



AGENDA OF THE REGULAR MEETING OF
THE CITY COUNCIL
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
August 23, 2018
4:00 P.M.

NOTE: Due to Open Meeting Law restrictions, the City Council may be discussing agenda items for the first time. Your patience and understanding is appreciated during this process.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVE AGENDA

CITY BUSINESS – CONSENT AGENDA

- A. Approve Regular Meeting Minutes from July 10, 2018* (pp. 2-7)
- B. Approve Treasurer's Report* (pp. 8-19)
- C. Approve Dock Management Contract* (pp. 20-25)

CITY BUSINESS – REGULAR AGENDA

- A. Council Member Vacancy* (p. 26)
 - a. Council Deliberation

Time Budget: 10 Minutes

ADJOURN

This is the rescheduled regular City Council meeting for August. The August 14 meeting was changed to August 15 due to Primary Elections on the 14 at City Hall. The August 15 meeting was subsequently canceled due to no quorum.

* Denotes items that have supporting documentation provided

**CITY OF BIRCHWOOD VILLAGE
REGULAR CITY COUNCIL MEETING
JULY 10, 2018**

MINUTES

Members Present: Mayor Mary Wingfield & Councilmembers Kevin Woolstencroft, Trilby White, Megan Malvey and Randy LaFoy.

Staff Present: City Administrator Tobin Lay and City Attorney Alan Kantrud.

Others Present: Terry Granec, Alan Mitchell, David Heiden and Mary S. Simmons.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

Mayor Wingfield: Called the regular meeting to order at 7:00 pm. The Pledge of Allegiance was recited.

APPROVE AGENDA

Mayor Wingfield: Expanded Roads Committee Update with discussion on potential Joint Meeting.

Councilmember White: Added Washington County Law Enforcement Invitation to follow Roads Committee Update.

Councilmember LaFoy: Added Lake Links Trail to Council Member Reports.

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER MALVEY TO APPROVE THE AGENDA AS AMENDED. ALL AYES. MOTION PASSED.

OPEN PUBLIC FORUM

Mayor Wingfield: Recognized City staff for responsiveness. Thanked Councilmember Malvey for her work on Council.

Alan Mitchell (23 Oakridge Drive): Stated concerns on Ordinance 2018-05-01. Thanked Council for recognizing the input of citizens during public forums.

ANNOUNCEMENTS

- A. August 2018 Regular City Council Meeting – Date changed to Wednesday August 15 at 7pm
- B. Tree Inspections – Last two weeks of July & first week of August
- C. 2018 Election – Affidavits of Candidacy filing period is July 31 thru August 14; contact City Hall for details
- D. Music in the Park – Every Sunday beginning at 6pm
- E. We are social – Follow us on Facebook/Twitter and/or register for the email listserv
- F. The “Lake Itch” has returned – Please be aware when enjoying White Bear Lake’s water and beaches.
- G. “Night to Unite” will be Tuesday, August 7. Please contact Washington County Sheriff’s office if interested.

ADMINISTRATIVE PRESENTATION

- A. Sheriff Report
- B. Birch Easement Rain Garden Update
- C. Maintenance Update

CITY BUSINESS – CONSENT AGENDA

- A. Approve Special Meeting Minutes from May 22, 2018
- B. Approve Regular Meeting Minutes from June 12, 2018
- C. Approve Joint Parks Committee Meeting Minutes from June 26, 2018
- D. Approve Treasurer’s Report

- E. Approve Resolution No. 2018-16, Appointment of Election Judges
- F. Approve Metropolitan Council Comprehensive Plan Extension Agreement

Mayor Wingfield: Removed items A, B, D and F.

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO APPROVE THE CONSENT AGENDA ITEMS C AND E. ALL AYES. MOTION PASSED.

Consent Agenda Item A: Approve Special Meeting Minutes from May 22, 2018

Mayor Wingfield: Added Councilmember LaFoy's announcement of his remote location from the University of Minnesota and that he was acting in an official capacity in public forum to the Special Meeting Minutes. Stated that telephonic meeting votes are recorded by roll call per the League of MN Cities and requested the minutes be changed accordingly.

MOTION WAS MADE BY COUNCILMEMBER WOOLSTENCROFT AND SECONDED BY COUNCILMEMBER WHITE TO APPROVE SPECIAL MEETING MINUTES FROM MAY 22, 2018 AS AMENDED. ALL AYES. MOTION PASSED.

Consent Agenda Item B: Approve Regular Meeting Minutes from June 12, 2018

Mayor Wingfield: Added in Lake Links Update that notice was given that any actions requested by Lake Links for action by the City must be placed on the agenda to serve as public notice.

MOTION WAS MADE BY COUNCILMEMBER WOOLSTENCROFT AND SECONDED BY COUNCILMEMBER MALVEY TO APPROVE THE REGULAR MEETING MINUTES FROM JUNE 12, 2018 AS AMENDED. ALL AYES. MOTION PASSED.

Consent Agenda Item D: Treasurer's Report

Mayor Wingfield: Stated the Roads and Bridges expense for \$9,380 must come out of Capital Project Funds, Community Club's two \$4 payments need to be refunded or redirected to and consulting fees for Birchwood's Comp Plan appear high.

Mayor and Council Members: Discussed the Comp Plan and fees. Asked Administrator Lay to assure project costs do not exceed \$10,000. He may withhold up to \$2,000 of those funds in order to assure full completion of the project.

MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WHITE TO APPROVE THE TREASURERS REPORT AS AMENDED. ALL AYES. MOTION PASSED.

Consent Agenda Item F: Approve Met Council Comp Plan Extension Agreement

Mayor Wingfield and Councilmember LaFoy: Requested Administrator Lay seeks clarification regarding clause 3 in the Met Council Extension Agreement to confirm what "Revised Attachment A" consists of.

MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO APPROVE THE METROPOLITAN COUNCIL COMPREHENSIVE PLAN EXTENSION AGREEMENT. ALL AYES. MOTION PASSED.

CITY BUSINESS – REGULAR AGENDA

A. Roads Committee Update

a. Committee Recommendation

Terry Granec (Roads Committee): Updated Council on proposed changes to intersection of Wildwood and Iris Street. Provided an illustration and stated support for the proposal. (Time Stamp 00:22:30)

b. Council Deliberation and Approval

Mayor, Council Members and Terry Granec (Roads Committee): Discussed traffic concerns and the proposal in detail.

