



AGENDA OF THE WORKSHOP AND
REGULAR MEETING OF THE CITY
COUNCIL
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
June 13, 2017
6:30 AND 7:00 P.M.

CITY COUNCIL WORKSHOP – 6:30PM

CALL TO ORDER

CITY BUSINESS – WORKSHOP AGENDA

- A. Council Photo Shoot

ADJOURN

REGULAR CITY COUNCIL MEETING – 7:00PM

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVE AGENDA

OPEN PUBLIC FORUM

ANNOUNCEMENTS

- A. Marian Johnson across the Lake Swim will be held July 2 beginning at 7am
- B. July 4 Parade will begin at 9:30am beginning at 5 Birchwood Ave
- C. Music in the Park – every Sunday beginning at 6pm
- D. Washington County has issued a health warning about lake swimming* (pp. 4-8)
- E. Cable Commission Alternate Director Opening – Application Deadline June 30
- F. We are social, follow us on Facebook/Twitter or register for the email listserv

PRESENTATIONS

- A. Open Meeting Law Policy Proposal From Alan Mitchell* (pp. 9-24)
- B. Mayor's Update on Halls Marsh* (p. 25)

- C. Sheriff Report* (pp. 26-27)
- D. Dog Park Committee Update/Minutes* (pp. 28-31)
- E. Upgrade City Hall Toilets (3)* (p. 32)

CITY BUSINESS – CONSENT AGENDA

- A. Approval of Regular Meeting Minutes from May 9, 2017 (Supplement)
- B. Approval of Treasurer’s Report* (pp. 33-47)
- C. Approval to Request Attorney Kantrud Work on Right of Way Ordinance* (pp. 48-61)
- D. Resolution 2017-17: Authorizing Transfer of Funds* (pp. 62-63)
- E. Replace Check Valve at Lift Station #2* (p. 64)
- F. Recycling Grant Contract* (pp. 65-70)

CITY BUSINESS – REGULAR AGENDA

- A. Resolution 2017-18: Approving Solar Garden Subscription Agreement with US Solar*(pp. 71-96)
 - 1. Guest Presentation – Peter Schmitt (US Solar)
 - 2. Council Deliberation and Consideration of Approval
- B. Comprehensive Plan Update* (pp. 97-104)
 - 1. Review Planning Commission Recommendation to Hire SHC, LLC to Consult
 - 2. Guest Presentation – Jennifer Haskamp (SHC)
 - 3. Council Deliberation and Consideration of Approval and Vision
- C. Dock Association Review* (p. 105)
 - 1. Mike Evangelist Q&A
 - 2. Council Deliberation and Requests
- D. Roads Committee Update and Recommendations* (p. 106)
 - 1. City Council Requests
- E. Water Rate Increase* (p. 107)
 - 1. Council Deliberation and Consideration of Approval
 - 2. Order Public Hearing and Publication in White Bear Press
- F. Council Member Reports:
 - 1. Mayor Wingfield:
 - i. Update on Birch Easement Rain Garden* (p. 108)
 - 2. Councilmember LaFoy:
 - 3. Councilmember Malvey:
 - i. School District Re-alignment Update
 - ii. Parks Committee Update
 - 4. Councilmember White:
 - 5. Councilmember Woolstencroft:
- G. City Administrator’s Report
 - 1. No Street Parking Along East County Line Rd.* (pp. 109-112)
 - 2. 2020 U.S. Census – LUCA Volunteers Needed* (pp. 113-114)
 - 3. Request Special Taskforces* (p. 115)

4. Approve Steve Dean Tree Work at Wildwood Park* (pp. 116-117)
 5. Workers Comp Insurance Quote* (pp. 118-121)
 6. Schedule Closed Meeting for Staff Review* (p. 122)
- H. City Attorney Report

ADJOURN

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Washington County Health Warning



Birchwood Village

Dear Mayor and Council Members,

Washington County sent the City brochures related to a health warning for lake swimming and dangerous lake parasites.

According to the letter, the County has experienced several recreational water illnesses in recent summers, including two (2) childhood deaths caused by an ameba called *Naegleria fowleri*.

I have enclosed the health warning and related brochure with this memo for dissemination to Council Members and Birchwood residents. I have posted this information in the bulletin board outside City Hall and also have brochures available at this meeting and in the office down stairs. This brochure can also be found online at: www.co.washington.mn.us/specialtopics.

Residents can reach the Washington County Dept of Public Health and Environment at 651-430-6655 or PHE@co.washington.mn.us for more details. If you have additional questions regarding water related disease you can contact Kris Keller, the County's Epidemiologist, at 651-430-6704 or Kristofer.Keller@co.washington.mn.us. Thanks!

Regards,
Tobin Lay



Quick Facts

Recreational water illnesses like those that cause diarrhea can spread person to person especially if swimmers swallow contaminated water. Symptoms may not begin for a week or more after swimming. Illnesses could be severe enough to cause hospitalization.

The ameba *Naegleria fowleri* is found in warm freshwater during periods of high water temperatures and low water levels. The ameba enters the nose and travels quickly to the brain. Symptoms may occur within one to seven days and starts with headache, fever, nausea, vomiting, and stiff neck. It does not spread person to person.

Seek medical attention if you or someone you know develops symptoms after swimming in freshwater.

Safe Swim Tips

- Keep an eye on your children at all times, drowning can occur in seconds and in silence
- Consider swim lessons or CPR classes for yourself or family members
- Waterwings & noodles are fun toys, but do not use in place of U.S. Coast Guard approved floatation devices
- Don't swim alone or for long periods of time
- Watch the weather for approaching storms
- For emergencies call 911 and seek help from lifeguards where available

For more information:

Healthy swimming web page at:
www.cdc.gov/healthywater/swimming

Fact sheet on *Naegleria fowleri* and primary amebic meningoencephalitis (PAM):
www.health.state.mn.us/divs/idepc/diseases/naegleria/naegleria.pdf



About *Naegleria*

Swimmer's Itch: www.cdc.gov/parasites/swimmersitch/faqs.html

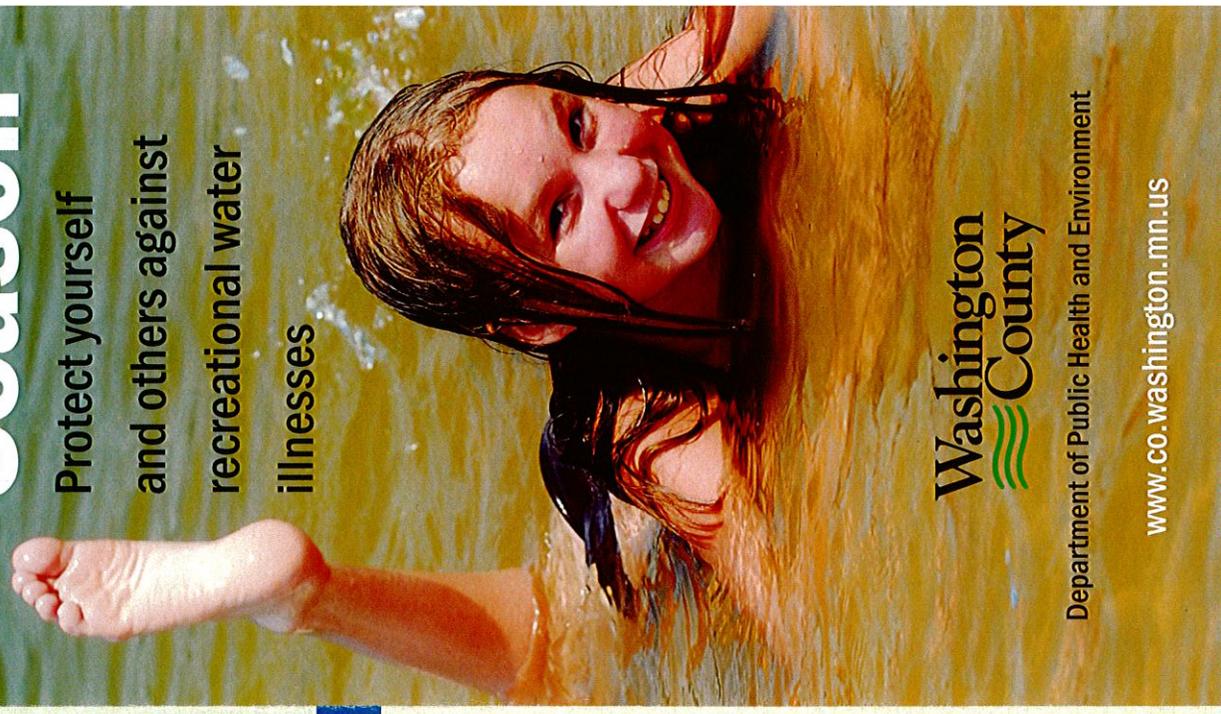


Washington County Department of Public Health and Environment
651-430-6655

www.co.washington.mn.us/specialtopics
PHE@co.washington.mn.us

Safe Swim Season

Protect yourself and others against recreational water illnesses



Department of Public Health and Environment



Think health and safety for the swim season

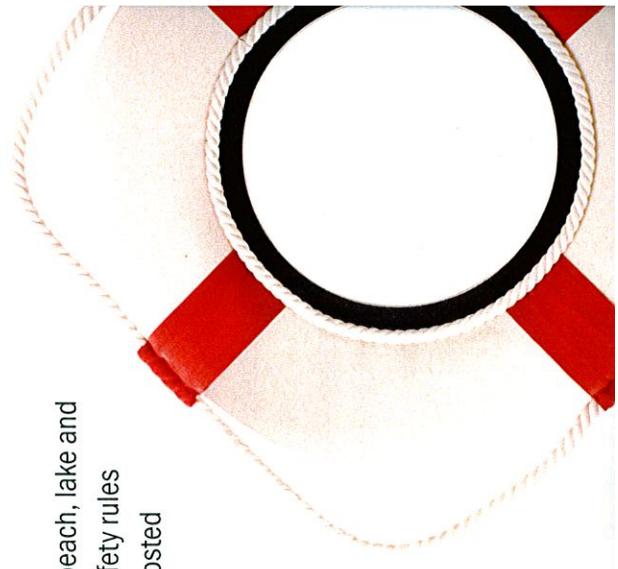
Many people have become sick from germs found in contaminated swimming areas.

