or otherwise protected is insufficient to prevent public access to the data contained in the bid.

RELEVANT LINKS:

Nat'l Council on Teacher Quality v. Minnesota State Colleges & Univs., 837 N.W.2d 314 (Minn. Ct. App. 2013).

Minn. Stat. § 13.37, subd. 2.

Minn. Stat. § 13.37, subd. 2.

Minn. Stat. § 412.691.

Minn. Stat. § 412.201.

State ex rel. Kron v. Hodapp, 104 Minn. 309, 116 N.W. 589 (1908).

See *Primer on Project Delivery* (2nd ed. 2011), The American Institute of Architects and The Associated General Contractors of America.

This is important because, while the Federal Freedom of Information Act does allow data to be withheld if marked “proprietary,” Minnesota state law is more restrictive. However, the Minnesota Government Data Practices Act cannot be interpreted to require a government body to violate the Federal Copyright Act.

When issuing a request for bids or proposals, a city may indicate the distinction between state and federal law and the need to mark any data claimed to be a trade secret. Potential respondents can be instructed to submit a separate letter to the responsible authority explaining how the data they claim is trade secret data meets the criteria. It is then the duty of the responsible authority to determine the appropriate classification.

III. Contracts

Generally, only the council may enter into contractual agreements on behalf of the city; individual councilmembers, council committees, and city administrative officers do not have that authority. However, city managers of Plan B statutory cities may let contracts when the amount does not exceed \$20,000. Home rule charters often provide similar limited authority as well.

The council should approve every contract by resolution. In addition, in statutory cities, the mayor and the clerk (or the manager in Plan B cities) must sign and affix the city seal to the contract. As long as the contract expresses an agreement of the council as a whole, and as long as there is no other reasonable doubt concerning the contract’s legality, these officials may not, based on their own judgment, refuse to execute the contract.

A. Delivery methods

The following is an overview of some of the different types of contract delivery methods.

1. Design/bid/build contracts

The design/bid/build delivery method is the most traditional type used for building construction. With this process, the city contracts with an architect who designs the building. The architect’s drawings are then used as the specifications to advertise for bids on the construction of the building. The winning bidder is contracted with to build the building.

The strength of this method is that it allows the city to plan the entire building before construction begins. It also allows for some follow-up between the contractor and the architect. The weakness of this type of contract is that disagreements can arise between the city, the architect, and the general contractor because of competing interests.

RELEVANT LINKS:

See *Primer on Project Delivery* (2nd ed. 2011), The American Institute of Architects and The Associated General Contractors of America. Handbook, Expenditures, Purchasing, and Contracts (pg. 41).

W.V. Nelson Constr. Co. v. City of Lindstrom, 565 N.W.2d 434 (Minn. Ct. App. 1997). See *Primer on Project Delivery* (2nd ed. 2011), The American Institute of Architects and The Associated General Contractors of America.

For example, the architect may not be aware of the most current cost of materials and procedures, or the costs could change significantly between the time the building was designed and the time the construction begins. This procedure is slow because the project must be entirely planned out and bid before the construction costs can be fixed.

2. Construction manager

With this method, the city hires a construction manager, who is responsible for overseeing the contractor or advising the city if the city is acting as the general contractor. Often, the city will take the responsibility for purchasing the construction materials.

The strengths with a construction manager are that the city can avoid contractor mark-ups on the cost of materials, and the city can have additional supervision and feedback on the architectural design and construction.

Weaknesses include the possibility of higher administrative costs for the city and possible delays because the responsibility for purchasing materials is not that of the contractor. There also can be more opportunities for disagreements between the city, architect, and contractor.

Note – Occasionally, the League is asked about whether cities can utilize a Construction Manager- At Risk project delivery method (often referred to as “CMAR” or “CM/GC”). A traditional Construction Manager at Risk method (where the Construction Manager awards the subcontracts) is not possible for cities because it does not comply with competitive bidding laws. It may be possible to conduct a modified form of Construction Manager- At Risk where the city itself conducts competitive bidding on the subcontracts or prime contracts. However, drafting these documents and utilizing this method requires involvement of experienced construction attorneys.

3. Design/build

With design/build, the city hires a firm whose architect and contractor design and construct the building. The design/build construction method does offer advantages over other construction methods, but it is not suited to every construction project. In addition, design/build contracts must still comply with competitive bidding laws. Currently, only the state of Minnesota is expressly authorized to use the design/build process (although it has been authorized for local governments in the past as part of a pilot project). These types of contracts are complex and fact-specific. Cities considering using this method should consult with their city attorney.

RELEVANT LINKS:

[Minn. Stat. § 465.71.](#)

[Minn. Stat. § 412.221, subd. 2.](#)

[Minn. Stat. § 412.221, subd. 2.](#)

[Minn. Stat. § 410.33.](#)

The strengths of the design/build delivery method are that the construction and design costs are established early and the responsibility for the entire project is with one firm. As a result, the architect and the contractor work together on the project. This type of procedure may also be faster because the construction can begin while the final design is still being finished.

The weaknesses of the design/build method are that the project may not be completely planned in advance, and the city may have less access to and control over the architect. Additionally, there is often little opportunity for outside checks and balances by other professionals because the responsibility for the project rests with one organization.

4. Lease purchase agreements

Cities may lease real or personal property with an option to buy under a lease purchase agreement. For the purpose of the bid requirements, the amount of the contract must include the total of all lease payments for the entire term of the lease. The city must have the right to terminate a lease-purchase agreement at the end of any fiscal year during its term and should be certain that any lease-purchase agreement contains language that gives it this right.

5. Conditional sales contract

Statutory cities may purchase personal property under a conditional sales contract. The purchase price must be paid within five years. The seller is limited to the recovery of the property in the case of nonpayment.

The city must publish a resolution stating its intent to enter into a conditional sales contract for a purchase if the contract price exceeds 0.24177 percent of the estimated market value of the city. The publication must occur at least 10 days before the city makes the contract.

If 10 percent of the number of voters who voted in the last regular city election submits a petition asking for an election, the city cannot enter into the contract until the purchase is approved at an election.

Home rule charter cities may enter into a conditional sales contract even if their charters are silent on this matter.

6. Total cost bidding

Traditional bidding on an item of equipment has focused exclusively on the purchase price. This method has the advantage of simplicity and in many cases is adequate to ensure the lowest overall cost. In making some purchases of equipment, however, lowest purchase price bidding may ignore other important elements of the cost.

RELEVANT LINKS:

Otter Tail Power Co. v. Village of Elbow Lake, 234 Minn. 419, 49 N.W.2d 197 (1951).

Otter Tail Power Co. v. Village of Wheaton, 235 Minn. 123, 49 N.W.2d 804 (1951).

A.G. Op. 707a-7 (Jan. 9, 1968).
A.G. Op. 707a-7 (June 12, 1967).

A.G. Op. 707-a-6 (Aug. 21, 1950).

A.G. Op. 707-D-6 (Aug. 9, 1946). A.G. Op. 707-B-7 (Nov. 14, 1947). A.G. Op. 707-B-7 (July 22, 1947). A.G. Op. 707-B-7 (May 21, 1946). A.G. Op. 707-B-7 (July 16, 1946).

To take account of these costs, some cities have used a method known as total cost bidding. Under this system, the city considers all of the costs of purchasing, owning, operating, and maintaining the equipment it will purchase. Specifications require vendors to bid not only the initial price of the equipment, but also a number of minimum after-purchase costs for a specific period, such as maintenance. The bid is generally backed by a bond to ensure performance by the vendor.

Total cost bidding is not specifically authorized by statute in Minnesota. Arguments have been made that such bidding violates competitive bidding requirements because it restricts competition.

The Minnesota Supreme Court has never considered the validity of such bidding, although it has held that a council has reasonable discretion in determining the lowest responsible bidder.

The attorney general has issued mixed opinions regarding total cost bidding. It was upheld in a situation where bidders were required to include both a provision for a guaranteed minimum repurchase price and for a guaranteed maximum repair cost. The reason behind this conclusion was that such specifications were reasonably designed to give all contractors an equal opportunity to bid. In addition, the specifications seemed to ensure taxpayers would get the best bargain for the least money. In an earlier opinion, the attorney general had disapproved of total cost bidding.

7. Cost-plus contracts

Cities may not make cost-plus contracts for construction work of any kind. Cost-plus contracts are those in which the governing body agrees to pay the contractor for all costs the contractor incurs on the project plus some additional sum of money. In effect, there is no competition on the cost of labor or materials and no indication of how much work is required or will be done. As a result, there is no basis for comparing the bidders except on the percentage for overhead and profit.

The attorney general has advised that a bid on a cost-plus basis does not meet the statutory provisions for competitive bidding.

An alternative to the cost-plus system in times of labor and material shortages, and possible rising prices, is to use an escalator clause in advertising for bids. Under such a clause, contract prices go up automatically with inflation according to a fixed formula prescribed in the contract. The attorney general has issued mixed opinions on the use of escalator clauses.