Mayor and Council Members: Asked Roads Committee to get community feedback via a public hearing at the next Committee meeting and report back to Council. Requested Administrator Lay post public notification, send letters to nearby residents and post the appropriate notification signage at the intersection.

Mayor Wingfield: Proposed a Joint Meeting with the Roads Committee.

B. Washington County Law Enforcement

Mayor and Council Members: Discussed various enforcement needs, including traffic signs and speed and excessive noise. They requested Administrator Lay to invite someone from the Washington County Sheriff Dept. to attend August City Council meeting to provide an annual presentation. Lay was also asked to set up a separate meeting with the Sheriff Dept. to be attended by City Administrator, City Attorney, Mayor, and Councilmember LaFoy.

C. Birchwood Dock Association (BDA) Contract

a. Council Review and Discussion

City Attorney Kantrud: Commented on creation of contract and recent changes. Term of contract was one item to note. Stated the document before Council provides a contract to the vendor and based on existing City ordinance.

Mayor Wingfield: Stated the BDA's office location has yet to be confirmed.

Administrator Lay: Informed Council the BDA's new address is: 418 Birchwood Avenue, Birchwood Village, MN 55110.

Mayor, Council Members and City Attorney Kantrud: Discussed the contract and its ratification process in detail.

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO EXTEND CONVERSATION BY 10 MINUTES. ALL AYES. MOTION PASSED.

Mayor, Council Members and City Attorney Kantrud: Continued to discuss the contract in detail.

Mayor Wingfield: Summarized that there is no status on the signing of the contract as per last month's meeting vote and thus there is no item before council at this time. The contract may be rescinded or kept, worked on and revisited.

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER MALVEY TO EXTEND DISCUSSION BY 10 MINUTES. ALL AYES. MOTION PASSED.

Councilmember White: Stated for the record she has attempted to reach compromise with the BDA. Asserted the contract is basic and has approval of the City Attorney and that the BDA has had time to make its substantive changes.

Mayor, Council Members and City Attorney Kantrud: Continued to discuss the contract in detail.

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER MALVEY TO CALL THE QUESTION. ALL AYES. MOTION PASSED.

MOTION WAS MADE BY COUNCILMEMBER MALVEY AND SECONDED BY COUNCILMEMBER LAFOY TO EXTEND THE BDA CONTRACT SIGNATURE DUE DATE BY TWO WEEKS AND ALLOW THE BDA TO STATE ANY SUBSTANTIVE CONCERNS, WHICH WILL BE REVIEWED BY CITY ATTORNEY KANTRUD AND THE CONTRACT RATIFIED UPON COMPLETION OF THE REVIEW PROCESS. COUNCILMEMBERS MALVEY, LAFOY AND WOOLSTENCROFT VOTE AYE. MAYOR WINGFIELD AND COUNCILMEMBER WHITE VOTE NAY. MOTION PASSED. (Time Stamp 01:13:00)

Mary Sue Simmons (BDA): Stated BDA wants to be in full compliance but two weeks may not be enough time. Clarified the specific concerns that the BDA had with the contract as: worker's compensation should be removed, indemnification should be reciprocal, and right of first refusal should be removed. Requested a calendar due date.

Mayor Wingfield: Responded Tuesday July 24, 2018.

Mayor, Council Members and City Attorney Kantrud: Continued to discuss substantive changes in light of clarification.

City Attorney Kantrud: Stated worker's compensation is not substantive. As long as the BDA does not hire employees, they are not obligated to the requirement. The language indemnifies the City only should the BDA hire employees. This clause should not be removed.

City Attorney Kantrud: Stated right of first refusal was requested by the City and can be removed at request of Council.

City Attorney Kantrud: Stated based on professional experience the City will be held liable for any injury that occurs on public property. Indemnification language is included here to protect the City against injuries caused by any action or inaction in the safety and management of the docks by the BDA. Indemnification can go both ways and if it is the will of the BDA to include the reciprocal language and council approves, it may be added to please both parties in negotiation.

MOTION WAS MADE BY COUNCILMEMBER MALVEY AND SECONDED BY COUNCILMEMBER WHITE TO REMOVE RIGHT OF FIRST REFUSAL LANGUAGE FROM THE CONTRACT. MAYOR WINGFIELD AND COUNCILMEMBERS MALVEY, LAFOY AND WHITE VOTE AYE. COUNCILMEMBER WOOLSTENCROFT VOTES NAY. MOTION PASSED. (Time Stamp 01:24:22)

MOTION WAS MADE BY COUNCILMEMBER MALVEY AND SECONDED BY COUNCILMEMBER LAFOY TO ADD THE RECIPROCAL INDEMNIFICATION LANGUAGE TO THE BDA CONTRACT. ALL AYES. MOTION PASSED.

Mayor and Council Members: Decided to retain the language regarding worker's compensation liability.

MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO HAVE THE BDA CONTRACT FULLY EXECUTED AS AMENDED BY JULY 24, 2018 OR THE CONTRACT IS NO LONGER VALID. MAYOR WINGFIELD AND COUNCILMEMBERS WHITE AND WOOLSTENCROFT VOTE AYE. COUNCILMEMBERS LAFOY AND MALVEY VOTE NAY. MOTION PASSED.

D. City Attorney Retainer Contract

a. Council Deliberation and Approval

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY MAYOR WINGFIELD TO APPROVE THE CITY ATTORNEY RETAINER CONTRACT. ALL AYES. MOTION PASSED.

E. First Reading Ordinance 2018-05-01, Special Events Permitting

Administrator Lay: Introduced the amended proposed ordinance to Council.

a. Council Deliberation and Approval

Mayor and Council Members and City Attorney Kantrud: Discussed Ordinance 2018-05-01 in detail.

Mayor and Council Members: Instructed Administrator Lay to investigate the work it would place on administrative staff, modify the ordinance language and seek community feedback including input from the appropriate Committees.

Alan Mitchell (23 Oakridge Drive): Volunteered to research and report the related codes of other cities.

F. Road Escrow

a. Council Deliberation

Mayor Wingfield: Stated large-scale projects impact roads and property with work vehicles and private activity. The City needs a means to secure its assets rather than absorb the costs of damage from this activity. Asked City Attorney Kantrud if an escrow fee schedule can be used or if an ordinance is required.