Recreational water illnesses are caused by germs that can contaminate swimming areas including freshwater lakes, pools, and rivers. The most common symptom of recreational water illness is diarrhea caused by germs like *cryptosporidium*.

Another germ, *Naegleria fowleri* is an amoeba that lives in warm, stagnant water. It causes a very rare fatal brain infection called primary amoebic meningoencephalitis or PAM.

Practice these steps to protect yourself and others from recreational water illnesses:

- Don't swim when you have diarrhea
- Keep your head out of the water, use nose clips or hold your nose shut
- Don't swallow pool, lake, or river water
- Practice good hygiene such as showering with soap before and after swimming
- Wash your hands thoroughly after using the toilet or changing diapers
- Take children on bathroom breaks or change diapers often
- Change diapers in a bathroom, not at poolside or beachside
- Avoid stirring up sediment in shallow freshwater areas
- Don't swim or submerge your head in stagnant warm bodies of water when air temperatures are high and water levels are low
- Follow beach, lake and pool safety rules when posted



HEALTH ALERT



Naegleria DANGEROUS PARASITE IN LAKE, RIVER AND POND WATER

Naegleria

Naegleria is a big name for a very tiny parasite (ameba) that is usually found in lakes, rivers and ponds.

Naegleria fowleri

Naegleria fowleri causes an infection that develops when these parasites enter the human body through the nose, making their way to the brain.

PAM (primary amebic meningoencephalitis)

This infection causes PAM – a rare, life threatening disease. Symptoms of PAM can start as quickly as 1-7 days after infection. Symptoms include headache, fever, nausea, vomiting and stiff neck.

THE DISEASE MOVES VERY QUICKLY

As the disease moves into the brain, it causes swelling which leads to confusion, lack of attention, loss of balance, seizure and hallucinations. This disease usually results in death within 1-12 days.

Seek immediate medical attention if you have any of these symptoms after swimming in freshwater.

Washington

County

Department of Public Health
and Environment

www.co.washington.mn.us/specialtopics



About Naegleria

Naegleria fowleri Infection



PREVENTION AND MORE

SAFEST WAY TO PREVENT INFECTION

Do not swim in warm, standing water, such as lakes, rivers, ponds or storm water holding areas. Bacteria and other harmful organisms thrive in warm, standing water. There is a low level of *Naegleria fowleri* risk when entering any warm freshwater.

INCREASED RISK IN SUMMER MONTHS

Avoid swimming or jumping into bodies of fresh water during the hot summer months when the water is stagnant, warm and water levels are low. As temperatures rise so does your chance of becoming infected.

CLOSING YOUR NOSTRILS

Wear nose clips, hold your nose shut or keep your head out of the water when swimming, jumping, diving or waterskiing in any freshwater. Closing your nostrils may reduce your chance of becoming infected.

PARASITE LIVES IN SAND AND SILT

Do not dig or stir up the sand and silt while swimming in shallow water. This infection cannot be spread from person to person.

MORE INFORMATION

Healthy swimming web page at:

www.cdc.gov/healthywater/swimming/

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Fact sheet on *Naegleria fowleri* and primary amebic meningoencephalitis (PAM): www.health.state.mn.us/divs/idepc/diseases/naegleria/naegleria.pdf

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Open Meeting Law Policy Proposal



Birchwood Village

Dear Mayor and Council Members,

In response to the recent I.P.A.D. decision, resident Alan Mitchell has reached out to the City to recommend that the Council consider establishing a City policy related to the Minnesota Open Meeting Law. Enclosed is a draft policy written by Mr. Mitchell for Council Members to consider. Thanks!

Regards,
Tobin Lay

**CITY OF BIRCHWOOD VILLAGE
POLICY IMPLEMENTING THE MINNESOTA OPEN MEETING LAW**

1.0 PURPOSE.

The purpose of this Policy is to ensure that all meetings of the Birchwood City Council and any committees or commissions created by the City are open to the public, unless permitted to be closed under the Open Meeting Law, and to establish a process for closing meetings with the attorney that may be properly closed under the Open Meeting Law.

2.0 MANDATORY CLOSED MEETINGS.

The Birchwood City Council shall close the following meetings:

- 2.1 Misconduct Allegations.** Pursuant to Minnesota Statutes § 13D.05, subd. 2(b), the Birchwood City Council shall close any meeting for preliminary consideration of allegations or charges against an individual subject to its authority. The City Council shall open such meeting at the request of the individual who is the subject of the meeting.
- 2.2 Meetings Requiring Consideration of Certain Non-Public Data.** The Birchwood City Council shall close any portion of a meeting where any of the types of not public data specified in Minnesota Statutes § 13D.05, subd. 2(a), are to be discussed.
- 2.3 Other Law.** The Birchwood City Council shall close any portion of a meeting that is expressly required to be closed by law.

3.0 DISCRETIONARY CLOSED MEETINGS.

The following meetings may be closed at the discretion of the Birchwood City Council provided the requirements of the Open Meeting Law and this Policy are complied with.

- 3.1 Performance Evaluations.** The Birchwood City Council may by a majority vote in a public meeting decide to hold a closed meeting to evaluate the performance of an individual who is subject to its authority, as permitted by Minnesota Statutes § 13D.05, subd. 3(a). The Council shall identify the individual to be evaluated prior to closing the meeting and advise the person of the right to have the evaluation conducted at an open meeting. The meeting must be open at the request of the individual who is the subject of the evaluation. The City Council may decide to conduct the evaluation in public over the objection of the individual to be evaluated unless the meeting must be closed under another requirement of the Open Meeting Law. At its next open meeting, the mayor or other presiding officer shall summarize any conclusions made by the Council regarding the person's evaluation.
- 3.2 Purchase or Sale of Real or Personal Property.** Pursuant to Minnesota Statutes § 13D.05, subd. 3(c), the Birchwood City Council may by a majority vote decide to hold a closed meeting to develop or consider offers or counteroffers or other transactional terms for the purchase or sale of real or personal property. The City Council must identify on the record the particular real or personal property that will be the subject of the closed meeting.

- 3.3 Labor Negotiations.** Pursuant to Minnesota Statutes § 13D.03, subd. 1, the Birchwood City Council may by a majority vote in a public meeting decide to hold a closed meeting to consider strategy for labor negotiations.
- 3.4 Security Discussions.** Pursuant to Minnesota Statutes § 13D.05, subd. 3(d), the Birchwood City Council may by a majority vote in a public meeting decide to hold a closed meeting to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency response procedures, and to discuss security deficiencies in or recommendations regarding public services, infrastructure and facilities, if disclosure of the information discussed would pose a danger to public safety or compromise security procedures or responses.
- 3.5 Meetings With Attorney.** Pursuant to Minnesota Statutes § 13D.05, subd. 3(a), the Birchwood City Council may by a majority vote in a public meeting decide to hold a closed meeting with the City's attorney to discuss active or threatened litigation. The City Council may decide to meet in private with the attorney only after complying with the requirements specified in Article 4.0 of this Policy.

4.0 ATTORNEY-CLIENT PRIVILEGE CLOSURE.

The Birchwood City Council shall comply with the following requirements with regard to any closed meeting held with the attorney under the attorney-client privilege exception to the Open Meeting Law.

- 4.1 Notice.** If the Council intends to hold a closed meeting or to close a portion of an otherwise open meeting to meet with the attorney, the Council shall give three days notice of the closed meeting. In such a situation, the City Council shall schedule the closed meeting as a separate Special Meeting and not as part of another meeting. If the City Council is justified in going into a closed session because of an unanticipated development at a properly noticed open meeting, the Council may make that decision as part of the ongoing meeting.
- 4.2 Statutory Authority.** Before closing the meeting, the Council shall state on the public record the statutory authority for closing the meeting.
- 4.3 The Subject Matter.** Before closing the meeting, the Council shall identify with specificity the matter to be discussed at the closed meeting. If the Council has not made a final decision on the matter under review, the Council shall not close the meeting to discuss the matter with the attorney, unless one of the other statutory provisions for closing a meeting justifies closure.
- 4.4 Litigation.** If the matter is in active litigation, the Council shall identify the lawsuit by name. If litigation has been threatened, the Council shall identify the person who is threatening litigation and the manner in which the threat was made. If the matter is not in active litigation or under threat of litigation, the Council shall not close a meeting under the attorney-client privilege to meet with the attorney, unless one of the other statutory provisions for closing a meeting justifies closure.
- 4.5 Balancing.** Before closing the meeting, the Council shall balance the need for the City to have absolute confidentiality on the matter versus the public's right to know the Council's

deliberations. The Council may close the meeting only if the Council determines that the reasons for absolute confidentiality outweigh the public's right to know about the deliberations.