RELEVANT LINKS:

[Minn. Stat. § 574.26.](#)
[Minn. Stat. § 471.345, subd. 3.](#)

[Goodin Co. v. City of Prior Lake](#), No. A14-1144 (Minn. Ct. App. Mar. 9, 2015) (unpublished opinion).

[Green Elec. Systems, Inc. v. Metropolitan Airports Com'n](#), 486 N.W.2d 819 (Minn. Ct. App. 1992).

[Local Oil Co., Inc. v. City of Anoka](#), 303 Minn. 537, 225 N.W.2d 849 (1975).

[Minn. Stat. § 574.29.](#)
[Collins Elec. Systems, Inc. v. Redflex Traffic Systems, Inc.](#), No. A07-0675 (Minn. Ct. App. Apr. 8, 2008) (unpublished opinion).

[Minn. Stat. § 574.26, subd. 3.](#)
[Office of the State Auditor, Statement of Position: Contract Change-Orders and Contractor's Bonds](#), Revised May 2019.

[Minn. Stat. § 574.27.](#)

B. Bonds

While some bonds are specifically required by statute, others are not. Cities often choose to require them to protect the city from costs that it may incur resulting from these contractual relationships.

1. Performance and payment bonds

Before any contract for public work over \$175,000 becomes binding, the contractor must provide a performance bond and a payment bond to the city. (Cities may choose to waive these bonds for projects of \$175,000 or less.) Whether a contract is one for doing of public work “depends on ownership of project, funding of project, scope of municipality's participation in project, and extent project is put to public use.”

The bond amounts must each be in at least the amount of the contract. The performance bond is to guarantee that the contractor will complete the contract according to its terms and conditions and to protect the city from all costs and charges that may accrue in the course of completing the work. The payment bond is to ensure that all workers, subcontractors, and persons furnishing materials are paid.

If a city fails to get a payment bond from a contractor, it can be held liable for losses to any workers, subcontractors, and persons who furnish materials if the contractor doesn't pay them. The city should make sure all subcontractors and material suppliers have been paid by the contractor before making final payment to a contractor.

Although a payment bond and a performance bond are not required for contracts that are \$175,000 or less, cities may want to require these bonds for all contracts.

If the contract price for public work increases due to change orders, unforeseen conditions, cost overruns, or any other reason after the contract is signed, the governing body has the option of increasing the amount of the contractor's payment bond or performance bond.

2. Bid bonds

Cities may require bidders to submit a bid bond with their bids. Generally, a bid bond ensures the city does not waste its time with a frivolous bid. It guarantees the bidder will enter into a contract with the bid that was submitted and provide the required bonds and insurance.

RELEVANT LINKS:

[Minn. Stat. § 429.041, subd. 1.](#)

[Minn. Stat. § 574.27.](#)

[Minn. Stat. § 176.182.](#)

[Minn. Stat. § 290.92.](#)
[Minn. Stat. § 270C.66.](#)
[Fact Sheet 13 Construction Contracts with State or Local Government Agencies,](#)
[Minnesota Revenue, Rev. Dec. 2017.](#)
[Form IC-134.](#)

[Minn. Stat. § 16C.05, subd. 5.](#)

There is no statutory requirement that bidders must submit a bid bond on contracts. However, bidders on projects made under the special assessment statutes must submit a cash deposit, cashier's check, bid bond, or certified check payable to the clerk for such percentage of the amount of the bid as the council specifies. Some home rule charters contain similar provisions that require bid bonds.

If a city requires bidders to submit bid bonds, it is responsible for returning the bid bonds to the bidders whose bids were not accepted. The city must also return the bid bond to the winning bidder after he or she has entered into the contract and provides acceptable security.

C. Miscellaneous considerations

The following is a brief overview of some of the more important considerations when making contracts. It is not intended as a complete list, and a city should have its attorney review any contract prior to its execution.

1. Workers' compensation

A city may not enter into a contract for any public work until it has received from all other contracting parties proof of compliance with the workers' compensation insurance requirements. This means the contractors must show they are self-insured, carry workers' compensation insurance for their employees, or are exempt from having to provide such insurance. Proof of compliance should be kept by the city but does not need to be filed or reported to any state agency.

2. Income tax withholding

Cities may not make final payment to a contractor until the contractor has shown proof of compliance with the state income tax withholding requirements. The Department of Revenue requires all contractors and subcontractors to file a Form IC-134 to show compliance with the withholding requirements. This certificate is the contractor's proof of compliance. A city should request a copy of this document from contractors before making the final payment on a contract.

3. Audits

A contract must include an audit clause that provides that the books, records, documents, and accounting procedures and practices of the contractor relating to the contract are subject to examination by the city and the state auditor for a minimum of six years.

RELEVANT LINKS:

[Minn. Stat. § 13.05, subd. 11.](#)

[Minn. Stat. § 471.425, subd. 4a.](#)

[Minn. Stat. § 337.05.](#)
LMCIT staff can assist in reviewing city contracts, especially provisions related to insurance and liability. For more information, contact Chris Smith, Risk Management Attorney, at csmith@lmc.org or 651-281-1269

[Minn. Stat. § 337.02.](#)
[Minn. Stat. § 337.05.](#)

4. Data practices compliance

When a city contracts with a private person to perform governmental functions, it must include language in the contract stating that all of the data created, collected, received, stored, used, maintained, or disseminated in performing the governmental functions are subject to the requirements of the Minnesota Government Data Practices Act, and that the private person must comply with those requirements as if it were a governmental entity. A city's failure to include this data practices language in a contract does not invalidate the application of these requirements.

5. Prompt payment of subcontractors

A city contract must require the prime contractor to pay:

- Subcontractors for undisputed services within 10 days of the prime contractor's receipt of payment from the city.
- Interest of 1.5 percent to the subcontractor if the payment is late.
- A minimum monthly interest penalty payment of \$10 for an unpaid balance of \$100 or more.

6. Indemnification

Indemnification agreements generally provide that the contractor promises to defend, indemnify, and hold the city (and its agents and employees) harmless from any and all damages arising out of the contract. These clauses are enforceable in some limited circumstances, such as where the contractor fails to comply with a contract provision to furnish a bond or insurance policy that would protect the city from liability arising out of the project.

However, in other instances, indemnification agreements may have limited enforceability. For example, they are unenforceable in construction contracts except to the extent that:

- The underlying injury or damage is attributable to the negligence or other wrongful act of the contractor or its independent contractors, agents, employees, or delegates.
- The city agrees to indemnify the contractor with respect to strict liability under environmental laws.

A city should also have the contractor name the city as an additional insured under the contractor's insurance policy. The city should require the contractor to provide a copy of this endorsement, as well as any appropriate certificates of insurance.

RELEVANT LINKS:

[Minn. Stat. § 181.59.](#)
Borom v. City of St. Paul, 289
Minn. 371, 184 N.W.2d 595
(1971).

[Minn. Stat. §§ 177.41-44.](#)
A.G. Op. (Jan. 14, 1988).
A.G. Op. (July 15, 1988).

[NewMech Co. v. Indep. Sch.](#)
Dist. No. 206, 540 N.W.2d
801 (Minn. 1995).

[40 U.S.C. §§ 3141-3148.](#)

7. Non-discrimination

All public contracts for materials, supplies, or construction must contain a statement where the contractor promises not to discriminate against prospective employees because of race, creed, or color. In addition, many state and federal grants contain requirements that construction contracts include language to ensure contractors do not discriminate with regard to age, race, sex, religion, nationality, and disability.

8. Prevailing wage

The wages paid to those working on city projects may also be a concern.

a. Minnesota law (Little Davis Bacon)

The wages of laborers, workers, and mechanics on projects financed in whole or in part by state funds should be comparable to wages paid for similar work in the community as a whole.

There is no clear definition of what constitutes “state funds” for the purpose of this requirement. Certainly, the definition would include any specific state grants a city might get for a particular project. It also may include such things as local government aid and other state aids.

Some have claimed money that has been kept in the same fund with any of these types of aids would qualify as state funds since it has commingled with such funds.

However, the Minnesota Supreme Court found that Debt Service Equalization Aid (DSEA) and Homestead and Agricultural Credit Aid (HACA) did not trigger the prevailing wage requirements in a school construction contract. The reasoning behind this decision was that these aids lacked a direct relationship to the project.

If a city has any doubts, it will probably want to be sure that at least the prevailing wages are paid. Otherwise, a city may want to be certain only non-state funds, or money that has been kept separate from anything that might be seen as state funds, are used to pay for the project.

b. Federal law (Davis Bacon)

There is a similar federal prevailing wage requirement for all public work contracts in which the United States or the District of Columbia is a party.

9. Project labor agreements

A project labor agreement (PLA) is an agreement between the city’s contractor and a union that is sometimes required by cities.

RELEVANT LINKS:

[Queen City Constr., Inc. v. City of Rochester](#), 604 N.W.2d 368 (Minn. Ct. App. 1999).