City Attorney Kantrud: Stated escrow is a common method used by municipalities. Noted management can be labor intensive. Recommended adding a proposed fee schedule for August with further research to better frame it contextually.

Mayor, Council Members and Attorney Kantrud: Discuss the matter in detail.

Mayor and Council Members: Decided to research the matter further and revisit it in August's meeting.

G. Section 203.040, Permitting Requirements

a. Council Deliberation

Councilmember LaFoy: Discussed how Section 203.040 is too broad in what it requires a permit for. He recommended this Ordinance be amended to be more reasonable.

Mayor and Council Members: Discussed the matter in detail. Decided to send it to the Planning Commission for review and recommendation.

H. Council Member Reports:

a. Councilmember LaFoy

i. Emergency Operations Procedures (EOP)

Councilmember LaFoy: Presented information via MS PowerPoint and updated Council on the status of this emergency planning software. (Time Stamp 01:50:40)

Councilmember White: Recommends locating an EOP class. She will follow up with Councilmember LaFoy.

Councilmember LaFoy: Thanked Councilmember White. Stated the Washington County Sheriff's Office may also be able to help locate EOP training classes.

ii. Lake Links Trail

Councilmember LaFoy: Referred to a recent article in the White Bear Press for the Council's information and stated that public representation in Lake Links Trail matters should be channeled through City Council Members only.

b. Councilmember Malvey

i. Resignation

Councilmember Malvey: Stated it has been an honor to serve the community of Birchwood. Apologized for not fulfilling the full four years of her elected term citing family, career and volunteer commitments. Assured Council resignation is in time for the 2018 election so the seat can be filled through the election process. Provided status of items she had been working on and stated she will assist in a volunteer capacity. Resignation is effective immediately upon conclusion of this meeting.

I. Resolution 2018-17, Resolution Accepting Resignation and Declaring a Vacancy

Administrator Lay: Read aloud the resolution effective July 10, 2018. The resignation was accepted and will trigger a special election to be put to ballot in 2018's general election. (Time Stamp 02:02:40)

MOTION WAS MADE BY COUNCILMEMBER MALVEY AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO ACCEPT RESOLUTION 2018-17. ALL AYES. MOTION PASSED.

Mayor Wingfield: Thanked Councilmember Malvey for her work and noted the challenges of the position.

Mayor, Council Members and Attorney Kantrud: Discussed the replacement of Councilmember Malvey's position leading up to the 2018 general election.

Mayor Wingfield: Asked Administrator Lay to put this item on the agenda for August's meeting.

J. City Administrator's Report

a. 5 Oaks Lane Tree

Administrator Lay: Recommended approval of the low bid by Precision Landscape to remove the dead Ash tree at Birchwood Avenue at Five Oaks Lane.

Mayor and Council Members: Discussed the bid and whether to grind the stump or not.

Administrator Lay: Answered that the Emerald Ash Borer could still be attracted to the stump if left too high above the ground. Precision cuts stumps at about 3 inches above the ground. Accordingly, grinding the stump would be preferred.

MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER WHITE TO APPROVE THE BID FROM PRECISION LANDSCAPE FOR \$1,200, INCLUDING TREE REMOVAL AND STUMP GRINDING. ALL AYES. MOTION PASSED.

b. Security Cameras at Ice Rink

Administrator Lay: Stated that the previously approved \$500 was not enough to purchase the camera equipment needed to monitor the warming house. He requested approval to increase that amount to \$700.

MOTION WAS MADE BY COUNCILMEMBER WHITE AND SECONDED BY COUNCILMEMBER LAFOY TO APPROVE UP TO \$700 TO PURCHASE AND INSTALL A SECURITY CAMERA SYSTEM AT THE ICE RINK LOCATED IN TIGHE-SCHMITZ PARK. ALL AYES. MOTION PASSED.

ADJOURN

MOTION WAS MADE BY COUNCILMEMBER MALVEY AND SECONDED BY COUNCILMEMBER WHITE TO ADJOURN THE MEETING. ALL AYES. MOTION PASSED. MEETING ADJOURNED AT 09:11 PM CST.

ATTEST:

Mary Wingfield
Mayor

Tobin Lay
City Administrator - Clerk

For the Period : 7/10/2018 To 8/10/2018

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursed</u>	<u>Ending Balance</u>
General Fund	\$733,516.65	\$19,323.89	\$45,829.05	\$707,011.49
Road and Bridge	\$0.00	\$0.00	\$0.00	\$0.00
Comp Plan Grant	\$4,460.00	\$0.00	\$5,560.00	(\$1,100.00)
Tree Canopy Care	\$0.00	\$0.00	\$0.00	\$0.00
Special Rev Projects	\$19,242.40	\$0.00	\$900.00	\$18,342.40
Spec Rev - Warm House	\$40.00	\$0.00	\$0.00	\$40.00
REIMBURSED CONTRACTED SERVICES	(\$7,285.26)	\$0.00	\$0.00	(\$7,285.26)
Birchwood In Re-hab Bond	(\$577.08)	\$0.00	\$0.00	(\$577.08)
Sewer Re-hab 2008 Debt	\$19,907.03	\$0.00	\$0.00	\$19,907.03
CAPITAL PROJECT FUNDS (401 through 499)	\$0.00	\$0.00	\$0.00	\$0.00
Capital Improvement Projects	\$0.00	\$0.00	\$0.00	\$0.00
Capital Project PW	\$66,233.91	\$0.00	\$0.00	\$66,233.91
Water	\$34,599.77	\$0.00	\$500.00	\$34,099.77
Sewer	\$32,502.95	\$0.00	\$12,884.19	\$19,618.76
Transit System	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Infrastructure	\$0.00	\$0.00	\$0.00	\$0.00
Engineering Services	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$902,640.37	\$19,323.89	\$65,673.24	\$856,291.02