- 4.6 Attendance.** The Council shall determine who shall be permitted to attend the closed meeting. The city clerk/administrator shall be permitted to attend the closed meeting as the person required to keep the Minutes.
- 4.7 Recording.** The Council shall determine whether a recording of the meeting will be made of the closed meeting, and if so, whether the recording will be video or audio.
- 4.8 Findings.** Before voting on whether to go into a closed session to meet with the attorney, the Council shall make Findings, either orally or in writing, setting forth the reasons for deciding to go into a closed meeting in accordance with the requirements of this Article 4.0 and the Open Meeting Law.
- 4.9 Motion.** No meeting to meet with the attorney shall be closed except upon approval of a motion to do so by a majority of the City Council.
- 4.10 Decisions At The Closed Meeting.** The Council may make decisions at the closed meeting but those decisions must be included in the summary that is provided after the meeting ends and shall be included in the Minutes.
- 4.11 Privileged Written Material.** At the closed meeting, the Council may consider written advice from the attorney without waiving the attorney-client privilege for any documents containing such advice, unless the privilege is waived in some other fashion.
- 4.12 Summary.** At its next open meeting, the mayor or other presiding officer shall summarize issues discussed in the closed meeting and any decisions that were made by the Council.
- 4.13 Minutes.** The Council shall adopt Minutes of the closed meeting. The Minutes must summarize the deliberations at the closed meeting but need not disclose any confidential information that was discussed. The Minutes shall be retained separate from the Minutes of the Council's open meetings.

5.0 SERIAL MEETINGS PROHIBITED.

No Birchwood City Council member shall communicate directly with another Council member through face-to-face meetings, telephone contact, written correspondence, email, or other method with regard to any matter that may come before the Council for a decision, except in a properly noticed open meeting.

6.0 NO COMMITTEE CLOSURES

No committee or commission established by the City shall close one of its meetings without the approval of the City Council.

CITY OF BIRCHWOOD VILLAGE
POLICY IMPLEMENTING THE MINNESOTA OPEN MEETING LAW

EXPLANATION OF TERMS

1.0 PURPOSE

Article 1.0 is simply a recital about the Open Meeting Law. This language recognizes that the Open Meeting Law requires almost all meetings of city councils to be open to the public; there are only a few exceptions that allow a city council to close a meeting.

The Minnesota Open Meeting Law is found at Minnesota Statutes, chapter 13D. The Open Meeting Law generally requires that all meetings of public bodies be open to the public. This presumption of openness serves three basic purposes:

- A. To prohibit actions from being taken at a secret meeting, where it is impossible for the interested public to become fully informed concerning decisions of public bodies, or to detect improper influences.
- B. To ensure the public's right to be informed.
- C. To afford the public an opportunity to present its views to the public body.

These bullet points come from the League of Minnesota Cities Handbook for Minnesota Cities, 4/11/2017, chapter 7, entitled Meetings, Motions Resolutions, and Ordinances, at page 11, and the Mayor's Handbook, April 2013, Appendix A, at page 50.

2.0 MANDATORY CLOSED MEETINGS

The Open Meeting Law has two categories of meetings that a city council must conduct in a closed session. These are found in Minnesota Statutes § 13D.05, subd. 2. The Policy does not do much more than simply recognizes the statutory provision requiring such meetings to be closed.

2.1 Misconduct Allegations. One category relates to the preliminary consideration of allegations or charges against an individual subject to the city's authority. Such meetings must be closed to the public. Section 13D.05, subd. 2(b). The statute does allow the employee or other person subject to the city's authority to request that the meeting be open to the public, and this provision is repeated in the Policy because it is an important point to emphasize. The statute does go on to say that upon a conclusion by the city council that discipline is required, future meetings must be open to the public.

Who is subject to the city's authority is not determined in the statute. City employees would certainly fall under this provision. Whether there are others who fall under the City's authority would have to be determined in the specific situation under review. No attempt is made to identify in the Policy what people might be subject to the authority of the Council.

2.2 Consideration of Non-Public Data. The second mandatory category requiring city council meetings to be closed are meetings where certain non-public data are to be considered by the council. Minnesota Statutes § 13D.05, subd. 2(a). There are four different types of non-public data that fall

into this mandatory requirement, and each one is set out in the statute. It is not necessary to include them in the Policy itself but they are repeated below:

- (1) Data that would identify victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
- (2) Active investigative data created by a law-enforcement agency, or internal-affairs data relating to allegations of law-enforcement personnel misconduct collected or created by a state agency, statewide system, or political subdivision.
- (3) Educational, health, medical, welfare, or mental-health data that are not public data under state law.
- (4) An individual's medical records governed by Minnesota Statutes §§ 144.291 to 144.298.

2.3 Other Law. The Open Meeting Law states that “Any portion of a meeting must be closed if expressly required by other law . . .” Minnesota Statutes § 13D.05, subd. 2(a). This language is repeated in the Policy just to recognize that there may be something besides the Open Meeting Law that requires the City Council to close a meeting. It is simply a catch-all phrase to allow governing bodies to meet in private if some state or federal law outside the Open Meeting Law requires closure.

3.0 DISCRETIONARY CLOSED MEETINGS.

There are several kinds of matters that might come before the Birchwood City Council where the Open Meeting Law allows the Council to close the meeting to discuss a particular matter. Article 3.0 of the Policy sets forth those areas specifically allowed to be closed under the Open Meeting Law in certain instances. For the most part, the Policy language simply references the statutory provision, but in a few instances some requirements may be emphasized or added.

3.1 Performance Evaluations. This provision is found in Minnesota Statutes § 13D.05, subd. 3(a). Because this is a category that the Birchwood City Council may have periodic occasions to rely on, more of the statutory requirements are included in the Policy than with some of the other categories. In addition, one additional requirement has been added to the Policy that is not specified in the statute, and that is the obligation of the Council to advise the person to be evaluated of the right to have the evaluation conducted in an open session. It seems like a practice the Council would follow regardless, but it is important to include it in the Policy.

Unlike Article 2.1 above, involving allegations of misconduct, the city is not required to close a meeting to discuss a regular performance evaluation of an employee or other person. For routine evaluations, the City Council has discretion to close the meeting. The statute does not address the right of the person to have the evaluation conducted privately over the desire of the Council to do it in public. While the Council may very likely not want to publicly evaluate an employee who wanted the evaluation to be conducted in private, the decision lies with the Council and language is included in the Policy to clarify that the Council could still decide to conduct an evaluation in open session even though the person preferred a closed meeting.

As with Article 2.1 above, who is subject to the City's authority is unclear. Employees would certainly fall within this provision. Whether other persons are subject to the City Council's evaluation would depend on the situation. No attempt is made to identify in the Policy what people might be subject to the authority of the Council.

The statute goes on to require that the city council must summarize its conclusions regarding the evaluation at its next open meeting. While it would be better practice to give the summary immediately upon coming back into public session if only a portion of a meeting was closed to conduct the evaluation, in no event should the summary be delayed beyond the next time the Council meets publicly.

The statute does not say which person is required to conduct the summary, but it is normal practice for the presiding officer (the mayor unless the mayor is absent) to make the summary, and that is what the Policy says. Nothing in the Policy, however, precludes other councilmembers from adding to the summary by the mayor.

The statute is also unclear on what must be included in the summary. The Commissioner of the Department of Administration, through the Information Policy Analysis Division (IPAD), has issued advisory opinions on this point. In Advisory Opinion 02-021, the Commissioner said:

How a public body approaches the evaluation will determine exactly which data it should summarize. The public body should carefully review the specific points it established in reaching a conclusion about the performance evaluation. Clearly, the language of the Open Meeting Law indicates that the governing body ought to summarize each salient point of the evaluation so that the public is given the opportunity to get the best possible sense of the performance - good, bad, or indifferent - of the public employee.

See also Advisory Opinions 16-002, 15-002, and 14-007. In an effort to ensure that the summary provides sufficient information for the public to understand what occurred, the Policy includes language saying that the summary must identify the issues discussed and any conclusions that were reached.

While the Policy does not address the question of recording the closed session, it should be noted that statute requires "All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body." Minnesota Statutes § 13D.05, subd. 1(d). Recording a closed session is an issue that the Council must be aware of in all situations where it decides that a closed meeting is authorized. In Article 4.7, specific language is included regarding the recording of a meeting closed under the attorney-client privilege because that is the only category under which a recording is not required by statute.