[Minn. Chapter of Associated Builders and Contractors, Inc. v. Minnetonka Indep. Sch. Dist. No. 276](#), C2-99-837 (Minn. Ct. App. Dec. 28, 1999) (unpublished opinion).

A.G. Op. 707a-15 (Oct. 8, 1945).

[Minn. Stat. § 429.041, subd. 1.](#)

See Section I. E. *Exemptions, exceptions, and alternatives.*

[Minn. Stat. § 429.041, subd. 7.](#)

Under this type of agreement, the project's contractor agrees to designate a particular labor organization as the exclusive bargaining representative for all employees working on the project. In addition, the contractor agrees to employ only contractors and subcontractors who agree to abide by the terms of a specific collective bargaining agreement. In return, the union agrees there will be no strikes, picketing, slowdowns, or similar disruptions during the project.

The Minnesota Court of Appeals appears to support the ability of cities to require PLAs. In a 1999 decision, the Minnesota Court of Appeals found that nothing in Minnesota law prevents a public entity from imposing a bid specification that requires successful bidders to sign a PLA.

In a challenge to a school district's PLA requirement on a construction project, the contractor claimed the PLA had an anti-competitive effect. However, in an unpublished decision, the court found that a PLA would not have an anti-competitive effect because Minnesota's prevailing wage law would require contractors on a project to pay wages essentially equivalent to union wages.

D. Contractual changes after award

Sometimes, changes to a contract are considered after the contract has been awarded.

1. Adding on to contracts

When one construction job is the subject of competitive bidding and the contract has been let, another job may not be added to the contract at a later time. This would give the contractor an unfair advantage since other prospective contractors did not have an opportunity to bid on the second job. However, cities may combine two or more improvements in one advertisement and in one contract, if the contract is made under the special assessment statutes.

A change to add new work to a contract may not need to be competitively bid if the total added cost is \$175,000 or less. Because the cost is below the competitive bidding threshold, it is arguable that bidding would not be mandatory. However, cities should exercise caution in this area.

A city council may authorize changes in a unit price contract that is made under the special assessment statutes.

After the work on a unit price contract has begun, the council may authorize additional units of work at the same unit price, as long as the total contract price does not increase by more than 25 percent. The city may do this without re-advertising for bids.

RELEVANT LINKS:

Village of Excelsior v. F.W. Pearce Corp., 303 Minn. 118, 226 N.W.2d 316 (1975).

Carson v. City of Dawson, 129 Minn. 453, 152 N.W. 842 (1915).

Buchman Plumbing Co., Inc. v. Regents of the Univ. of Minn., 298 Minn. 328, 215 N.W.2d 479 (1974).

Lundstrom Constr. Co. v. Dygert, 254 Minn. 224, 94 N.W.2d 527 (1959).

Shaw v. First Baptist Church of Winona, 44 Minn. 22, 46 N.W. 146 (1890).

Carson v. City of Dawson, 129 Minn. 453, 152 N.W. 842 (1915).

In applying this provision, a court approved the addition to the contract of one political subdivision of units of work to be done by another political subdivision, as long as the 25 percent restriction was not exceeded. The court found the variable in the contract was the total estimated number of units and the constant was the unit price. Therefore, no harm resulted from amending a factor that may change under many different circumstances. The harm to protect against was an unreasonable unit price, and that factor was not a proper subject of the contract modification.

2. Changes in work

A city may be able to make alterations or require extra work because of errors in plans, unforeseen conditions, or other similar reasons.

Construction contracts often contain language that authorizes these types of necessary changes. Such provisions may permit a city to make some minor changes in the work, if the changes are ordered in writing. However, cities should use caution when ordering changes in work since this type of requirement has given rise to a considerable amount of litigation.

Sometimes these provisions include a requirement that estimates must accompany or precede the order. These provisions are generally valid. A provision requiring written notice to the city of claims for extra cost is similar in effect.

Such provisions are intended as a check on the contractor, and, being for the benefit of the city, may be insisted upon or waived depending upon what best suits the city's needs.

When the contract with the principal contractor contains such a notice provision, it is applicable to both the principal contractor and any subcontractors involved on the project.

What constitutes "extras" has also been the subject of litigation. For example, a city contract provided that the city had the right to make alterations in extent, dimensions, form of plans, or location of the work, and also provided that no claims for extra labor or material were allowed unless ordered in writing by the city. Here, the court found these provisions to be independent. As a result, when the changes that were made increased the expense, the contractors could recover the value of the necessary labor and material even though no written order had been given.

If the "extras" are needed because of errors in the specifications or unforeseen conditions, the contractor may have a right to recover because of misrepresentation. In this type of situation, a written order would not be necessary.

RELEVANT LINKS:

[Minn. Stat. § 574.26, Office of the State Auditor, Statement of Position: Contract Change-Orders and Contractor's Bonds, Revised May 2019.](#)

[McCree & Co. v. State](#), 253 Minn. 295, 91 N.W.2d 713 (1958).

[Stanton v. Morris Constr. Co.](#), 159 Minn. 380, 199 N.W. 104 (1924).

[Stees v. Leonard](#), 20 Minn. 494 (1874).
[Friederick v. Redwood County](#), 153 Minn. 450, 190 N.W. 801 (1922).

[Minn. Stat. § 471.345, subd. 14, Rochon Corp. v. City of St. Paul](#), 831 N.W.2d 651 (Minn. Ct. App. 2013).

[Kotschevar v. North Fork Township](#), 229 Minn. 234, 39 N.W.2d 107 (1949).
[Buffalo Bituminous, Inc. v. Maple Hill Estates](#), 311 Minn. 468, 250 N.W.2d 182 (1977).

If the contract price increases due to change orders, unforeseen conditions, cost overruns, or any other reason after the contract is signed, the governing body has the option of increasing the amount of the contractor's payment bond or performance bond.

3. Different conditions

Often a contractor finds that the conditions, such as underlying soil, rock, or water, are different from those in the specifications. Sometimes conditions have changed since the contract was let. These are among the most common causes of disputes between a contractor and a city.

If the specifications assume conditions different from the actual conditions, and, as a result, it costs more to perform the contract, the contractor may recover damages sustained as a result of having relied on the specifications.

If the discrepancy is discovered before performance begins, the contract might be voided. In one case, the court found that a bidder on a highway contract could recover losses from having relied on inaccurate specifications, even though the specifications included a warning that they could differ from the true conditions.

On the other hand, a contractor who makes an absolute and unqualified contract to perform a given undertaking assumes the risks. As a result, the contractor is liable for any failure to perform the contract even though costs may be much more than contemplated. In an extreme case, a contractor had twice built part of a building that fell down because of alleged quicksand. The court said that no difficulty short of absolute impossibility would excuse the contractor from doing what he expressly agreed to do.

Specifications and contracts that include a provision for making adjustments for unknown difficulties may result in lower bids when there is a possibility of such difficulties. Without such a provision, cities may find the bids will be higher because bidders have to anticipate possible bad site conditions.

IV. Violations

An unsuccessful bidder may challenge the validity of a contract in court. If the contract was made without following the competitive bidding requirements, the contract is void and the unsuccessful bidder may be awarded the costs of preparing the unsuccessful bid. A court may not award an unsuccessful bidder damages or attorney fees.

When a contract is found to be void, it is no longer a legally enforceable agreement. However, this does not mean the supplier of the goods or services has no remedy. Minnesota courts have held that cities are liable to the seller or contractor for the benefit received by the city.

RELEVANT LINKS:

Williams v. Nat'l Contracting Co., 160 Minn. 293, 199 N.W. 919 (1924).

Fargo Foundry Co. v. Village of Calloway, 148 Minn. 273, 181 N.W. 584 (1921).

Elec. Unlimited, Inc. v. Village of Burnsville, 289 Minn. 118, 182 N.W.2d 679 (1971).

Major Indus., Inc. v. Krech, Ojard & Associates, Inc., No. A04-1052 (Minn. Ct. App. Dec. 21, 2004) (unpublished opinion).

Sanborn v. Neal, 4 Minn. 126 (1860).

Minn. Stat. § 297A.70, subd 2.

The reasoning behind this conclusion is that it would be unfair for the city to use the supplier's goods or services and not pay for what it has received because of its violation of the competitive bidding law. However, this is generally only the case if the contract was entered into in good faith and was a contract the city had the power to make.

A foundry was permitted to recover the value of the benefits received by the village under a contract to rebuild and repair a water tower and steam-heating system. The contract itself was unenforceable because of the failure to advertise for bids. Recovery was not permitted for the value of the material and cost of labor. However, the contractor did recover payment for the amount of benefit actually received by the village.

This rule for recovery based on benefits received applies only when the contract has been performed or partly performed. Before its performance, the contract may be set aside or found void through a court action. Once a contract is void, the city may not compel its performance.