Fund Name: All Funds

Date Range: 07/10/2018 To 08/10/2018

<u>Date</u>	<u>Remitter</u>	<u>Receipt #</u>	<u>Description</u>	<u>Deposit ID</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-P</u>	<u>Total</u>
07/23/2018	Window World	171734430	Building Permit	(07/23/2018) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 186.10
								\$ 186.10
07/23/2018	Brooks, David	171734431	Building Permit	(07/23/2018) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 2,102.75
								\$ 2,102.75
07/23/2018	Blackwolf Exteriors	171734432	Building Permit	(07/23/2018) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 214.92
								\$ 214.92
07/23/2018	Sigecan, Cameron	171734433	Building Permit	(07/23/2018) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 576.26
								\$ 576.26
07/23/2018	Will, Jennifer	171734434	Building Permit	(07/23/2018) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 115.00
								\$ 115.00
07/23/2018	Natural Creations & Designs	171734435	Building Permit	(07/23/2018) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 145.00
								\$ 145.00
07/23/2018	Geisenheyner, Timothy	171734436*	Hall Rental	(07/23/2018) -	N	City/Town Hall Rent	100-34101-	\$ 50.00
								\$ 50.00
07/23/2018	Fireplace Guys	171734437	Building Permit	(07/23/2018) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 48.30
								\$ 48.30
07/23/2018	Fireside Hearth & Home	171734438	Building Permit	(07/23/2018) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 37.73
								\$ 37.73
07/23/2018	Sorenson, Luke	171734439*	Animal License - New Dog	(07/23/2018) -	N	Animal Licenses	100-32240-	\$ 10.00

Fund Name: All Funds

Date Range: 07/10/2018 To 08/10/2018

<u>Date</u>	<u>Remitter</u>	<u>Receipt #</u>	<u>Description</u>	<u>Deposit ID</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-P</u>	<u>Total</u>
								<u>\$ 10.00</u>
07/24/2018	Rahkola, Urho & Pamela	171734440*	Donation - Bell Tower Project	(07/24/2018) -	N	Contributions and Donations from Private Sources	100-36230-	\$ 50.00
								<u>\$ 50.00</u>
07/24/2018	Lund, John & Kellie	171734441*	Donation - Bell Tower Project	(07/24/2018) -	N	Contributions and Donations from Private Sources	100-36230-	\$ 25.00
								<u>\$ 25.00</u>
07/24/2018	Suburban Cable Commission	171734442*	AC Upgrade Reimbursement 2018	(07/24/2018) -	N	Refund-Reimbursemnt-Dividend	100-36240-	\$ 10,607.00
								<u>\$ 10,607.00</u>
07/24/2018	MN Management & Budget	171734443	Court Fines + PERA Aid + State Aid.	(07/24/2018) -	N	State Grants and Aid	100-33422-	\$ 119.00
						State Grants and Aid	100-33422-	\$ 4,991.00
						Court Fines	100-35101-	\$ 33.33
								<u>\$ 5,143.33</u>
08/08/2018	Amazon	171734445*	EFT Refund - Shoe Ice Grippers Outdoor - 02/16/2018	(02/16/2018) -	N	Refund-Reimbursemnt-Dividend	100-36240-	\$ 12.50
								<u>\$ 12.50</u>
Total for Selected Receipts								<u><u>\$ 19,323.89</u></u>

Fund Name: All Funds

Date Range: 07/10/2018 To 08/10/2018

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
07/13/2018	Amy & Adams	30145	Music in the Park - 07/08/2018	N	Recreation	210-45101-440-	\$ 150.00
	Total For Check	30145					\$ 150.00
07/13/2018	IRS - US Treasury	EFT071318A	Q2 2018 - June Payment	N	Clerk - Treasurer	100-41401-100-	\$ 1,715.06
	Total For Check	EFT071318A					\$ 1,715.06
07/16/2018	Tilden Barger	30147	Music in the Park - 2B4U - 07/15/2018	N	Recreation	210-45101-440-	\$ 150.00
	Total For Check	30147					\$ 150.00
07/16/2018	MN Department of Revenue	EFT071618A	State Tax Filing - Q2 2018	N	Clerk - Treasurer	100-41401-115-	\$ 865.85
	Total For Check	EFT071618A					\$ 865.85
07/19/2018	SHC LLC	30148*	Comp Plan 2040	N	Grants	204-41905-438-	\$ 5,560.00
	Total For Check	30148					\$ 5,560.00
07/20/2018	Payroll Period Ending 07/20/2018	30146	Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 1,817.66
	Total For Check	30146					\$ 1,817.66
07/20/2018	PERA	EFT072018A*	Employee Retirement - Tobin	N	Clerk - Treasurer	100-41401-121-	\$ 350.00
	Total For Check	EFT072018A					\$ 350.00
07/24/2018	Vern Johnson	30149	Music in the Park - Lightning Creek - 07/22/2018	N	Recreation	210-45101-440-	\$ 150.00
	Total For Check	30149					\$ 150.00
07/24/2018	Nephew, Nick & Sara	30150	Community Club Refund	N	CULTURE-RECREATION	100-45001-810-	\$ 4.00
	Total For Check	30150					\$ 4.00
07/24/2018	Hagan, Karen or Lind, Brian	30151	Community Club Refund	N	CULTURE-RECREATION	100-45001-810-	\$ 4.00
	Total For Check	30151					\$ 4.00
07/24/2018	Payroll Period Ending 07/16/2018	30168	Maintenance - Greg Beckman	N	Parks	100-45207-100-	\$ 855.08
	Total For Check	30168					\$ 855.08
07/24/2018	Insituform Technologies USA, LLC	30169*	Sewer Lining Project - Final Payment	N	Sewer Utility	605-43190-300-	\$ 3,398.63
	Total For Check	30169					\$ 3,398.63

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Date Range: 07/10/2018 To 08/10/2018