3.2 Purchase or Sale of Real or Personal Property. Minnesota Statutes § 13D.05, subd. 3(c) allows a city council to close a meeting to discuss the sale or purchase of real or personal property. While the statute allows the Council to close a meeting to talk about prices and offers and counteroffers, the Policy also recognizes that a meeting could be closed to consider other transactional terms of the proposed sale. Inclusion of this additional recognition of other

transactional terms is based on language from an unpublished Minnesota Court of Appeals case, *Vik v. Wild Rice Watershed Dist.*, No. A09- 1841 (Minn. Ct. App. Aug. 10, 2010) (holding that this exception authorizes closing a meeting to discuss the development or consideration of a property transaction and is not limited to the discussion of specific terms of advanced negotiations). *See* the League of Minnesota Cities Handbook, chapter 7, at page 16.

The statute spells out a number of steps that the Council must follow in closing a meeting to discuss the sale or purchase of property. While those steps are not repeated in the Policy, it is important to note that among those steps is the obligation to tape record the closed meeting and keep the tape for eight years. The City must make that tape available to the public after the property has been purchased or sold or the City has abandoned the purchase or sale. The City must also make available to the public a list of all persons who attended the closed session. Finally, the Council cannot approve the actual sale or purchase at the closed session but must do so at an open meeting.

3.3 Labor Negotiations. This provision comes from Minnesota Statutes § 13D.05, subd. 3(c). While the City of Birchwood may not be involved in labor negotiations, this provision is included because it is part of the Open Meeting Law. The language is consistent with the statutory provisions.

3.4 Security Discussions. This provision comes from Minnesota Statutes § 13D.03(d). The language in the Policy is consistent with the statutory provisions.

3.5 Meetings With Attorney. This provision recognizes that in certain circumstances the Open Meeting Law allows the City Council to go into a closed session to discuss a matter with the attorney. Minnesota Statutes § 13D.05, subd. 3(b). However, this is the category that is most problematic and the one that requires certain steps to be followed and certain findings to be made, so Article 4.0 is included to specify exactly how the Council should go about determining that it is appropriate to close a meeting to meet with the attorney.

4.0 ATTORNEY CLIENT PRIVILEGE CLOSURE

Before discussing each of the individual sections of this Article of the Policy, the following summary of the steps that must be taken with regard to a meeting that is closed to discuss a matter with the attorney is provided:

- A. Closing the Meeting.** Here's what the Policy requires prior to actually closing a meeting to meet with the attorney. These steps are essentially in chronological order.
1. The Council must be meeting at a time that has been properly noticed.
 2. The Council must identify the specific statutory authority to close the meeting. Since the reason is to meet with the attorney, the authority will be Minnesota Statutes § 13D.05, subd. 3(b).
 3. The Council must identify the subject matter to be discussed at the closed meeting. The matter must be one for which the Council has made a final decision.

4. The matter must be in litigation or there must be a threat of litigation over the decision made by the Council.
5. Whether in litigation or whether there is just a threat of litigation, the Council must balance the Council's reasons for requiring absolute confidentiality with the public's right to be present when the Council deliberates, and the balance must favor the need for absolute confidentiality.
6. The Council should decide that if it is justified in closing the meeting, who shall be allowed to attend the closed session.
7. Again, if the Council can justify closing the meeting, it must decide whether there will be a tape recording made of the closed session.
8. The Council must make Findings of all the reasons closing the meeting is justified.
9. A Council member must make a motion to close the meeting, the motion must be seconded, and it must be approved by a majority vote. The motion should include adoption of Findings and it should address the issues of attendance and recording. The Council can then go into a closed session.

B. Holding the Meeting. Here's what occurs at the closed meeting.

1. Only those who the Council has determined can attend the meeting should be there.
2. The attorney must be present.
3. The clerk/administrator should be present and should keep Minutes.
4. The meeting should be recorded if the Council decided to record it.
5. The Council may make decisions at the closed meeting.
6. The Council may consider written advice from the attorney.

C. Post Closure. After the meeting, the following should occur:

1. After coming back into open session or at the next open meeting of the Council, the mayor or other presiding officer must summarize what occurred at the closed meeting.
2. The clerk/administrator shall prepare Minutes of the closed meeting.

With these bullet points in mind, we turn to an explanation of each of the steps required to be followed in order to close a meeting to meet with the attorney under the Policy. As a reminder, all the steps leading to the closing of a meeting, Articles 4.01 to 4.9, must be done in an open meeting.

4.1 Notice. Even when a city council is authorized to close a meeting, it must give notice of the closed meeting. The intent of this provision is to require the City Council to notify the public in advance if it knows that it intends to close a meeting or a portion of a meeting. In fact, the rule requires that the Council hold the closed meeting as an entirely separate Special Meeting when it knows ahead of time that it plans to hold a closed meeting. This is a better practice than to not alert the public of the intention to close a portion of a meeting until just a few minutes before closing the meeting. It gives the public a chance to object if there is opposition to the closure, and it surely affords the city attorney at opportunity to determine that closure is appropriate and to

ensure that the Council follows the correct procedures and to be prepared to discuss the matter in the closed session.

The rationale for holding a Special Meeting with its own notice is spelled out in a guidance document provided by the League of Minnesota Cities. *Practical Guide to the Open Meeting Law*, Troy Gilchrist and Peter Tiede, Attorneys at Law, March 18, 2006, at pages 32-33. While the authors recognize that this approach is conservative, they state that “A time when someone is already suing, or about to sue the public body seems a particularly inopportune moment to take risks with the Open Meeting Law.” *Id.* at page 33.

Of course, the Policy language allows the Council to close a portion of a meeting if something occurs that was unanticipated and still justifies closure. Perhaps a person showing up at a City Council meeting and serving a complaint on the City to initiate a lawsuit would be such a situation.

4.2 Statutory Authority. The Open Meeting Law requires the City Council to state on the record what provision of the statute allows the Council to close the meeting. This requirement applies regardless of the reason for closing a meeting. But it is important for the Council to state on the record that in these situations, the Council is closing the meeting under the attorney-client provision of the Open Meeting Law, Minnesota Statutes, § 13D.05, subd. 3(b). It is possible that an entirely different statute might authorize the Council to meet with its attorney in a closed session, and in such a case, that statute should be cited.

Incidentally, it is the mayor and not another council member who must make the statement on the record and identify the statutory authority. The Commissioner of the Minnesota Department of Administration has advised in an Advisory Opinion that “The Board, not its attorney, has the authority to close a meeting, and it is the Commissioner’s opinion that the Board’s reliance on its attorney’s statements did not meet the strict statutory requirement.” Opinion 14-005. The League has cautioned cities about this requirement in its Handbook for Minnesota Cities, chapter 7 (Meetings, Motions, Resolutions, and Ordinances) at page 13, citing *The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. Ct. App. 2004).

4.3 The Subject Matter. This provision requires the Council to identify with specificity the matter that is to be discussed in the closed session. “Both the commissioner and the Minnesota Court of Appeals have concluded that something more specific than a general statement is needed to satisfy the requirement of providing a description of the subject to be discussed.” See the League’s Information Memo entitled *Meetings of City Councils* dated 11/9/2015 at page 11. In *The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. Ct. App. 2004) the court held that a county’s statement that it was closing a meeting under the attorney-client privilege to discuss “pending litigation” did not satisfy the requirement of describing the subject to be discussed at a closed meeting.

The Policy language states that if the Council has not made a final decision in the matter at the time, closure is not permitted. While this requirement is not specified in the statute, it is a better practice to avoid closing a meeting to discuss a matter with the attorney if a final decision has not been made. The Minnesota Supreme Court, in *Prior Lake American v. Mader*, 642 N.W.2d 729,

741 (Minn. 2002), said that closing a meeting to meet with a city council’s attorney in a matter where the council had not made a final decision is “fraught with peril.” The authors of the League’s *Practical Guide to the Open Meeting Law* say that “The meetings least likely to survive a challenge would be those where a decision on a request or other municipal business is yet to be made, and someone has threatened to sue if the decision does not go their way.” Page 25. They also state, “After *Prior Lake*, many municipal attorneys felt closed meetings outside of litigation were simply not possible, or at least too risky to try.” *Id.* at page 24.

4.4 Litigation. This provision expands on the obligation in Article 4.3 to be specific in advising the public about the matter to be discussed in the closed session. Because the Council can only close a matter to meet with the attorney under this provision if a matter is in litigation or litigation is threatened, this provision specifies that the Council must publicly identify the litigation that will be discussed, or the threat that was made. If the Council cannot do that, this provision requires that the meeting not be closed, at least not under the attorney-client category.

4.5 Balancing. The language in this provision requiring that the Council balance its need for absolute confidentiality with the public’s right to know comes from a Supreme Court decision. *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002). In that case, the Prior Lake city council decided to go into a closed meeting to discuss with its attorney a matter where there was a threat of litigation. The Supreme Court held that before a city can close a meeting under the attorney-client privilege provision, the governing body must balance the interests. The Court said:

To determine whether the attorney-client privilege exception to the Open Meeting Law applies, we balance the purposes served by the attorney-client privilege against those served by the Open Meeting Law. The exception applies when this balancing dictates the need for absolute confidentiality. In this case, the balancing does not dictate the need for absolute confidentiality and, therefore, we reverse and remand.