When an item to be purchased is capable of exact specifications, the court may prevent the award to a bidder where there is evidence that another bidder with a lower bid met the advertised specifications in all material respects. However, because the council has reasonable discretion, a court will not require the city to award a contract to a particular bidder.

In an unpublished decision, the Minnesota Court of Appeals held that the statute prohibiting specifications that exclude all but one type of supplies or equipment does not authorize private actions by individuals for damages. In this case, the Court dismissed a claim by a skylight manufacturer against a school district for damages based on its claim that the school district had violated the statute by using specifications that required a particular manufacturer and type of skylight for a construction project.

Generally, a councilmember who makes a contract on behalf of the city without advertising for bids would not be personally liable for damages resulting from the illegal contract, if acting in good faith. Of course, if the action is a deliberate evasion of the bid requirement, the councilmember may be criminally liable since the cases that have exempted councilmembers from civil liability have been limited to instances in which the official acted in good faith.

V. Limited sales tax exemption for construction projects

The Minnesota Legislature has granted a limited sales tax exemption to cities for certain construction projects. Materials for a city's construction projects are generally tax-exempt if the city purchases them directly.

RELEVANT LINKS:

[Minnesota Department of Revenue Notice #17-10, December 4, 2017.](#)

[Minnesota Department of Revenue Notice #17-10, December 4, 2017.](#)

[Minnesota Department of Revenue Factsheet #111 – Schools: Sales and Purchases.](#)

[Minnesota Department of Revenue Factsheet #142 – Sales to Governments.](#)

[Purchasing Agent Agreement, LMC Model Contract.](#)

However, if the city contracts out the labor and purchase of materials separately, the tax exemption is not automatically available.

The sales tax exemption is only available if a city or its contractor purchases construction materials to be used in constructing buildings or facilities used principally by the city.

The tax exemption does not apply to sales of materials if purchased by a contractor or subcontractor for building, construction, or reconstruction if part of a lump-sum contract, or similar type of contract, with a guaranteed maximum price covering both labor and materials. Therefore, a combined labor and materials guaranteed maximum contract (or similar type of contract) will not benefit from the sales tax exemption.

The alternative to lump-sum contracts is to solicit bids on two separate contracts—one for materials and one for labor—and to designate a contractor as the city’s purchasing agent. If done properly, the city will not have to pay sales or use tax on the materials for the contracted project.

A. Soliciting bids on two contracts

When soliciting two separate contracts to obtain the sales tax exemption, a city must:

- Initially advertise for separate bids for materials and labor.
- Reserve the right to accept only one bid without accepting both bids from any one contractor.
- Award separate contracts for materials and labor.

The Department of Revenue extends this separation of labor and materials requirement to contracts with subcontractors as well.

B. Purchasing agent agreements

To receive the tax exemption, a city must also formally authorize the contractor providing the materials as its purchasing agent. Minnesota schools and towns and their contractors benefited from the sales tax exemption before Minnesota cities. The Department of Revenue has published fact sheets for those entities that can be used to guide cities when designating a purchasing agent.

Using a proper form for designating a purchasing agent agreement is important because using an improper form could deprive a city of its intended sales tax exemption. The purchasing agent agreements have many requirements, which are described below.

RELEVANT LINKS:

[Minn. R. 8130.1200, subp. 3 D.](#)

[Minnesota Department of Revenue Notice #17-10, December 4, 2017.](#)

[Minn. R. 8130.1200, subp. 3 D.](#)

[Minnesota Department of Revenue, Certificate of Exemption Form ST3.](#)

[Minnesota Department of Revenue, Certificate of Exemption Form ST3.](#)

1. Agreements for contractors

The purchasing agent agreement between the city and the city's materials contractor must specify that:

- The city has appointed a purchasing agent.
- When the purchasing agent delivers the materials to the city, the city becomes the owner of the materials. The city takes on the risk of loss with respect to such materials.
- The city, and not the purchasing agent, shall have responsibility for all defective materials and supplies, including those incorporated into realty purchased in such manner.

State administrative rule also requires the designated purchasing agent to "furnish adequate notification" to all vendors and suppliers of the agency relationship with the city and to make it clear to the vendors and suppliers that the city is the one responsible for paying and not the contractor-agent. This must be included in the purchase order between the purchasing agent and the retail vendor.

This is re-emphasized when the contractor checks the box on a completed Certificate of Exemption Form ST3, indicating it has been appointed as a purchasing agent. The contractor-agent should provide the completed form, along with the purchase order, to the seller before the sales tax-exempt transaction is completed.

2. Agreements for subcontractors

A subcontractor can also make purchases tax-free as the city's purchasing agent if the subcontractor has also provided separate bids on materials and labor, and at the time of sale, the subcontractor:

- Has a copy of the completed Certificate of Exemption Form ST3 showing the city is exempt from sales and use tax.
- Has a document appointing the subcontractor as purchasing agent for the city. This is usually provided by the primary purchasing agent whom the city has authorized to appoint subagents.
- Secures separate contracts for materials and labor (avoiding the lump-sum contract or similar guaranteed maximum contract for both materials and labor), or only obtains a materials contract.

VI. Federal anti-trust legislation

Anti-trust laws were passed to protect our economic system from the monopolization of businesses and the restraint of trade. These laws have been found to apply to the practices of cities as well as businesses.

RELEVANT LINKS:

[15 U.S.C. §§ 1-7.](#)

[15 U.S.C. §§ 12, 13, 14-19, 22-27.](#)

[15 U.S.C. §§ 13a, 13b, and 21a.](#)

[City of Columbia v. Omni Outdoor Adver., Inc.](#), 499 U.S. 365, 111 S. Ct. 1344 (1991).

It is important that cities keep these laws in mind when selling, purchasing, or making contracts.

The laws do not specify what damages may be awarded in a successful lawsuit against a city. However, a contract could be voided and a successful challenger could be awarded attorney's fees.

A. Anti-trust acts

The three most important anti-trust laws work in conjunction with one another.

1. The Sherman Act

The Sherman Act prohibits monopolies and attempts (or conspiracies) to monopolize.

Agreements between buyers not to purchase from a particular seller may be a violation of the Sherman Act. An agreement among competing buyers to prevent competition in their purchasing or to control prices may also violate this act.

2. The Clayton Act

The Clayton Act generally prohibits price discrimination and certain mergers and acquisitions. It also prohibits the sale or lease of goods conditioned upon a buyer's agreement not to use the goods of a competitor. Such practices could result in substantially less competition or tend to create a monopoly.

3. The Robinson-Patman Act

The Robinson-Patman Act was adopted to amend the price discrimination part of the Clayton Act. It prohibits sellers from setting unreasonably low prices for the purpose of driving out competitors. It also prohibits sellers from charging different prices for the same item based upon geographic location for the purpose of driving out competitors. In addition, the law makes it a crime for buyers to knowingly induce or receive an illegal discriminatory price.

B. Application to cities

Decisions made by the United States Supreme Court have made it clear that federal anti-trust laws can apply to cities. As a result, it is important for cities to keep these laws in mind when contracting and purchasing. The state's immunity from the federal anti-trust laws does not apply directly to local governments. However, a city may have immunity if acting under a clearly expressed state policy.

RELEVANT LINKS:

See Section II. A.
Preparation of bid specifications.

[Minn. Stat. §§ 471.87-.89.](#)
LMC information memo,
Official Conflict of Interest.

[Minn. Stat. § 471.895.](#)

See Section II. D. 1. *Lowest responsible bidder.*

At a minimum, city officials should add an anti-trust mindset, like their current anti-discrimination mindset, to their mental checklist of considerations before acting and speaking about city purchases and contracts. They should resolve to act openly through formal meetings, and keep a well-documented record through minutes, formal findings, and resolutions setting out exactly what was done and why.

The following should be kept in mind to keep purchases and contracts free of anti-trust problems:

- Use competitive bids or quotations even when the law does not require them.
- Avoid using vendor-furnished specifications that might unnecessarily limit competitive bidding. When consultants prepare bid specifications, they generally should not bid on the contract.
- Avoid purchasing from a company in which a councilmember or other city decision maker in the purchasing process has an interest (this is also prohibited under the state's conflict of interest laws).
- Avoid informal, unrecorded communications with suppliers.
- Do not accept gifts from suppliers (something generally prohibited by the state gift law).
- Be sure that when performance bonds or bid bonds are required, they are either legally necessary or are for the purpose of ensuring responsible bidders. Bond requirements can serve as a restriction on bidders and may not be necessary when purchasing standard materials.
- Be wary of giving local vendors preference in public purchasing when it limits competition. This does not mean cities must avoid contracting with a local vendor when all other things are equal. Likewise, if the bidder's location has an impact on the contract's cost (such as for delivery charges or repairs), it may be an important factor to consider when determining the lowest responsible bidder.
- Emphasize non-restrictive specifications that facilitate competitive bidding.