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
08/03/2018	Wingfield, Mary	30152	Reimbursement for Supplies - July 2018 - Office Supplies	N	Office Operations Supplies	100-41911-200-	\$ 65.00
		Total For Check	30152				\$ 65.00
08/03/2018	Rydeen, Jim	30153	Reimbursement - Gas for Mower + Small Parts	N	Parks	100-45207-220-	\$ 48.56
		Total For Check	30153				\$ 48.56
08/03/2018	Leeves, Robert	30154	Videographer - Regular CC Meeting 07/10/2018	N	Cable Eqpmt and Service	100-41950-314-	\$ 75.00
		Total For Check	30154				\$ 75.00
08/03/2018	Thatcher Engineering, Inc	30155*	415 Wildwood + Xcel ROW Permits	N	Engineer Service	100-41650-300-	\$ 255.00
		30155*				100-41650-300-	\$ 170.00
		Total For Check	30155				\$ 425.00
08/03/2018	Metropolitan Council - Env. Service	30156*	Wastewater Service - August 2018.	N	Sewer Utility	605-43190-217-	\$ 4,411.24
		Total For Check	30156				\$ 4,411.24
08/03/2018	Gopher State One Call	30157*	Locates (25 Tickets) - June 2018	N	Utility Locates	605-42805-314-	\$ 33.75
		Total For Check	30157				\$ 33.75
08/03/2018	TSE Inc. - Work Account	30158*	Janitorial Services - 06/21/18 & 07/05/18	N	General Government Buildings and Plant	100-41940-314-	\$ 25.00
		30158*				100-41940-314-	\$ 25.00
		Total For Check	30158				\$ 50.00
08/03/2018	LVC Companies, Inc.	30159*	Fire Extinguisher Inspections 2018	N	General Government Buildings and Plant	100-41940-314-	\$ 68.50
		Total For Check	30159				\$ 68.50
08/03/2018	AirFresh Industries, Inc.	30160*	Portable Restroom Rental - 07/03/2018 + Standard Monthly Rentals (x2) - July 2018	N	Parks	100-45207-314-	\$ 40.00
		30160*				100-45207-314-	\$ 162.50
		Total For Check	30160				\$ 202.50
08/03/2018	SL - serco	30161*	Water Meter Reading - May 2018	N	Water Utility	601-43180-314-	\$ 500.00
		Total For Check	30161				\$ 500.00

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Date Range: 07/10/2018 To 08/10/2018

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
08/03/2018	Office Depot	30162*	Pickleball Signage Lamination	N	Office Operations Supplies	100-41911-210-	\$ 1.79
		Total For Check	30162				\$ 1.79
08/03/2018	Lay, Tobin	30163*	Reimbursement - Mailbox Lock Cover	N	Office Operations Supplies	100-41911-210-	\$ 7.00
		Total For Check	30163				\$ 7.00
08/03/2018	Lund, John	30164	Remove Couch (Wildwood Ave) & Remove Trees (Hall Ave) - 07/14/2018	N	Tree Removal	100-43135-314-	\$ 100.00
		30164			Sanitation - Recycling	100-44101-314-	\$ 149.00
		Total For Check	30164				\$ 249.00
08/03/2018	MENARD'S - OAKDALE	30165*	24" Pushbroom multi-surface + Exterior Paints (2)	N	Parks	100-45207-220-	\$ 68.96
		30165*				100-45207-240-	\$ 52.92
		Total For Check	30165				\$ 121.88
08/03/2018	City of White Bear Lake	30166*	Fire Services - August 2018	N	Fire	100-42201-314-	\$ 1,694.75
		Total For Check	30166				\$ 1,694.75
08/03/2018	Press Publications	30167*	Candidate Filing & Meeting Date Change Publications - 07/12/18 - WBP	N	Ordinances and Proceedings	100-41130-351-	\$ 72.67
		30167*				100-41130-351-	\$ 40.37
		Total For Check	30167				\$ 113.04
08/03/2018	Roger Stratton	30170	Music in the Park - Ensemble Aventura - 07/29/18	N	Recreation	210-45101-440-	\$ 150.00
		Total For Check	30170				\$ 150.00
08/03/2018	Legacy Celtic Music, LLC	30171	Music in the Park - Legacy - 08/05/2018	N	Recreation	210-45101-440-	\$ 150.00
		Total For Check	30171				\$ 150.00
08/03/2018	MCFOA	30172	MCFOA Annual Dues 2018	N	City Training and Development	100-41914-433-	\$ 45.00
		Total For Check	30172				\$ 45.00
08/03/2018	Payroll Period Ending 08/03/2018	30173	Administrator	N	Clerk - Treasurer	100-41401-100-	\$ 1,817.66
		Total For Check	30173				\$ 1,817.66
08/03/2018	Payroll Period Ending 07/31/2018	30174	Treasurer - Deputy Clerk	N	Clerk - Treasurer	100-41401-100-	\$ 618.12

Fund Name: All Funds

Date Range: 07/10/2018 To 08/10/2018

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
		Total For Check	30174				\$ 618.12
08/03/2018	Payroll Period Ending 08/03/2018	30175	Administrator - Insurance	N	Clerk - Treasurer	100-41401-100-	\$ 420.12
		Total For Check	30175				\$ 420.12
08/03/2018	PERA	EFT080318A*	Employee Retirement - Tobin	N	Clerk - Treasurer	100-41401-121-	\$ 350.00
		Total For Check	EFT080318A				\$ 350.00
08/03/2018	PERA	EFT080318B*	Employee Retirement - Paul	N	Clerk - Treasurer	100-41401-121-	\$ 100.80
		Total For Check	EFT080318B				\$ 100.80
08/03/2018	Xcel Energy	EFT080318C*	Electric Bill & Gas for Generator - 06/18 to 07/18/18 + Street Lights - 06/03 to 07/02/18	N	General Government Buildings and Plant	100-41940-380-	\$ 96.04
		EFT080318C*			Street Lighting	100-41940-383-	\$ 28.32
		EFT080318C*			Parks	100-43160-380-	\$ 1,222.48
		EFT080318C*			Sewer Utility	100-45207-380-	\$ 12.09
		EFT080318C*				605-43190-380-	\$ 51.99
		EFT080318C*				605-43190-380-	\$ 186.78
		EFT080318C*				605-43190-380-	\$ 340.03
		EFT080318C*				605-43190-383-	\$ 28.93
		Total For Check	EFT080318C				\$ 1,966.66
08/08/2018	Payroll Period Ending 07/24/2018	30176	Maintenance - Jim Rydeen	N	Parks	100-45207-100-	\$ 1,021.84
		Total For Check	30176				\$ 1,021.84
08/08/2018	Metropolitan Council - Env. Service	30177*	Wastewater Service - Sep 2018.	N	Sewer Utility	605-43190-217-	\$ 4,411.24
		Total For Check	30177				\$ 4,411.24
08/08/2018	Lay, Tobin	30178	Reimbursement - Certified Mail + Envelope - 07/24/2018	N	Office Operations Supplies	100-41911-210-	\$ 6.13
		Total For Check	30178				\$ 6.13
08/08/2018	Fred Bailey	30179	Music in the Park - Maple Street Ramblers - 08/12/2018	N	Recreation	210-45101-440-	\$ 150.00
		Total For Check	30179				\$ 150.00
08/08/2018	Lund, John	30180	Tree Inspection 2018	N	Tree Care/ Inspection	100-43104-314-	\$ 1,300.00
		Total For Check	30180				\$ 1,300.00
08/08/2018	TSE Inc. - Work Account	30181*	Janitorial Services - 07/19/2018	N	General Government Buildings and Plant	100-41940-314-	\$ 25.00