The Court recognized that the threat of litigation was not alone sufficient reason to close a meeting.

Threats of litigation notwithstanding, the public has a right to be informed of all actions and deliberations that affect the public interest. Balancing the policies behind the attorney-client privilege and the Open Meeting Law, it is clear to us that when a public body is deciding a matter within its jurisdiction, the threat that litigation might be a consequence of deciding the matter one way or another does not, by itself, justify closing the meeting.

The League provides the following guidance regarding this point.

Meetings between a government body and its attorney to discuss active or threatened litigation may only be closed, under the attorney-client privilege, when a balancing of the purposes served by the attorney-client privilege against those served by the open meeting law dictates the need

for absolute confidentiality. The need for absolute confidentiality should relate to litigation strategy, and will usually arise only after the city has made a substantive decision on the underlying matter. This privilege may not be abused to suppress public observations of the decision-making process, and does not include situations where the council will be receiving general legal opinions and advice on the strengths and weaknesses of a proposed underlying action that may give rise to future litigation.

League's Handbook for Minnesota Cities, Chapter 7 Meetings, Motions, Resolutions, and Ordinances, 4/11/2017, at page 16.

The failure to balance these two interests was why the Birchwood City Council was found to have violated the Open Meeting Law in September 2015. IPAD Opinion 17-03. It will be helpful to have this Policy guidance to ensure that this balancing occurs in the future.

4.6 Attendance. It is important for the Birchwood City Council to give some thought to who may be allowed to attend a closed meeting with the attorney. Obviously, the attorney must be present. The Policy language allows the city clerk (or the city administrator if that is the title of the person) to attend the meeting. That person's attendance is necessary to ensure the Minutes are properly recorded. The Council should be precise in its deliberations on whether other people may attend the closed meeting. For example, there are witnesses or actors involved in the lawsuit who may be allowed to attend. In their *Practical Guide to the Open Meeting Law* at page 26, the authors write about this attendance issue and urge caution in allowing others to attend a closed meeting with the attorney.

4.7 Recording. The Open Meeting Law does not require a governing body to record a closed meeting with the attorney under the attorney-client exception to the Open Meeting Law. Nonetheless, this provision specifies that the Council make a deliberate decision on whether to record the closed meeting or not. The Council might in some circumstances determine that it would prefer to make a recording of the closed session. See IPAD Opinion 17-003 ("Finally, the Commissioner notes that meetings closed based on the attorney-client privilege exception are the only closed meetings that public bodies are not required to record and thus, the record for review is necessarily limited. As such, adherence to the other requirements of the OML becomes even more significant, so that the public can be informed and can judge whether closure is indeed appropriate.")

The authors of the League's *Practical Guide to the Open Meeting Law* say, at page 35, "we recommend that public bodies follow their usual procedure for taping." In that vein, the Birchwood City Council might want to tape record all closed meetings, since all regular open meetings are recorded and video of such open meetings is made available to the public.

4.8 Findings. This provision of the Policy requires the Birchwood City Council to reduce its conclusions to Findings before deciding to close a meeting. The authors of the *Practical Guide to the Open Meeting Law* at page 33, write, "Before going into closed session, the public body should make such findings as are necessary to document and justify its reason for a closed

meeting.” The authors continue at page 34, “meetings where litigation is threatened, or possibly even where litigation is ongoing, can be very perilous to close. In such a situation, we recommend findings be made explaining the reason for the closed meeting and the authority under which it is being closed.” The authors then provide examples of the kind of findings that would be appropriate.

The Findings should be reduced to writing, which is possible if the Council knows ahead of time that it intends to close a meeting or if the closed meeting is to be held at a later date, but oral Findings are also acceptable if the Council needs to go into a closed session immediately. Oral Findings can be transcribed later by the clerk/administrator. In any event, requiring Findings will help ensure that the Council has justified the decision to close the meeting and that the Council has addressed the required issues.

The requirements in Articles 4.1 to 4.11 are essentially listed in the order in which the Council should address them. Requiring specific Findings before a decision to close a meeting can be made should ensure that the Council does not close a meeting prematurely. In the September 2015, closed meeting - the subject of Advisory Opinion 17-003 - the motion to close the meeting was made at the outset, and when the motion passed, the videotaping ended, with the result that there may have been more discussion that did not appear on the video because the meeting had been closed. Requiring certain steps to be followed before the motion is made and passed should eliminate that possibility.

4.9 Motion. This provision simply requires that the Council not decide to close a meeting without a Council member first making a motion to close the meeting, with a second, and a majority of the Council voting to close the meeting. The motion should include the adoption of the Findings, along with the decision to go into closed session. The motion should describe when the Council will go into the closed session. It might be immediate but it could be at a later specified date. Of course, regardless of when the closed meeting is to be held, the decision to go into a closed session must be made at an open meeting and must appear in the Minutes of that open meeting.

4.10 Decisions At The Closed Meeting. Once into a properly closed meeting, the Council can still make decisions, and this provision recognizes that fact. However, under this Policy language the City Council still has to summarize those decisions and include them in the Minutes of the closed meeting.

4.11 Privileged Written Material. In their *Practical Guide to the Open Meeting Law* at page 31, the authors talk about the fact that the Open Meeting Law does not require disclosure of documents and materials considered at a closed meeting, citing Minnesota Statutes § 13D.01, subd. 6(b). This provision of the Policy is intended to emphasize that the Council is not waiving any attorney-client privilege for legal advice by discussing a matter in a closed session with the attorney. The authors caution, however, that a city council could waive such a privilege in various ways, including discussing a document prepared by the attorney at an open meeting or by including such a document in an agenda packet.

4.12 Summary. This provision repeats the existing requirement in Article 2.06 of the City's Rules of Procedure, which requires the presiding officer to give a summary of the discussion at the closed meeting at the first open meeting following the closed meeting. The first open meeting could in some situations be a re-convening of the Council immediately after ending the closed session. A summary does not mean that the presiding officer is to disclose what was discussed privately, but it does mean the public is entitled to know that in the closed session, the discussion was limited to the subject matter that was the reason for closing the meeting.

4.13 Minutes. A city council is not required to keep Minutes of closed meetings, but it certainly can do so. This provision says that the City will keep Minutes of its closed meetings under the attorney-client privilege. The language clarifies that the Minutes will not be public documents so the discussion at the closed session can remain confidential.

The authors of Practical Guide to the Open Meeting Law recommend that a city keep Minutes of its closed meetings. They write, at page 34:

We recommend that separate minutes be kept of the closed meeting and that those minutes be held under seal and not disclosed except under the court order or a specific resolution of the municipality. This has long been the recommended practice in Minnesota. See "*Of Open Meetings, Attorney-Client Privileges and the Government Lawyer*," James S. Holmes and David C. Graven, Bench and Bar, February 1977.

In sum, compliance with all the procedures and obligations spelled out in the Policy with regard to closing a council meeting to meet with the attorney should help ensure that both the public and the City are well served with regard to complicated, contested matters that sometimes come before the City.

5.0 SERIAL MEETINGS PROHIBITED.

In addition to addressing how the City Council can go about closing a meeting in accordance with the Open Meeting Law, it is important that the Policy also address the question of how Council members may communicate with each other about matters before the Council. It is possible to violate the Open Meeting Law through a series of communications that result in a serial meeting. A serial meeting can occur when a city council member contacts two or more members of the council (thus, a quorum of three) in some fashion and discusses city business, even though the council member may only contact one other member at a time. The League of Minnesota Cities is well aware of the difficulties presented to city councils when cell phones and email and other methods of communication are so common today. The League writes in its guidance documents:

It is possible that communication through telephone calls, email, or other technology could violate the open meeting law. The Minnesota Supreme Court has indicated that communication through letters and telephone calls could violate the open meeting law under certain circumstances. The commissioner of the Department of Administration has advised that back-and-forth email communications among a quorum of a public body that was subject to the open meeting law in which the members commented on and provided direction about official business violated the open meeting law.

League of Minnesota Cities Handbook for Minnesota Cities 4/11/2017 Meetings, Motions, Resolutions, and Ordinances, Chapter 7 at pages 20-21, citing *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983).] and IPAD Advisory Opinions 09-020 and 14-015.

The Policy language would prohibit Council members from communicating with other Council members in any fashion outside a properly noticed open meeting about any matter involving city business. While not every communication between Council members would constitute a violation of the Open Meeting Law, it is difficult to establish a policy that recognizes all the possible contacts that are permitted. It is safer and clearer to simply prohibit such contacts. Council members can easily rely on the city clerk/administrator to handle the exchange of information among council members to ensure that the public is kept advised of the exchange and the information.

Prohibiting such communications is consistent with the League's guidance. The League of Minnesota Cities states:

It is also important to remember that serial discussions between less than a quorum of the council could violate the open meeting law under certain circumstances. As a result, city councils and other public bodies should take a conservative approach and should not use telephone calls, email, or other technology to communicate back and forth with other members of the public body if both of the following circumstances exist:

- A quorum of the council or public body will be contacted regarding the same matter.
- City business is being discussed.