REFUSE COLLECTION SERVICE AGREEMENT

This Agreement between the City of Foley, a Minnesota municipal corporation (the "City") and Allied Waste Services of North America, LLC, a Delaware limited liability company doing business as Republic Services of Sauk Rapids (the "Contractor") is made July 1, 2019 ("Effective Date"). The collection of refuse under this Agreement shall be managed and disposed of in accordance with the Benton County Solid Waste Ordinance #162, as may be amended, and the Tri-County Solid Waste Management Plan.

RECITALS

WHEREAS, Minnesota Statute §115A.94 allows cities to implement organized solid waste collection;

WHEREAS, the City of Foley has implemented organized collection within the City of Foley for many years;

WHEREAS, the City released a Request for Proposals ("RFP") for organized collection on April 11, 2019; and

WHEREAS, Contractor submitted a proposal to the RFP ("RFP Response") to provide service under the terms of the RFP submission.

AGREEMENT

NOW, THEREFORE, in consideration of the representations in this Agreement, the City and Contractor agree to the following terms:

1. **Definitions.** Terms in this Agreement shall have the following meaning:

Acceptable Waste: garbage, refuse and other municipal solid waste from residential activities, but does not include Prohibited Waste or Recyclables.

Prohibited Waste: waste delivered in quantities which, as determined by the Tri-County Solid Waste Management Commission, may pose a threat to health or safety, or to the environment, or may cause damage to, or materially adversely affect, the operation of the Facility accepting waste, including but not limited to: incinerator ash; foundry sand; explosives; hospital pathological and biological waste; Hazardous Waste; chemicals and radioactive materials; oil sludges; asbestos in identifiable quantities; cesspool or other human wastes; sewage and any other highly diluted, water-carried materials or substances and those in gaseous forms; human or animal remains; street sweepings; ash; mining waste; sludges; demolition debris; hazardous refuse of any kind such as cleaning fluids, crank case oils, cutting oils, paints, acids, caustics, poisons, drugs and such other materials as may be specified from time to time by resolution of the Tri-County Solid

Waste Management Commission or by resolution of the Benton County Board or any other regulated waste.

Recyclable Material: Recyclable Material consists of any material or substance at Facility that can be put to beneficial re-use or sold in recognized markets for purposes other than disposal, including, without limitation, uncontaminated non-hazardous metal food/drink containers, glass bottles and jars, plastic bottles and containers, cardboard, and paper, but does not include Prohibited Waste.

Holidays: Thanksgiving Day and Christmas Day. Changes to the holiday schedule are subject to change if City and Contractor mutually agree to changes.

Hazardous Waste: waste defined as hazardous waste by State or Federal law, rules and regulations from time to time, including but not limited to 42 U.S.C. Section 6903 (5), and regulations interpreting such act, or in Minnesota Statutes Section 116.06, subd. 13 and regulations interpreting such statute, but excluding waste excluded from regulation by Minnesota Rules 7045.0120A, as any of the foregoing may be amended from time to time.

Household: Any dwelling unit located in a building containing up to four dwelling units that is served by refuse collection under this Agreement.

Commercial Unit: Any commercial property or business, other than a Household, that is served by refuse collection under this Agreement.

Facility: the disposal facility designation by the Tri-County Solid Waste Commission.

Solid Waste: Solid Waste is any nonhazardous solid waste generated at Facility that is not excluded by the provisions of this Agreement. Solid Waste shall not include any Prohibited Waste.

Applicable Law: Applicable Law means any applicable law (whether statutory or common), including statutes, ordinances, regulations, rules, governmental orders, governmental decrees, judicial judgments, constitutional provisions, and requirements of any kind and nature promulgated or issued by any governmental authority claiming or having jurisdiction.

2. **Term.** The term of this Agreement shall be from the Effective Date, to June 30, 2024. Actual collection service shall begin on July 1, 2019 and run through June 30, 2024.
3. **Extension.** The parties may mutually extend this Agreement for five additional years beginning July 1, 2024. To extend this Agreement, the parties shall both execute an extension document by April 1, 2024.
4. **Incorporation of RFP Response from Contractor.** In addition to the terms of this Agreement, the City has relied on the representations from the Contractor's RFP

Response. Contractor's RFP Response is part of the contractual obligations and are hereby incorporated into this Agreement. In the event that any representation by Contractor in the RFP Response conflicts with any term of this Agreement, this Agreement shall control and take precedent.

5. **Household Count.** The approximate number of Households/Residential Units as of the Effective Date is 652. The City will provide Contractor with a report of addresses for all Households in the City upon request. The City shall provide Contractor with updates to the Household addresses upon request.
6. **Commercial Unit Count.** The approximate number of Commercial Units as of the Effective Date is 77. The City will provide Contractor with a report of addresses for all Commercial Units in the City upon request. The City shall provide Contractor with updates to the commercial addresses upon request.
7. **Refuse Collection Service.** In providing said service Contractor shall:
 - (a) **Refuse Containers.** Contractor shall collect Acceptable Waste at least weekly of all Households and Commercial Units in the City of Foley that are placed in containers provided by Contractor and approved by the City.
 - (b) **Recycling Containers.** Contractor shall collect Recyclables once every other week in single-sort containers at least 60 gallons in size or larger provided by Contractor and approved by the City Council. Recyclable collection shall occur on the same day as refuse collection.
 - (c) **Handling of Prohibited Waste.** If Contractor determines that a Household or Commercial Unit has set out Prohibited Waste, Contractor shall:
 - i. Leave the prohibited waste in the Household's refuse container and leave a "Prohibited Waste" tag.
 - ii. Record the address and the prohibited waste.
 - (d) **Collection Vehicles.** Contractor shall use an enclosed truck for Acceptable Waste and Recyclable pick-up service. Each vehicle shall be:
 - i. Conspicuously marked with the name and website of Contractor on both sides of the vehicle.
 - ii. Equipped with a fire extinguisher, back up alarms, first aid kit, and broom and shovel for cleaning up spillage.
 - iii. Licensed, inspected, and operated in accordance with all State and local laws and regulations.
 - iv. Maintained in proper working order free of leaking fluids and in as cleanly and odor free condition as possible.
 - (e) **Contractor Personnel.** Contractor shall ensure that its personnel providing service under this Agreement:
 - i. Wear a uniform with a name tag or identification.
 - ii. Conduct themselves in a courteous and professional manner.
 - iii. Operate collection vehicles in a safe, alert manner free from the distractions of hand-held electronic devices as required by state law, and free from the influence of drugs or alcohol.

- (f) Disposal by Contractor. Dispose of all Acceptable Waste and Recyclables at facilities where the Contractor can legally dispose of at Contractor's expense. Collection vehicles shall be weighed after completion of a route or at the end of the day, whichever occurs first. Contractor will keep accurate records consisting of an approved weight slip with the date, time, collection route, driver's name, vehicle number, tare weight, gross weight, and net wet weight. A copy of each weight slip shall be kept on file for the term of this Agreement and shall be made available for inspection upon request by the City.
- (g) Collection Day. Collect all Acceptable Waste once weekly on Mondays.
- (h) Holidays. If the regular collection date falls on a holiday, the Contractor may collect all Acceptable Waste and Recyclables on the next day. The Contractor shall, at its expense, notify the City and residents of changes in collection dates resulting from a holiday, at the beginning of every year.
- (i) Collection Times. Contractor shall not begin collections before 6:00 a.m. and shall complete collection by 6:00 p.m. For good cause, Contractor may request an exception for a specific collection day from the Public Works Director by phone or email.
- (j) Lost and Damaged Containers. Contractor will be allowed to bill residents or businesses directly for carts or dumpsters damaged by the resident or business or carts taken without the consent of Contractor or the City. The City is not responsible for any of these costs.
- (k) Missed Collections. The Contractor shall be responsible for missed collections. If Contractor receives notice of the missed collection before noon, the missed collection shall be picked up on the same day. If Contractor receives notice after 12 p.m., Contractor shall pick up the missed collection no later than the next day. If the refuse container was not in place for collection at the time Contractor provided service, it is not a "missed collection."
- (l) Cleanup of Spilled Material. Contractor shall make its best efforts to avoid and control spillage or blowing refuse. Contractor shall immediately cleanup any refuse spilled or blown from collection vehicles during the course of collection operations.
- (m) Construction Dumpsters. This agreement does not include disposal of construction debris by dumpster. Each household/commercial unit may contact any contractor for this type of disposal service.
- (n) Title to Waste. Title to Waste Material shall pass to Contractor when loaded into Contractor's collection vehicle or otherwise received by Contractor. Title to and liability for Prohibited Waste shall at no time pass to Contractor or the City, except any prohibited waste collected from the City shall remain its responsibility.
- (o) Right to Refuse or Reject Prohibited Waste. If Prohibited Waste is discovered before it is collected by Contractor, Contractor may refuse to collect the entire waste container that contains the Prohibited Waste. In the event Prohibited Waste is present but not discovered until after it has been collected by Contractor, Contractor may, in its sole discretion, remove, transport, and dispose of such Prohibited Waste at a facility authorized to accept such Prohibited Waste in accordance with Applicable Law and charge the depositor or generator of such Prohibited Waste for all direct and indirect costs incurred due to the removal,

remediation, handling, transportation, delivery, and disposal of such Prohibited Waste. The City shall provide all reasonable assistance to Contractor to conduct an investigation to determine the identity of the depositor or generator of the Prohibited Waste and to collect the costs incurred by Contractor in connection with such Prohibited Waste. Subject to the City's providing all such reasonable assistance to Contractor, Contractor shall release City from any liability for any such costs incurred by Contractor in connection with such Prohibited Waste, except to the extent that such Prohibited Waste is determined to be attributed to the City.