Fund Name: All Funds

Date Range: 07/10/2018 To 08/10/2018

<u>Date</u>	<u>Vendor</u>	<u>Check #</u>	<u>Description</u>	<u>Void</u>	<u>Account Name</u>	<u>F-A-O-P</u>	<u>Total</u>
		Total For Check	30181				\$ 25.00
08/08/2018	City of Roseville	30182	IT & Phone Services - July 2018	N	General Government Buildings and Plant	100-41940-320-	\$ 366.00
		30182				100-41940-320-	\$ 62.12
		Total For Check	30182				\$ 428.12
08/08/2018	Allstream	30183*	Analog Phone Line - 07/23/18 to 08/22/18	N	General Government Buildings and Plant	100-41940-320-	\$ 45.87
		Total For Check	30183				\$ 45.87
08/08/2018	Gopher State One Call	30184*	Locates (16 Tickets) - July 2018	N	Utility Locates	605-42805-314-	\$ 21.60
		Total For Check	30184				\$ 21.60
08/08/2018	MENARD'S - OAKDALE	30185*	Dehumidifier, Batteries & Driveway Marker - 07/27/2018	N	General Government Buildings and Plant	100-41940-210-	\$ 19.94
		30185*				100-41940-240-	\$ 149.99
		30185*			Street Signs	100-43155-210-	\$ 4.93
		Total For Check	30185				\$ 174.86
08/08/2018	Office Depot	30186*	Pickleball Signage Lamination (2 of 2)	N	Office Operations Supplies	100-41911-210-	\$ 1.79
		Total For Check	30186				\$ 1.79
08/08/2018	Washington County Sheriff	30187*	Jan - Jun 2018 Police Services	N	Police	100-42101-314-	\$ 26,441.78
		Total For Check	30187				\$ 26,441.78
08/08/2018	Xcel Energy	EFT080818A*	Electricity for Street Lights - 07/3/18 to 08/02/18	N	Street Lighting	100-43160-380-	\$ 1,223.19
		Total For Check	EFT080818A				\$ 1,223.19
08/08/2018	IRS - US Treasury	EFT080818B	Q3 2018 - July Payment	N	Clerk - Treasurer	100-41401-100-	\$ 1,716.17
		Total For Check	EFT080818B				\$ 1,716.17
Total For Selected Checks							\$ 65,673.24

As on 8/10/2018

Special Rev Projects

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Dock/Lift Permit Fee	0.00	12,050.00	12,050.00
Total Acct 322	0.00	12,050.00	12,050.00
Park Fees	0.00	220.00	220.00
Total Acct 347	0.00	220.00	220.00
Total Revenues	0.00	12,270.00	12,270.00
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Recreation			
Miscellaneous: Dues and Subscriptions	0.00	200.00	(200.00)
Community Events	0.00	1,200.00	(1,200.00)
Total Acct 451	0.00	1,400.00	(1,400.00)
Parks			
Misc	0.00	220.00	(220.00)
Total Acct 452	0.00	220.00	(220.00)
Total Disbursements	0.00	1,620.00	(1,620.00)
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		7,692.40	
Total Receipts and Other Financing Sources		12,270.00	
Total Disbursements and Other Financing Uses		1,620.00	
Cash Balance as of 08/10/2018		18,342.40	

As on 8/10/2018

Capital Project PW

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Total Revenues	0.00	0.00	0.00
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Total Disbursements	0.00	0.00	0.00
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		66,233.91	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		0.00	
Cash Balance as of 08/10/2018		66,233.91	

As on 8/10/2018

Water

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Water Fee	0.00	39,488.96	39,488.96
Penalty - Late Water/Sewer	0.00	318.37	318.37
State and Misc fees	0.00	1,174.41	1,174.41
Total Acct 341	0.00	40,981.74	40,981.74
Water Main Break	0.00	2,938.93	2,938.93
Total Acct 349	0.00	2,938.93	2,938.93
DELQ - Water-Sewer fees	0.00	1,460.42	1,460.42
Total Acct 361	0.00	1,460.42	1,460.42
Total Revenues	0.00	45,381.09	45,381.09
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Financial Administration			
Contracted Services	0.00	5,633.10	(5,633.10)
Total Acct 415	0.00	5,633.10	(5,633.10)
Water Utility			
Repair and Maintenance Supplies (221 through 229)	0.00	216.50	(216.50)
Contracted Services	0.00	42,132.02	(42,132.02)
Fees	0.00	1,124.00	(1,124.00)
Wtr/Swr Emergency			
Repair and Maintenance Supplies (221 through 229)	0.00	400.00	(400.00)
Professional Services: Medical and Dental Fees	0.00	10,749.90	(10,749.90)
Total Acct 431	0.00	54,622.42	(54,622.42)
Total Disbursements	0.00	60,255.52	(60,255.52)
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		48,974.20	
Total Receipts and Other Financing Sources		45,381.09	
Total Disbursements and Other Financing Uses		60,255.52	
Cash Balance as of 08/10/2018		34,099.77	