League of Minnesota Cities Handbook for Minnesota Cities 4/11/2017 Meetings, Motions, Resolutions, and Ordinances, Chapter 7 at page 22.

It should be quickly added that this Policy does not interfere with the City's use of social media. The League provides guidance on that point too. It is worth repeating a significant portion of that guidance in this document.

In 2014, the open meeting law was amended to provide that "the use of social media by members of a public body does not violate the open meeting law as long as the social media use is limited to exchanges with all members of the general public." Email is not considered a type of social media under the new law.

The open meeting law does not define the term "social media," but this term is generally understood to mean forms of electronic communication, including websites for social networking like Facebook, LinkedIn, and MySpace as well as blogs and microblogs like Twitter through which users create online communities to share information, ideas, and other content.

It is important to remember that the use of social media by city councilmembers could result in other claims, in addition to open meeting law claims, such as claims of defamation or of bias in decision making.

As a result, councilmembers should make sure that any comments they make on social media are factually correct, and they should not make any comments demonstrating bias on issues that will come before the council in the future for a quasi-judicial decision, such as the consideration of whether to grant an application for a conditional use permit.

League Handbook, chapter 7, at page 21. The statute is Minnesota Statutes § 13D.065, which provides in its entirety, “The use of social media by members of a public body does not violate this chapter so long as the social media use is limited to exchanges with all members of the general public. For purposes of this section, e-mail is not considered a type of social media.”

Finally, it must be mentioned that nothing in the Policy precludes Council members from interactions or communications with other Council members at social gatherings and other places on matters not involving city business.

6.0 NO COMMITTEE CLOSURES

This provision simply says that no committee or commission of the City can close one of its meetings without the approval of the City Council. There are no examples of where a body like a committee or planning commission could go into a closed session. Committees and commissions do not get sued; they do not make set sale or purchase prices; they do not evaluate employees; they do not have final authority over anything really; they would have no reason to close a meeting. Perhaps the one scenario that can be imagined where a committee or commission might think it could close a meeting is if it had to review non-public data for some reason, but even that is hard to envision. If such a case did arise, the policy allows the committee or commission to ask the City Council for permission to go into closed session

References:

The materials cited in this document from the League of Minnesota Cities are available on the Internet at the League’s Reference Library page: <http://www.lmc.org/page/1/resource-library.jsp>

The Practical Guide to the Open Meeting Law, by Troy Gilchrist and Peter Tiede, Attorneys at Law, March 18, 2006, is available by doing a Google search for the article under the title.

The Advisory Opinions of the Information Policy Advisory Division (IPAD) are available at: <http://www.ipad.state.mn.us/search/>

Minnesota cases are available at: <https://mn.gov/law-library-stat/archive/>

There are many other sources of information about the Minnesota Open Meeting Law besides those cited in this document.

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Halls Marsh Update



Dear Mayor and Council Members,

Mayor Wingfield requested that I include the following letter in the packet for your information:

“UPDATE ON HALL’S MARSH DRAINAGE PROJECT

Last month (May 19th) City Administrator Lay and I met with the Rice Creek Watershed Board, two county commissioners and neighbors from along Hall’s Marsh to discuss the repair and reconstruction of the outlet pipes that allow water to exit the marsh.

The outlet pipe at issue is supposed to allow water to flow in normal conditions into White Bear Lake; it is 30+ years old and is broken and plugged. Water now only flows through higher emergency overflow pipes when the marsh elevation rises to 925. This damming causes water to back up well into Tighe-Schmitz park as was evidenced by our tour that day. These standing water areas in the park are a direct result of the plugged pipe as there was no flow in the culvert located under Iris Street that serves to drain the park. The resulting flooding has destroyed private property along the marsh and interferes with the use and enjoyment of the park.

The meeting was helpful to explain the urgency of the situation to the RCWD board and ask for their assistance to expedite the process. The current plan is to have the repairs made in October. The board gave us their assurance that this is a priority project, but no guarantee that the schedule could be accelerated.

We asked if they would consider pumping the excess water at this time to give relief to the neighbors and city spaces. The RCWD board recently decided that that was not a viable option.

The problems the neighbors and the city have experienced have been exacerbated by the recent rains. There does not seem to be any acknowledgement that the matter can be done any differently than has been scheduled. The city needs to continue to monitor the situation to ensure that no further delays are incurred and the project is designed as necessary to protect all those concerned” – From Mayor Mary Wingfield.

Thanks!

Regards,
Tobin Lay

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Sheriff Report



Dear Mayor and Council Members,

Please see the below Sheriff report for May 2017:

“Washington County Sheriff's Office CONTRACT ICR's
Contract Report for BIRCHWOOD
For the Period 5/01/17 To 5/31/17

Date	Time	ICR #	ID#	Street Name	Complaint
5/01/17	17:52:17	117013988	0197	HALL AV	XP - SPEED
5/01/17	20:29:27	117013997	1264	HALL AV	TRAFFIC: STOP SIGN VIOLATION
5/02/17	15:49:43	117014102	1264	BIRCHWOOD	DIRECTED PATROL: TRAFFIC
5/03/17	7:43:01	117014183	0197	BIRCHWOOD	DIRECTED PATROL
5/03/17	16:43:23	117014245	0091	EAST CO LINE RD	NOISE COMPLAINT
5/04/17	8:00:18	117014296	0197	BIRCHWOOD	DIRECTED PATROL
5/04/17	23:15:22	117014436	1202	HALL AV	DIRECTED PATROL
5/05/17	9:14:31	117014472	0063	CEDAR ST	THEFT REPORT
5/06/17	7:37:45	117014601	1202	HALL AV	DIRECTED PATROL
5/06/17	11:33:30	117014618	1202	EAST CO LINE RD	ACCIDENT **RSTK NO INJ
5/08/17	12:18:14	117014812	0100	OAKRIDGE DR	OFFICER INFO
5/09/17	6:19:57	117014903	1264	BIRCHWOOD	DIRECTED PATROL: TRAFFIC
5/10/17	16:33:44	117015131	1264	WILDWOOD AV	THEFT FROM VEHICLE
5/11/17	13:20:14	117015263	1286	JAY ST	MEDICAL LEVEL 1
5/11/17	13:20:41	117015264	0110	WILDWOOD AV	HARASSMENT REPORT - PHONE CALL
5/11/17	22:02:54	117015327	0074	HALL AV	PUBLIC ASSIST
5/11/17	22:27:53	117015332	0076	BIRCHWOOD AV	ALARM
5/12/17	7:35:45	117015352	0088	EAST CO LINE RD	VEH LOCKOUT MN050MCE
5/12/17	10:51:48	117015375	1286	WILDWOOD AV	THREATS REPORT
5/13/17	17:56:57	117015557	0074	HALL AV	WELFARE CHECK **RESTACK START
5/15/17	6:29:58	117015698	1264	CEDAR ST	DIRECTED PATROL
5/15/17	19:37:36	117015798	1204	EAST CO LINE RD	NEIGHBOR COMPLAINT
5/16/17	11:10:46	117015880	0100	JAY ST	OFFICERS INFO
5/17/17	6:48:33	117015985	0190	WILDWOOD AV	MEDICAL LEVEL 2
5/17/17	9:52:10	117015998	0182	HALL AV	DIRECTED PATROL
5/17/17	10:15:52	117016001	0182	JAY ST	TRAFFIC
5/17/17	16:01:59	117016063	0197	BIRCHWOOD	DIRECTED PATROL
5/18/17	11:11:07	117016207	0197	HALL AV	TRAFFIC - SPEED
5/18/17	12:42:10	117016216	0197	BIRCHWOOD	DIRECTED PATROL
5/18/17	19:51:08	117016260	1264	BIRCHWOOD AV	NOISE COMPLAINT
5/19/17	7:58:40	117016311	0197	BIRCHWOOD	DIRECTED PATROL
5/19/17	8:45:08	117016317	0096	LAKE AV	STOLEN TRAILER
5/20/17	14:20:24	117016461	0197	WILDWOOD AV	PARKING COMPLAINT

5/20/17 14:36:24 117016463 0197 WILDWOOD AV WELFARE CHECK/3RD PARTY
5/21/17 15:19:45 117016558 0999 WILDWOOD AV FIRE CALL
5/21/17 16:28:15 117016566 0179 LAKE AV RES BURG ALARM
5/22/17 10:32:32 117016639 1208 HALL AV PHONE SCAM
5/23/17 1:32:44 117016763 1264 WILDWOOD AV OPEN GARAGE DOOR
5/23/17 6:04:31 117016769 1264 BIRCHWOOD DIRECTED PATROL: TRAFFIC
5/24/17 0:50:20 117016896 1264 LAKE AV SUSP VEHICLE
5/24/17 22:03:02 117017059 0197 BIRCHWOOD AV DOG COMPLAINT
5/25/17 2:55:07 117017077 1217 HALL AV SPEED SURVEY
5/26/17 7:21:00 117017225 0197 WILDWOOD AV DISTURBANCE
5/27/17 6:06:41 117017422 1202 HALL AV DIRECTED PATROL
5/28/17 8:22:48 117017566 0197 WILDWOOD AV PUBLIC ASSIST
5/30/17 1:02:45 117017776 1202 LAKE AV SUSPICIOUS ACTIVITY
5/30/17 15:04:01 117017842 BIRCHWOOD AV RECEIPT# 170002230
5/31/17 2:00:40 117017903 0070 BIRCHWOOD AV 911 CALL/ASSIST
5/31/17 7:21:02 117017911 0165 BIRCHWOOD AV FIRE ALARM
5/31/17 15:22:23 117017981 1267 WILDWOOD AV PROPERTY DAMAGE REPORT *RST
5/31/17 18:19:58 117018015 0084 HALL AV SUSPICIOUS MALE

Total ICRs Processed: 51"

Thanks!