8. **Commercial Service Costs.** The cost for commercial refuse and recycle service collection shall include a fee based on refuse container size, a fee for recycling, and any other special fees for waste collection.
- (a) **Refuse and Recycle Fee.** All Commercial Units shall pay a fee for the Acceptable Waste collection based on the container size ("Commercial Refuse Fee"). The Commercial Refuse Fee rates are as follows:
- i. The rate for 60-65 gallon containers shall be \$12.00 per month.
 - ii. The rate for 90-95 gallon containers shall be \$12.00 per month.
 - iii. The rate for 90 gallon every other week recycling shall be \$9.00 per month.
 - iv. The rate for a 1 cubic yard dumpster shall be as follows:
 - 1) One Pickup/Week: \$41.22 per month.
 - 2) Two Pickups/Week: \$82.43 per month.
 - 3) Three Pickup/Week: \$123.65 per month.
 - v. The rate for a 1.5 cubic yard dumpster shall be as follows:
 - 1) One Pickup/Week: N/A per month.
 - 2) Two Pickups/Week: N/A per month.
 - 3) Three Pickup/Week: N/A per month.
 - vi. The rate for a 2 cubic yard dumpster shall be as follows:
 - 1) One Pickup/Week: \$64.40 per month.
 - 2) Two Pickups/Week: \$115.95 per month.
 - 3) Three Pickup/Week: \$193.20 per month.
 - vii. The rate for a 3 cubic yard dumpster shall be as follows:
 - 1) One Pickup/Week: \$76.00 per month.
 - 2) Two Pickups/Week: \$140.43 per month.
 - 3) Three Pickup/Week: \$228.00 per month.
 - viii. The rate for a 4 cubic yard dumpster shall be as follows:
 - 1) One Pickup/Week: \$87.60 per month.
 - 2) Two Pickups/Week: \$164.90 per month.
 - 3) Three Pickup/Week: \$247.30 per month.
 - ix. The rate for a 6 cubic yard dumpster shall be as follows:
 - 1) One Pickup/Week: \$115.95 per month.
 - 2) Two Pickups/Week: \$216.40 per month.
 - 3) Three Pickup/Week: \$324.60 per month.
 - x. The rate for a 8 cubic yard dumpster shall be as follows:
 - 1) One Pickup/Week: \$217.73 per month.
 - 2) Two Pickups/Week: \$407.05 per month.

- 3) Three Pickup/Week: \$610.55 per month.
 - (b) Compactors. The rate for a 30-yard, self-contained trash compactor.
 - 1) \$132.00 per haul plus disposal at \$70.82/Ton plus ERF & FRF. Does not include rental cost.
 - (c) Pass Through Costs. Contractor's fees listed above include all existing taxes, fees, and charges required by third-parties. Contractor may pass through for payment by the residents or businesses for new, future actual costs from government-imposed taxes, fees and charges (other than income or real property taxes) or changes in local, state, or federal rules, ordinances or regulations.
9. **Residential Service Costs**. The cost for residential refuse service collection shall include a fee based on refuse container size, a fee for recycling, and any other special fees for additional bags or special Acceptable Waste collection.
 - (a) Refuse Fee. All Households shall pay a fee for the Acceptable Waste collection based on the container size ("Refuse Fee"). The Refuse Fee rates are as follows:
 - i. The rate for 30-35 gallon containers shall be \$12.00 per month.
 - ii. The rate for 60-65 gallon containers shall be \$12.00 per month.
 - iii. The rate for 90-95 gallon containers shall be \$12.00 per month.
 - iv. The rate for 65-90 gallon recycling every other week shall be \$3.00 per month plus \$.84 processing for a total of \$3.84. City's processing rate assumes that, on average, City's Recyclable Material consists of no more than 20% unacceptable material (the "Unacceptable Material Threshold"). This processing rate is subject to Annual Increase in Section 10.
 - v. The rate for a bag system shall be \$3.00 per unit.
 - (b) Contractor may visually inspect the collected Recyclable Materials to ensure loads are at or below the Unacceptable Material Threshold. If Company's visual inspector determines that loads of Recyclable Material are above the Unacceptable Material Threshold for two (2) consecutive months, Company will notify City of the issue and provide educational materials to residential and commercial customers to assist with education and outreach and the parties agree to promptly negotiate in good faith (a) an agreed upon procedure to audit a representative sample of City's Recyclable Material to determine its actual composition of Unacceptable Material; and (b) an updated Collection and Processing rate commensurate with the composition of Unacceptable Material if the Unacceptable Material Threshold continues to be surpassed.
 - (c) Changes in Market Conditions. If market conditions develop that limit or inhibit Contractor from selling some or all of the Recyclable Material, Contractor may at its option and upon sixty (60) days' notice to City (i) redefine Recyclable Materials, (ii) update the City's processing fee; (iii) suspend or discontinue any or all services, or (iv) dispose of certain Recyclable Material (as currently defined) in a landfill and update the pricing to City accordingly. Any such actions, if taken, may be reversed or further changed as market conditions dictate.

- (d) **Pass Through Costs.** Contractor's fees listed above include all existing taxes, fees, and charges required by third-parties. Contractor may pass through for payment by the residents or businesses for new, future actual costs from government-imposed taxes, fees and charges (other than income or real property taxes) or changes in local, state, or federal rules, ordinances or regulations.
10. **Annual Increase.** An annual increase of 4% shall apply to commercial and residential refuse service fees on July 1st of each year.

Annual Recycling Adjustment. In addition to the Annual Increase, on each anniversary of the Effective Date of this Agreement, Contractor shall evaluate, and adjust if needed, the recycling processing rate based on any changes in commodity sales, processing rates and/or residual costs. The recycling processing rate over the most recent twelve-month period shall be compared to the last identified recycling processing rate to determine any change. A reduction in the recycling process rate shall result in a decreased price for the recycling services for the twelve months after the effective date of the Annual Recycling Adjustment. An increase in recycling processing rate shall result in an increased price for the recycling Services for the twelve months after the effective date of the Annual Recycling Adjustment. Should unforeseen circumstances cause at least a 20% change in Contractor's recycling processing rate, both parties agree to implement a mid-year adjustment to the recycling processing rate.

11. **Billing.** The Contractor shall bill all Households and Commercial Units for the Refuse Fee, Recycling Fee, and corresponding taxes. The Contractor shall bill all other fees and charges for additional bags, special waste collection, container exchanges, or damaged carts. All unpaid invoices shall carry interest at a rate of 1.5% per month or, if lower, the maximum rate permitted by applicable state law, until the balance is paid in full.
12. **Customer Service.** The Contractor shall provide staffing of a local telephone number to receive missed collection complaints and other complaints between the hours of 7:00 a.m. until 4:30 p.m. on all days of collection as specified in this Agreement. Phone calls to the Contractor for any reason must be answered by a "live person" rather than a recording, or roll over to an answering machine/voice mail system to leave a message. Return calls from voice mail messages must be returned within three hours during the hours of 7:30 a.m. to 4:00 p.m. during regular business hours. Voice mail messages left after 4:00 p.m. must be returned prior to 10:00 a.m. the next business day. Recorded messages of the Contractor shall request a day time phone number where the caller can be reached. The Contractor may also request a daytime email address for customers.

The Contractor shall have an answering machine or voice mail system activated to receive phone calls after hours. The telephone number shall be given to the City in writing, with a minimum of ten days' prior notice of any change. The address of this office as of the execution of the Agreement is W5118 Duck Pond Road, Sarona, WI 54870, and the telephone number is (715-549-3170). The Contractor shall also allow complaints to be made electronically and shall provide an email address or website link.

13. **Delayed Refuse Collection.** After notice to City staff, the Contractor may postpone trash collections due to severe weather or other causes outside the Contractor’s reasonable control (each, an event of “Force Majeure”). Every effort shall be made by the Contractor to coordinate service postponement announcements with the City so that mixed messages are not broadcast to City residents. Upon postponement, collection will be made on the next day following the conclusion of delay-causing event. Road projects may occasionally impact Contractor’s collection routes. The City and Contractor shall work together to ensure that efficient refuse collection is maintained during road projects.
14. **Special Cleanup Collections.** At no extra cost, the Contractor agrees to conduct a Fall special cleanup with special curbside collection on a date mutually agreed upon by the City and Hauler. This date will typically be held on a Saturday in October. Contractor agrees to publish for two weeks an advertisement in the official city newspaper with details of the event.