As on 8/10/2018

Sewer

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Penalty - Late Water/Sewer	0.00	386.76	386.76
Sewer Fee	0.00	60,448.34	60,448.34
Total Acct 341	0.00	60,835.10	60,835.10
SPECIAL ASSESSMENTS	0.00	16,340.07	16,340.07
DELQ - Water-Sewer fees	0.00	1,460.42	1,460.42
Total Acct 361	0.00	17,800.49	17,800.49
Total Revenues	0.00	78,635.59	78,635.59
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Postage/Postal Permits			
OFFICE SUPPLIES (201 through 209)	0.00	773.60	(773.60)
Total Acct 414	0.00	773.60	(773.60)
Engineer Service			
PROFESSIONAL SERVICES (301 through 319)	0.00	4,960.00	(4,960.00)
Total Acct 416	0.00	4,960.00	(4,960.00)
Utility Locates			
Contracted Services	0.00	159.20	(159.20)
Total Acct 428	0.00	159.20	(159.20)
Sewer Utility			
Sewer - Wastewater Charge	0.00	35,289.92	(35,289.92)
PROFESSIONAL SERVICES (301 through 319)	0.00	67,972.50	(67,972.50)
Contracted Services	0.00	7,689.75	(7,689.75)
Utility Services (381 through 389)	0.00	6,941.95	(6,941.95)
Utility Services: Gas Utilities	0.00	226.48	(226.48)
Total Acct 431	0.00	118,120.60	(118,120.60)
Total Disbursements	0.00	124,013.40	(124,013.40)
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		64,996.57	
Total Receipts and Other Financing Sources		78,635.59	
Total Disbursements and Other Financing Uses		124,013.40	
Cash Balance as of 08/10/2018		19,618.76	

MEMORANDUM



Birchwood Village

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Dock Management Contract

Dear Mayor and Council Members,

At last month's City Council meeting, the Council made amendments to the Dock Management contract with the Birchwood Dock Association (BDA) and voted to extend the deadline for the BDA's endorsement of the contract to July 24, 2018.

The Council instructed staff to provide the endorsed contract at the August City Council meeting for Council's final approval.

The President of the BDA did endorse the contract on July 23, 2018 and it is enclosed for your final approval.

Request/Recommendation

Accordingly, staff requests Council:

- 1) Approve the enclosed final Dock Management contract, which has already been endorsed by the BDA President.

Thanks!

Regards,
Tobin Lay

Enclosed: final Dock Management contract

CONTRACT FOR DOCK MANAGEMENT

This Contract, made and entered into this 24th day of July 2018, by and between The City of Birchwood Village (hereinafter referred to as the "City"), a municipal corporation organized under the laws of the state of Minnesota with offices at, 207 Birchwood Ave, Birchwood, MN 55110, and The Birchwood Dock Association (hereinafter referred to as the "Contractor"), a Minnesota corporation, with offices at 418 Birchwood Courts, Birchwood, MN 55110.

WHEREAS, the City has exclusive jurisdiction of and to its shore-land public easements abutting White Bear Lake and,

WHEREAS, the City manages those easements in the interest of the public and specifically to provide bathing and boating access to White Bear Lake and,

WHEREAS, the City has adopted in its Municipal Code, Chapter 617, a local Ordinance guiding the management of those easements abutting White Bear Lake and,

WHEREAS, the City has the authority, pursuant to Chapter 617, to contract with a third party vendor to prosecute the management of the easements abutting White Bear Lake including but not limited to the management of docks that are placed on said easements and,

WHEREAS, the Contractor was organized specifically to manage the docks that are placed on the public easements abutting White Bear Lake and,

WHEREAS, both parties believe it is in their mutual and best interest to enter into agreement for the provisions of dock management at the City's designated public lake tracts and,

WHEREAS, the Parties desire to formalize their relationship by execution of this Contract;

NOW, THEREFORE, IT IS MUTUALLY AGREED BY THE PARTIES, as follows:

1. **Parties.** The Parties to this Contract are The City of Birchwood Village, and the Birchwood Dock Association.
2. **Recitals.** The above recitals are hereby incorporated into this Agreement by reference.
3. **Term.** The term of this Contract shall be from the day of execution until October 31st, 2018. This contract may be renewed after expiration of the initial term upon agreement of the parties.
 - 3.1 **Equipment Provided.** The Contractor shall provide all equipment necessary to administer the contract without contribution by City in any way except by special agreement in writing.
 - 3.2 **Storage.** The Contractor is responsible for providing for storage of its materials except that the City shall provide a location onsite that is accessible to the Contractor for storage

of the docks and boat lifts when off-season and not installed during the boating season, nominally from October to May.

3.3 Direction. Deployment of resources will be at the sole discretion of the Contractor so long as consistent with the requirement of Chapter 617 of the Birchwood Village City Code.

3.4 Remuneration. The Contractor shall be charged at the following rate:

3.4.1 \$750 (\$650 per slip permitted plus \$100 per stored boat lift) payable in full by April 1 of the boating season. In the event of low water, the fee shall be at least the fee amount multiplied by the number of boat slip users at the end of the previous boating season or the number of boat slip users for the following boating season, whichever is greater.

4. Performance Standards and Operation

4.1 Equipment Damage. The Contractor shall be responsible for safekeeping of its equipment, including, but not limited to, fire damage, theft and graffiti to the equipment. This provision shall in no way limit the Contractor's right or ability to seek repayment for damages caused to its equipment from persons who are responsible for the damages.

4.2 Customer Notice. The Contractor shall be responsible for advising and monitoring individual slip holders regarding their duty to safeguard their personal property from damage.

4.3 Employee Safety. The Contractor shall provide and maintain all safety accommodations for the use and protection of its employees as may be necessary to provide for their health and welfare and the City shall not be held responsible for injury or death of Contractor personnel.

4.4 Applicable Regulations. The Contractor shall comply with all applicable ordinances of the City and with all laws and rules of the County, the State of Minnesota and its agencies relating to the management of the docks. The full text of Ordinance 617 is attached hereto as Exhibit A and incorporated by reference. Any terms that conflict shall be resolved in favor of the meaning and intent of the Ordinance.

4.5 Licenses. The Contractor shall maintain always all licenses required by state, county, and local government for the services, including proper licensing for all personnel employed or contracted by the Contractor.

4.6 Complaints. Complaint procedure is addressed by the City Code, Section 617.460 and the Contractor shall establish and maintain an office with supervision and a telephone number for accepting complaints and other calls. The address and telephone number of such office shall be provided to the City, and the Contractor shall promptly notify the City in writing of any changes in either. The Contractor shall respond to all calls and

complaints promptly and courteously. The Contractor shall maintain a written record of all complaints received and the action taken in response.