Regards,
Tobin Lay

FINAL MEETING MINUTES

DATE: Tuesday, May 23, 2017

TIME: 6:00 PM

LOCATION: Birchwood City Hall

Call to Order Birchwood Dog Park Committee

Schad called meeting to order at 6:07 PM

Meeting to Discuss: draft of revised committee vision, and recommended areas for off leash dog activity

Committee Members Present: Kathy Blegen-Huntley, Kellie Lund, Steve Schad, Trilby White,

Committee Members Not Present: Tami Hart, Chris Rollinger

Approval of Previous Minutes

Blegen-Huntley moved to approve May 2nd minutes; White seconded; passed unanimously

Reports

Public comment received: Two community members were present: Michelle Ahtapu, Liz Dabruzzo

Both reported a desire to become more informed about our process, asked questions and shared additional thoughts. The committee also received comment via letter from community member John Anderson. Additionally the committee received a letter of resignation from the committee by Kelly Paradise.

The committee discussed and reached agreement on revisions to our committee vision statement:

Our committee serves to develop a detailed proposal for one or two off-leash dog areas for sole use by Birchwood Village residents. One site will be recommended to the City Council for initial implementation as a pilot project. Our committee envisions a fenced area that is unobtrusive with low visual impact. The area will be created using natural materials that compliment the atmosphere of our community. Our committee is committed to a thoughtful and careful process that will include community input. We share a goal with the community for impact upon neighbors of our chosen site to be limited as much as possible. To this end we are committed to a priority of safety for both our human and canine community members.

The committee held discussion of pros and cons of various sites. Our committee vision guided us to narrow our focus to two locations: the property behind City Hall and the undeveloped area of Bloomquist Park.

Schad will draft a committee update article for our next Birchwood Village newsletter that will focus on our vision, process and sites of focus.

We are committed to both an upcoming public forum and community survey to provide details of our proposal and illicit community input. Blegen-Huntley will prepare a fact sheet about our work to date including the community forum and survey details, which will be made available at our July 4th Parade.

White will focus on the visual elements of our proposals with assistance from community member Michelle Ahtapu, an architect.

Lund will focus on building materials/estimates .

Unfinished Business – Action Steps

White will communicate City Council's decision about who will be our Council liaison when known

Committee bylaws to be reviewed as homework by committee members, with any needed discussion on the agenda for our next meeting.

Our standing committee meeting time conflicts with the Planning Commission meeting time. We scheduled our next meeting and agreed to delay determination of our standing meeting time awaiting an update from the Planning Commission.

Motions

Lund moved to amend agenda to include review of updated Committee Bylaws. Motion died.

Blegen-Huntley moved to add community messaging discussion to agenda. Motion seconded by Schad. Motion passed

Schad moved to approve amended agenda. Seconded by Lund. Motion passed

New Business

Announcements

To fulfill our purpose as a committee we are obligated to review and consider all public spaces in the community. We are committed to a process that will include community member input and opportunities for discussion. Those opportunities will be clearly communicated with full community participation encouraged.

Other Business

- Next meeting Tuesday June 6, 2017 5:00-6:30 PM at City Hall (note earlier meeting time)
- Next meeting draft agenda to include:
 - Call to order
 - Finalize agenda
 - Approve May 23rd minutes
 - Receive public comment
 - Review committee bylaws questions/concerns
 - Determine tasks and timeline needed to complete our proposal
 - Determine new standing meeting time
 - Develop next meeting agenda
 - Adjourn

Adjournment

Blegen-Huntley motioned to adjourn; White seconded; passed unanimously at 7:40 PM

SECRETARY APPROVAL:

Prepared by Secretary

Kellie Lund

DRAFT MEETING MINUTES

DATE: Tuesday, June 6, 2017

TIME: 5:00 PM

LOCATION: Birchwood City Hall

Call to Order Birchwood Dog Park Committee

Schad called meeting to order at 5:07 PM

Meeting to Discuss: tasks and timelines needed to complete our proposal

Committee Members Present: Tami Hart, Kathy Blegen-Huntley, Kellie Lund, Steve Schad,

Committee Members Not Present: Trilby White

Approval of Previous Minutes

Blegen-Huntley moved to approve May 23rd minutes; Schad seconded; passed unanimously

Reports

No public comment received

The committee discussed our revised bylaws and reviewed the process for filling of committee vacancies

The committee set a timeline for mid August to conduct our public forum and survey

The committee reviewed a draft flyer for circulation at the July 4th parade about the public forum and survey

The committee discussed components of the survey and reviewed a draft of some possible questions

The committee came up with the following order of tasks to attain prior to the public forum and survey:

1. Committee site review of both prospective sites
2. Drawings completed of both sites
3. Cost estimates for materials and labor determined
4. Flyer announcing public form and survey finalized
5. Survey seeking public comment finalized
6. Public forum meeting agenda finalized

Unfinished Business – Action Steps

Schad will communicate City Council’s decision about who our Council liaison is

Schad will seek action from City Council regarding committee vacancies

Schad will seek clarity whether the Planning Commission meeting time will remain the first Tuesday of the month at 7:00 p.m.

Motions

Lund moved to approve agenda. Seconded by Blegen-Huntley. Motion passed

New Business

Rollinger resigned from committee due to ongoing schedule conflicts

Announcements

To fulfill our purpose as a committee we are obligated to review and consider all public spaces in the community. We are committed to a process that will include community member input and opportunities for discussion. Those opportunities will be clearly communicated with full community participation encouraged.

Other Business

- Next meeting Thursday June 22, 2017 5:30-7:00 PM at City Hall
- Following meeting Tuesday July 11, 2017 5:15-6:45 PM at City Hall
- Next meeting draft agenda to include:
 - Call to order
 - Finalize agenda
 - Approve June 6 minutes
 - Receive public comment
 - Visit two prospective sites to determine possible boundaries
 - Update tasks and timeline if needed
 - Develop next meeting agenda
 - Adjourn

Adjournment

Schad motioned to adjourn; Hart seconded; passed unanimously at 6:20 PM

SECRETARY APPROVAL:

Prepared by Secretary

Kellie Lund

\\

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Upgrade City Hall Toilets



Dear Mayor and Council Members,

As you may be aware, Birchwood residents qualify for a 100% rebate when replacing old toilets, washing machines, and irrigation controllers with select water efficient models. The City purchases all of our water from the City of White Bear Lake and this rebate is available to all White Bear Lake utility customers.

Accordingly, staff will be purchasing and replacing all of City Hall's toilets. This will take place in June, as the grant expires on June 30. The only cost to the City will be the labor of installing the new toilets. If the Council is aware of a knowledgeable volunteer who is willing to install the toilets for the City, please let staff know; otherwise, staff will perform the installation.

Information regarding the rebate follows and is also available on Birchwood's website:

"WATER EFFICIENCY REBATE PROGRAM

Water Efficiency Rebate Grant: The Metropolitan Council, through funding from the Clean Water Land and Legacy Amendment, awarded the City of White Bear Lake a water efficiency grant. The goal of the water efficiency grant program is to improve municipal water conservation.

Overview: This grant will enable the City of White Bear Lake to provide rebates to water utility customers who replace existing toilets, clothes washing machines and irrigation system controllers with these specified water efficient alternatives:

- Up to \$150 rebate for Energy Star Clothes Washers
- Up to \$200 rebate for WaterSense Certified Toilets (1.28 GPF or less for both the tank and bowl)
- Up to \$200 rebate for WaterSense Irrigation Controllers (only **replacement** controllers qualify)

Details:

- Maximum of six (6) rebates per White Bear Lake water utility customer address
- Purchases and installation completed between September 30, 2015 – until June 30, 2017, or until grant funding is depleted.
- Pre-tax out-of-pocket costs of the product and its installation only (no owner labor costs)
- Products must be installed at the address listed on the water utility account
- No multi-unit complexes permitted at this time as funds are limited
- Only replacement devices qualify, no new construction
- Toilets with options for 1.6 GPF may not qualify even if the WaterSense label is displayed! Please double-check models with this option are listed on the WaterSense Certified Toilets website.