15. **Service to City Facilities.** The Contractor shall, at no extra cost to the City, supply the City of Foley the following containers and/or dumpsters:

LOCATION	TYPE OF CONTAINER	COLLECTION
321 4 th Avenue N – Public Works	Public Works – 6 cubic yard dumpster	3 times per week
251 4 th Avenue N – City Hall (alley)	1 - 65-gallon refuse 2 - 65-gallon recycling	Refuse – weekly Recycling – bi-weekly
440 Broadway Avenue S	30 yard roll-off – Foley Fun Days	Drop Off Friday before Foley Fun Days – pick up Friday after (June of each year)


16. **Public Education.** Contractor shall, at its sole cost, prepare and distribute an annual public education piece and “Prohibited Waste” tags. Contractor agrees to work with the City to provide information for the City’s various communication outlets on waste education and service issues.
17. **City Inspection.** The City, at its sole cost, may, during normal business hours, inspect all Contractor’s records directly relating to this Agreement, vehicles, and facilities used by Contractor to provide service under this Agreement. The City will provide reasonable advanced notice to Contractor of such inspection. Such inspection shall not be conducted more than once per year. Contractor agrees to comply with the Minnesota Government Data Practices Act regarding maintenance of data, data privacy, and data dissemination.
18. **Liability.** Nothing in this Agreement shall constitute a waiver of the City’s statutory limits on liability set forth in Minnesota Statutes Chapter 466 or a waiver of any available immunities or defenses. Insurance secured by Contractor shall be issued by insurance companies acceptable to the City and authorized to do business in Minnesota. All

required insurance shall be in effect on the Effective Date and remain continuously in effect for the term of the Agreement. Contractor shall provide the City with evidence of insurance on an ACORD Insurance Certificate. A 30-day written notice is required if the policy is cancelled. Acceptance of the insurance by the City shall in no way affect the liability of the Contractor.

- (a) Indemnification. Contractor agrees to indemnify, defend and hold the City of Foley harmless from any and all claims, demands, damages, costs, judgments or liabilities, including reasonable attorney fees, to the extent caused by the negligence or willful misconduct of the Contractor or non-performance by the Contractor of the requirements of this Agreement. Notwithstanding anything to the contrary set forth in this Agreement or otherwise, Contractor shall have no obligation to indemnify, defend or hold harmless City for any such liability or claim to the extent resulting from the negligence or, willful misconduct by City or any third party.
 - (b) Commercial General Liability Insurance. Contractor shall obtain and maintain commercial general liability insurance in companies satisfactory to the City, naming the City as additional insured in the sum of at least \$1,000,000 general aggregate, \$1,000,000 personal injury per occurrence, \$1,000,000 property damage per occurrence.
 - (c) Commercial Automobile Liability Insurance. Contractor shall obtain and maintain commercial automobile liability insurance on all owned, leased, or operated vehicles providing service under this Agreement in the sum of at least \$1,000,000.00 per accident.
 - (d) Workers Compensation Insurance. Contractor shall meet all statutory requirements for workers compensation insurance coverage.
 - (e) Independent Contractor. Nothing contained in this Agreement is intended to create or establish an employer/employee relationship or a partnership between the City and Contractor. At all times Contractor shall remain an independent contractor. Any and all personnel of Contractor shall be considered employees or subcontractors of the Contractor and not the City.
19. **Default.** Either party may declare a default if the other party has failed to comply with the material terms of this Agreement, by providing the defaulting party with thirty (30) days written notice of the specific default. The defaulting party shall have 30 days to cure such default after receipt of written notice. However, if the default cannot be substantially cured within thirty (30) days, the Agreement may not be terminated if a cure is commenced within the cure period and for as long thereafter as a cure is diligently pursued. After service of notice of default and failure to cure such default within the cure period, the non-defaulting party shall be released from the terms of this Agreement, and its obligations hereunder shall cease. The release of the non-defaulting party from the obligations of this Agreement shall not necessarily release the defaulting party of its obligations. Further, Contractor shall collect its equipment and Contractor shall have no further obligation to perform any services under this Agreement. Any legal action arising under this Agreement shall be resolved exclusively in the state court located in the county and state where the services are performed.

20. **Non-Assignment.** This Agreement shall not be assigned or subcontracted without written approval from the City Council and Contractor, which approval shall not be unreasonably withheld, delayed, or qualified, provided, however, that Contractor may assign this Agreement, without consent, to an affiliate of Contractor or in connection with the sale of Contractor's business.
21. **Amendment of Agreement.** The Agreement may only be amended in writing, approved by the City Council and signed by both the Contractor and City.
22. **Equipment.** Any equipment Contractor furnishes shall remain Contractor's property. City shall be liable for all loss or damage to such equipment (except for normal wear and tear and for loss or damage resulting from Contractor's handling of the equipment). City shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move or alter the equipment. City shall be liable for all losses arising from any injury or death to persons or loss or damage to property (including the equipment) arising out of City's use, operation or possession of the equipment.
23. **Access.** City shall provide safe, unobstructed access to the equipment on the scheduled collection day, with the exception of road projects as provided in Section 13. Contractor, with the exception of road projects as provided in Section 13, may charge an additional fee for any additional collection service required by City's failure to provide access.

CONTRACTOR
Allied Waste Services of
North America, LLC dba
Republic Services of Sauk Rapids



Its General Manager

CITY OF FOLEY



Mayor

Attest:



City Administrator

Foley Service Levels & Pricing

4% Annual PI

Commercial Se	2019	2020	2021	2022	2023	2023
65 gallon trash	\$ 12.00	\$ 12.48	\$ 12.98	\$ 13.50	14.04	\$ 14.04
95 gallon trash	\$ 12.00	\$ 12.48	\$ 12.98	\$ 13.50	14.04	\$ 14.04
90 gallon recyd	\$ 9.00	\$ 9.36	\$ 9.73	\$ 10.12	10.5248	\$ 10.52
Cart RPC	\$ -	\$ -	\$ 0.88	\$ 0.91	0.9464	\$ 0.95
Dumpster RPC	\$ -	\$ -	\$ 6.70	\$ 6.97	7.2488	\$ 7.25
1 yard dumpster						
1x/week	\$ 41.22	\$ 42.87	\$ 44.58	\$ 46.36	48.2144	\$ 48.21
2x/week	\$ 82.43	\$ 85.73	\$ 89.16	\$ 92.73	96.4392	\$ 96.44
3x/week	\$ 123.65	\$ 128.60	\$ 133.74	\$ 139.09	144.6536	\$ 144.65
2 yard dumpster						
1x/week	\$ 64.40	\$ 66.98	\$ 69.66	\$ 72.45	75.348	\$ 75.35
2x/week	\$ 115.95	\$ 120.59	\$ 125.41	\$ 130.43	135.6472	\$ 135.65
3x/week	\$ 193.20	\$ 200.93	\$ 208.97	\$ 217.33	226.0232	\$ 226.02
3 yard dumpster						
1x/week	\$ 76.00	\$ 79.04	\$ 82.20	\$ 85.49	88.9096	\$ 88.91
2x/week	\$ 140.43	\$ 146.05	\$ 151.89	\$ 157.97	164.2888	\$ 164.29
3x/week	\$ 228.00	\$ 237.12	\$ 246.60	\$ 256.46	266.7184	\$ 266.72
4 yard dumpster						
1x/week	\$ 87.60	\$ 91.10	\$ 94.75	\$ 98.54	102.4816	\$ 102.48
2x/week	\$ 164.90	\$ 171.50	\$ 178.36	\$ 185.49	192.9096	\$ 192.91
3x/week	\$ 247.30	\$ 257.19	\$ 267.48	\$ 278.18	289.3072	\$ 289.31
6 yard dumpster						
1x/week	\$ 115.95	\$ 120.59	\$ 125.41	\$ 130.43	135.6472	\$ 135.65
2x/week	\$ 216.40	\$ 225.06	\$ 234.06	\$ 243.42	253.1568	\$ 253.16
3x/week	\$ 324.60	\$ 337.58	\$ 351.09	\$ 365.13	379.7352	\$ 379.74
8 yard dumpster						
1x/week	\$ 217.73	\$ 226.44	\$ 235.50	\$ 244.92	254.7168	\$ 254.72
2x/week	\$ 407.05	\$ 423.33	\$ 440.27	\$ 457.88	476.1952	\$ 476.20
3x/week	\$ 610.55	\$ 634.97	\$ 660.37	\$ 686.78	714.2512	\$ 714.25
Compactor						
Haul rate	\$ 132.00	\$ 137.28	\$ 142.77	\$ 148.48	154.4192	\$ 154.42
Disposal	\$ 70.82	\$ 73.65	\$ 76.60	\$ 79.66	82.8464	\$ 82.85

EXTRA (non-scheduled pickup per customer's request)

\$3.90
\$3.90
\$2.92

\$13.39
\$26.77
\$40.15

\$20.91
\$37.65
\$62.74

\$24.68
\$45.60
\$74.04

\$28.45
\$53.55
\$80.30

\$37.65
\$70.27
\$105.41

\$70.70
\$132.19
\$198.26

\$42.86

Residential Service	2019	2020	2021	2022	2023	2023
35 gallon trash	\$ 12.00	\$ 12.48	\$ 12.98	\$ 13.50	14.04	\$14.04
65 gallon trash	\$ 12.00	\$ 12.48	\$ 12.98	\$ 13.50	14.04	\$14.04
95 gallon trash	\$ 12.00	\$ 12.48	\$ 12.98	\$ 13.50	14.04	\$14.04
Recycle service	\$ 3.00	\$ 3.12	\$ 3.24	\$ 3.37	3.5048	\$3.50
RPC	\$ 0.84	\$ 1.25	\$ 0.88	\$ 0.91	0.9464	\$0.95

TO: FOLEY CITY COUNCIL
FROM: SARAH BRUNN, CITY ADMINISTRATOR
SUBJECT: 04-02-24 –COUNCIL MEETING
DATE: MARCH 28, 2024

Consent Agenda

We have received interest in the Foley Library Board and an email is included in your packet.