5. **Contact Person.** It is expected that the City's primary contact with the Contractor shall occur via its president. In the event that s/he is known or expected to be unavailable to accept communications from the City, then the Contractor shall provide an alternative contact person's name and phone number for such purposes.
6. **Payment.** For complete and satisfactory performance of the duties and actions assigned to the Contractor within this agreement, the Contractor is permitted to collect additional fees of slip holders as determined by the Contractor.
7. **Independent Contractor.** The Contractor and its employees, agents or subcontractors shall be deemed an independent contractor for purposes of all services to be provided under this Contract. Nothing contained in this Contract is intended or should be construed as creating the relationship of co-partners or joint ventures. Unless otherwise agreed by the parties, the Contractor shall provide its own tools and equipment and shall select its own manner and method of performing its services. The Contractor and its employees, agents or subcontractors shall not be considered an employee of the City for any purpose, and shall waive, release, and not be entitled to any of the benefits usually accorded regular employees, including but not limited to severance pay, health insurance benefits, PERA, unemployment benefits, retirement credits, worker's compensation coverage, or any other rights or benefits that accrue to City's employees, if any.
8. **Notice to parties.** Notices required to be provided pursuant to this Contract shall be given by United States Mail to the following addresses, by personal service, or fax, or by e-mail if the parties agree:

To the Contractor:	To the Owner:
BDA (Auth. Agent) 418 Birchwood Courts Birchwood, MN 55110	City Administrator City of Birchwood Village 207 Birchwood Avenue Birchwood, MN 55110 Phone: 651-426-3403

9. **Insurance.** The Contractor shall maintain appropriate insurance coverage to cover its activities at all times while this Contract is in effect, in at least the following amounts:
 - General Comm. Liability: \$2,000,000/\$2,000,000
 - Worker's Comp (if applicable): Per Statute or \$500,000 per injury, whichever is greater

Any lapse of insurance coverage shall be cause for the City to immediately terminate the Contract. All policies evidencing insurance required by this paragraph shall insure the Contractor for any act or omission, including negligence of the Contractor or of the Contractor's employees or

agents, in connection with the performance of the services herein, including claims arising out of the use of or operation of any vehicles used by the Contractor or the Contractor's employees or agents in performing the services.

- 10. Indemnity.** The Parties agree to defend, indemnify and hold harmless each other, their agents, officers, and employees from any and all demands, claims, causes of action, liabilities, losses, damages, costs, expenses including reasonable attorney's fees, suits, demands and judgments of any nature, because of bodily injury to, or death of, any person or persons and/or because of damages to property including loss of use from any cause whatsoever, which may be asserted against the Party on account of any act or omission, including negligence of the Party or the Party's employees or agents, in connection with their performance. The Parties agree to defend any action brought against the other on any such matters, and to pay and satisfy any judgment entered thereon together with all costs and expenses incurred in connection therewith. Contractor shall provide for the City to be named as an additional insured on its Declarations Page and provide the same to the City within 14 days of this Agreement being fully-executed. Additionally, Contractor shall ensure that any Cancellations or changes of Endorsement communications are copied to City during the active terms of the Agreement
- 11. Transfer of Rights and Obligations.** The Contractor shall not assign, transfer, or subcontract its obligations under this Contract without notice to and approval of the City. Any attempt to assign or transfer or subcontract this Contract in whole or in part without prior approval of the City shall be grounds for immediate termination of the Contract.
- 12. Nondiscrimination.** The Contractor agrees that during the term of this Contract, it will not within the State of Minnesota discriminate against any employee or applicant for employment because of race, color, creed, sex, national origin, or ancestry and will include a similar provision in all subcontract(s) entered into for the performance hereof. This paragraph is included in this Contract to comply with provisions of Minnesota Statutes § 181.59. Violation of this statute is a misdemeanor, and if violated, will permit the City to cancel this Contract.
- 13. Costs and Attorneys Fees.** The prevailing party in any dispute arising out of this Contract shall be entitled to reimbursement of its costs and attorneys' fees in asserting or defending its rights hereunder against the non-prevailing party.
- 14. Merger, Amendment & Savings Clause.** It is understood and agreed that the entire Contract between the parties is contained herein and that this Contract supersedes all oral agreements, negotiations, and past practices between the parties relating to the subject matter. This Contract may be amended at any time by mutual agreement of the City and the Contractor. Any amendments shall be in writing to be effective. If any section of this Contract is found to be invalid or not enforceable, the remainder of the Contract shall remain in force and binding.
- 15. Non-Conforming Services.** The acceptance by the City of any services non-conforming with the terms of this agreement or the foregoing by the City of any rights or remedies it is entitled to under the terms of this agreement shall not constitute a waiver of the City's rights to conforming services or any such rights or remedies in respect to any subsequent breach or default of the terms

of this agreement. The rights and remedies of the City provided or referred to under the terms of the agreement will be cumulative and not mutually exclusive.

16. Termination. This Contract shall terminate upon the expiration of the term as provided in Paragraph 3. Upon termination of the Contract, the relationship shall end, except for the damage obligations of the parties under Paragraph 4 and the indemnity obligations of the Contractor under Paragraph 10. If the Contractor fails to perform any of the provisions of this Contract or so fails to administer the work as to endanger the performance of the Contract, this shall constitute default. Unless the Contractor's default is promptly remedied, the City may, upon written notice, immediately cancel this Contract in its entirety. The Contractor may terminate this Agreement at anytime in writing if the City fails to perform any of its requirements within this Agreement upon written notice of same.

16.1. Condition Upon Termination. Upon termination of this Agreement the Contractor shall vacate entirely, leaving no equipment or storage not otherwise agreed between the parties and agree to return premises, including all city-owned equipment, to the City in the same condition and repair as it was upon occupancy, except for reasonable wear and tear, but not including breakage or damage caused by the Contractor's actions or inaction.

17. Governing Law. The laws of Minnesota shall govern the interpretation and enforcement of this Contract. The parties consent to the jurisdiction and venue of the Washington County District Court for all disputes arising hereunder.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed as of the dates set forth below.

City of Birchwood Village

By: _____
Tobin Lay, Administrator

Dated: _____

By: _____
Mary Wingfield, Mayor

Dated: _____

Birchwood Dock Association

By: Dana J. Klimp
Dana Klimp, President

Dated: 7/23/18

MEMORANDUM



Birchwood Village

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Council Member Vacancy

Dear Mayor and Council Members,

Last month the Council learned of and approved Councilmember Megan Malvey's resignation from the City Council. Staff was asked at that time to place this topic on the August agenda for Council's deliberation.

Request/Recommendation

Staff requests Council:

- 1) Deliberate the vacant Council seat left by Councilmember Malvey's resignation.

Thanks!

Regards,
Tobin Lay