2025 Improvements – Presentation of Feasibility Study

The feasibility study information is in your packet and will be presented on Tuesday. This study will provide more details related to the 2025 Street Improvements. After the presentation the council will consider adopting a resolution to move to the next phase of the project. City Engineer Jarod Griffith will provide more details at the meeting.

St. Cloud Wastewater Treatment Agreement

Revisions to the regional wastewater treatment agreement are included in your packet. These have been in the works for many months – some of the changes resulting because of the need for Foley to join the regional system. All regional cities, including St. Cloud, will be asked to adopt the revised agreement. A couple things to note about the revisions. First, they were made as a collaborative group, in an effort to make things easier for capacity sales among cities. We spent a lot of time as a group meeting to discuss various options. The agreement also transitions to a postage stamp allocation approach. This was the preferred method by the majority in order to make things simpler to understand as we move forward and grow and update the facility. It has been provided to legal and at the time of this memo no concerns have been raised.

Compost Gate

We have quotes in the packet upgrading the access/power to the compost site. Mark can explain the details of the proposal at the meeting.

City Audit

Fieldwork is scheduled for the week of April 8th. We do the majority remotely but on Wednesday of that week will have auditors on site, in person during regular office hours. The council is welcome to stop by if they wish. Also, every year a couple councilmembers are asked to respond to a series of questions related to the audit. These are randomly selected so please keep an eye out for an email or letter and if you receive one, please respond. We also have confirmed that we will not be needing a single line audit. The reason being is that we utilized our PSIG funding (state funds only) and did not draw over the \$750k on the loan. I instead held some of the draws until 2024 so that we could avoid that cost for one year. We will need the single line for audit year 2024 and also possibly 2025 based on the ARPA funding distributed by the county.

Tri-County Humane Society Fees

I did pull the humane society fees and our last bill was \$325. We get charged \$75 for each animal they take in, \$100 if they are euthanized. All of our charges paid this year have been for cats. We noticed an uptick in the fall that has continued throughout the winter. We used to average a couple hundred dollars per year when the rates were lower and we charged the participation fee – we are already

exceeding that with our first billing. We also are anticipating additional billings with the calls we have received from the humane society – they must call to authorize the animal based on the contract.

Garbage Hauling Contract

I received a call late Thursday afternoon with Republic Services. I had a prior conversation with our representative after our last meeting and was waiting for them to send over a revised contract for council consideration. They said they had some discussions internally and based on those discussions they are not willing to renew anymore and would like to either re-negotiate our contract or submit a proposal.

Downtown Façade Program

I'd like to have a brief discussion following the regular meeting about the downtown façade program. I've again included the policy.

Upcoming Reminders:

April 8-12, 2024 – City Audit Fieldwork

April 11, 2024 – Wisconsin Water Plant Tours

May 7, 2024 – Council Meeting

City of Foley Downtown Facade Improvement Grant Program (DRAFT)

Purpose

The Foley Downtown Facade Improvement Grant Program provides incentives to stimulate external, visible investment in Downtown businesses. Property owners and business owners are encouraged to consider improvements that incorporate the surrounding community including but not limited to aesthetics, environment, cultural and historic elements and architecture. These improvements should create a cohesive, attractive environment. The program provides a 1:1 matching grant for actual design and construction costs up to \$5,000 per property on a pay-for-performance basis. Qualifying projects will require design approval and will be applied for by commercial property owners and/or business tenants (with property owner approval). Approvable projects include exterior building and landscape improvements visible from a public right-of-way.

Eligibility

Property must be within the Downtown Foley Corridor (map attached).

All work must be done on the property/building exterior and result in a publicly visible improvement.

All work must be done in accordance with City of Foley ordinances and building codes. All required permits must be obtained. Work must include the correction of any known exterior building code violations.

Work already in progress or performed prior to project approval will not be eligible for funding.

Funds may be used for design of exterior building improvements, awnings, windows, doors (including front/back door accessibility) and/or site landscaping resulting in a publicly visible improvement and for actual construction costs related to an approved improvement. Other uses may also be eligible if prior approval is granted by the City of Foley Economic Development Authority. Signs are eligible for funding.

Ineligible properties include: Tax delinquent, Special Assessment delinquent, property in litigation, property in condemnation or receivership, exclusively residential buildings, industrial zoned properties, new construction projects on previously undeveloped sites.

Project Approval Guidelines

The Economic Development Committee will first review all applications for completeness and project feasibility. The City of Foley Economic Development Authority (EDA) is responsible for program oversight and grant approval. Grants will be approved based on the guidelines below:

Only fully completed applications will be reviewed.

Owners of multiple properties must submit separate applications for each project.

Business owners under a lease submitting applications must include written consent of the property owner.

Preference will be given to projects which:
Positively contribute to downtown revitalization efforts.
Result in visible improvement that would not otherwise be made.
Demonstrate a ratio of private to public investment greater than 1:1
Projects must be completed in a timely manner from date of approval (within one year with a maximum extension of six months). As indicated by the pay- for-performance model, funds will be distributed after the project's completion and reimbursement is requested.

Grant Disbursement

Awarded funds will be dispersed to the applicant upon submittal of receipts and/or invoices for supplies purchased and inspection which certifies the work completed is in accordance with the EDA approval and other city ordinances.

Property Owner Requirements

Upon the approval of submitted application, the Applicant enters a partnership which includes the City of Foley Economic Development Authority. The following may be required to review plans depending on the scope of the project: City Staff, Economic Development Committee and the EDA. Those required to review the plans and/or grant application will review design drawings, proposed work specifications, and the architectural materials. Items required as a part of completing potential projects include:

Property owners' attendance at various meetings, reviews, etc. with representatives of either the City or EDA to expedite various stages of the project.

The applicant agrees city that, pursuant to the terms of the grant agreement, they will continue operations in the City for at least five years after the project is completed.

All work to be completed shall be the sole responsibility of the property owner. The City of Foley EDA administers the grant program herein and the City/EDA is not responsible for any work undertaken as a result of the grant. The owner hereby holds the City and EDA harmless for an and all liability commencing out of any work constructed and paid for the facade improvement grant herein.

Procedural Guidelines:

The EDA is a governmental entity and as such must provide public access to public data it receives. Data deemed by Applicant to be nonpublic data under State law should be so designated or marked by Applicant. See Minn. Stat. Sections 13.59, Subd. 1, respectively.

1. The applicant shall meet with city staff to obtain information about the grant program, discuss the project, and obtain application forms.
2. The applicant shall complete and submit an application form to the city.
3. The applicant must provide evidence of their ability to meet the 50% match.
4. The application will be reviewed by the city staff to determine if it conforms to all city policies and ordinances and to consider the following:
5. The availability of program dollars to fund the request.
6. Whether the proposed project will result in conformance with building and zoning codes.
7. Whether it is desirous and in the best interests of the public to provide funding for the project.
8. The Economic Development Committee will review each application in terms of its consistency with the goals of:
9. The EDC will evaluate the project application in terms of the following:
10. Project Design - Evaluation of project design will include review of proposed activities,

timelines and a capacity to implement the project.

11. Financial Feasibility - Availability of funds, private involvement, financial packaging and cost effectiveness.
12. Appropriate ratio of private funds to grant funds.
13. Letter of Commitment from applicant pledging to complete the project during proposed project duration, if the grant application is approved.
14. Letter of Commitment from other financing sources stating terms and conditions of their participation in the project, if applicable.
15. A recommendation from the Economic Development Committee will be forwarded to the EDA for approval, denial or request a resubmission.
16. The EDA will review the recommendation from the Economic Development Committee and recommend approval, denial to the City Council for final action.