Questions: E-mail kcountry@whitebearlake.org or call (651) 429-8508"

City of Birchwood Village

Cash Control Statement

For the Period : 5/9/2017 To 6/9/2017

<u>Name of Fund</u>	<u>Beginning Balance</u>	<u>Total Receipts</u>	<u>Total Disbursed</u>	<u>Ending Balance</u>
General Fund	\$577,563.55	\$2,619.50	\$24,897.79	\$555,285.26
Road and Bridge	\$0.00	\$0.00	\$0.00	\$0.00
Comp Plan Grant	\$5,000.00	\$0.00	\$0.00	\$5,000.00
Special Rev Projects	\$4,565.02	\$0.00	\$10,555.00	(\$5,989.98)
Library	\$0.00	\$0.00	\$0.00	\$0.00
Spec Rev - Warm House	\$40.00	\$0.00	\$0.00	\$40.00
Reimbursed Contracted Services	(\$1,676.51)	\$0.00	\$0.00	(\$1,676.51)
General Debt Service (Identify)	\$0.00	\$0.00	\$0.00	\$0.00
Birchwood In Re-hab Bond	\$0.00	\$0.00	\$0.00	\$0.00
Sewer Re-hab 2008 Debt	\$8,719.84	\$0.00	\$1,142.61	\$7,577.23
Capital Improvement Projects	\$78,758.91	\$0.00	\$0.00	\$78,758.91
Municipal State Aid Streets - Construction	\$0.00	\$0.00	\$0.00	\$0.00
Open Spaces Acquisition (Optional)	\$0.00	\$0.00	\$0.00	\$0.00
Water	(\$8,362.43)	\$460.74	\$8,504.30	(\$16,405.99)
Sewer	\$98,322.78	\$767.03	\$26,107.97	\$72,981.84
Transit System	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$762,931.16	\$3,847.27	\$71,207.67	\$695,570.76

Fund Name: All Funds

Date Range: 05/09/2017 To 06/09/2017

Date	Remitter	Receipt #	Description	Deposit ID	Void	Account Name	F-A-P	Total
05/12/2017	Residents - UB	171734113	Utility Billing	(05/12/2017) -	N	Parking Permits	100-32250-	\$ 74.05
						Parking Permits	100-32250-	\$ 5.28
						Miscellaneous	100-36140-	\$ 49.26
						Water Fee	601-34110-	\$ 196.98
						Penalty - Late Water/Sewer	601-34160-	\$ 8.84
						State and Misc fees	601-34170-	\$ 5.81
						Penalty - Late Water/Sewer	605-34160-	\$ 17.88
						Sewer Fee	605-34190-	\$ 320.29
								\$ 678.39
05/12/2017	MN State	1990	Court Fines x 2	(05/12/2017) -	N	State and Misc fees	100-34170-	\$ 60.00
						State and Misc fees	100-34170-	\$ 476.66
								\$ 536.66
05/19/2017	Residents - UB	171734112	Utility Billing	(05/19/2017) -	N	Parking Permits	100-32250-	\$ 10.73
						Parking Permits	100-32250-	\$ 0.77
						Water Fee	601-34110-	\$ 86.40
						Penalty - Late Water/Sewer	601-34160-	\$ 1.96
						State and Misc fees	601-34170-	\$ 4.77
						Penalty - Late Water/Sewer	605-34160-	\$ 6.26
						Sewer Fee	605-34190-	\$ 179.76
								\$ 290.65
05/24/2017	Marsh Heating	1991	Permit Fee	(05/24/2017) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 91.00
05/24/2017	Broadreach Communications, Inc.	1992	Permit Fee	(05/24/2017) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 1,493.68
								\$ 1,493.68
05/24/2017	Megan Schaffhausen	1993	Permit Fee	(05/24/2017) -	N	Building Permits (Excludes surcharge)	100-32210-	\$ 233.06
								\$ 233.06

Fund Name: All Funds

Date Range: 05/09/2017 To 06/09/2017

Date	Remitter	Receipt #	Description	Deposit ID	Void Account Name	F-A-P	Total
05/24/2017	Ricgard Oni	1994	Canoe/kayak rack & storage fee	(05/24/2017) -	N Gas Installation Permits	100-32220-	\$ 35.00
05/24/2017	Amazon	1995	Refund in part for EFT050217C	(05/24/2017) -	N Refund-Reimbursemnt-Dividend	100-36240-	\$ 38.97
05/25/2017	Residents - UB	171734111	Utility Billing	(05/25/2017) -	N Miscellaneous	100-36140-	\$ 0.34
					Water Fee	601-34110-	\$ 34.59
					Penalty - Late Water/Sewer	601-34160-	\$ 0.03
					State and Misc fees	601-34170-	\$ 1.64
					Penalty - Late Water/Sewer	605-34160-	\$ 0.11
					Sewer Fee	605-34190-	\$ 63.21
							\$ 99.92
06/01/2017	Residents - UB	171734110	Utility Billing	(06/01/2017) -	N Miscellaneous	100-36140-	\$ 0.70
					Miscellaneous	100-36140-	\$ 50.00
					Water Fee	601-34110-	\$ 116.22
					Penalty - Late Water/Sewer	601-34160-	\$ 0.15
					State and Misc fees	601-34170-	\$ 3.35
					Penalty - Late Water/Sewer	605-34160-	\$ 0.34
					Sewer Fee	605-34190-	\$ 179.18
							\$ 349.94
							\$ 3,847.27

Total for Selected Receipts

City of Birchwood Village

Disbursements Register

6/9/2017

Fund Name: All Funds

Date Range: 05/09/2017 To 06/09/2017

<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>
05/09/2017	Payroll Period Ending 05/09/2017	29613		N	Clerk - Treasurer	100-41401-100-	\$ 138.52
	Total For Check	29613					\$ 138.52
05/12/2017	Lay, Tobin	29614	Reimbursement - Stamp Machine Return Packaging	N	Recording and Reporting	100-41420-200-	\$ 18.20
	Total For Check	29614					\$ 18.20
05/12/2017	Holmen, Karen	29615	***VOID\$142.66***Refund - Permit for Fireplace - Work Cancelled	Y	Building Inspections Administration	100-42401-810-	\$ -
	Total For Check	29615					\$ -
05/12/2017	Lutz, Diana	29616	Refund - Over-payment of utility bill for address: 415 Wildwood Ave	N	Sewer Utility	601-43190-810-	\$ 2.62
	Total For Check	29616					\$ 2.62
05/12/2017	McNeely, Greg	29617	Over-payment of utility bill for address: 345 Wildwood Ave	N	Sewer Utility	100-43190-810-	\$ 50.00
	Total For Check	29617					\$ 50.00
05/12/2017	Taylor & Vashti Graphentee	29618	Refund - Over-payment of utility bill for address: 2 Oakhill Court, Birchwood, MN	N	Sewer Utility	601-43190-810-	\$ 9.30
	Total For Check	29618					\$ 9.30
05/12/2017	Payroll Period Ending 05/12/2017	29619		N	Clerk - Treasurer	100-41401-100-	\$ 1,575.80
	Total For Check	29619					\$ 1,575.80
05/12/2017	The Chimney Pro's	29620	Refund - Permit for Fireplace - Work Cancelled	N	Building Inspections Administration	100-42401-810-	\$ 142.66
	Total For Check	29620					\$ 142.66
05/12/2017	Heinz, Susan	29621	Hall Rental Cancellation	N	General Government Buildings and Plant	100-41940-810-	\$ 25.00
	Total For Check	29621					\$ 25.00

Fund Name: All Funds

Date Range: 05/09/2017 To 06/09/2017

Date	Vendor	Check #	Description	Void	Account Name	F-A-O-P	Total
05/12/2017	PERA	EFT051214F	Employee Retirement	N	Clerk - Treasurer	100-41401-100-	\$ 422.04
		EFT051214F					\$ 422.04
05/12/2017	PERA	EFT051214F	Employee Retirement	N	Clerk - Treasurer	100-41401-121-	\$ 274.40
		EFT051214F					\$ 274.40
05/12/2017	MN State MMB	EFT051217A	***VOID\$60.00***court fines - Feb. 2017	Y	Ordinances and Proceedings	100-41130-999-	\$ -
		EFT051217A					\$ -
05/12/2017	MN State MMB	EFT051217B	***VOID\$476.66***court fines - Mar. 2017	Y	Ordinances and Proceedings	100-41130-999-	\$ -
		EFT051217B					\$ -
05/12/2017	Xcel Energy	EFT051217C	Electric for Lift Stations/Warminghouse	N	Street Lighting	100-43160-380-	\$ 1,166.37
		EFT051217C					\$ 1,166.37
05/12/2017	Amazon	EFT051217D	Office Supplies - Swingline 210 - Heavy Duty Stapler	N	Recording and Reporting	100-41420-200-	\$ 37.39
		EFT051217D					\$ 37.39
05/12/2017	City of Birchwood Village	EFT051217E	Transfer to Birchwood in Re-hab Bond	N	Transfer To Governmental Fund	605-49360-720-	\$ 25,194.03
		EFT051217E					\$ 25,194.03
05/12/2017	PERA	EFT051217F	***VOID\$127.40***Employee Retirement	Y	Clerk - Treasurer	100-41401-121-	\$ -
		EFT051217F					\$ -
05/12/2017	PERA	EFT051217G	***VOID\$127.40***Employee Retirement	Y	Clerk - Treasurer	100-41401-121-	\$ -
		EFT051217G					\$ -
05/12/2017	IRS - US Treasury	EFTIRS0517	Q2 2017 Payment - April	N	Clerk - Treasurer	100-41401-100-	\$ 1,123.48
		EFTIRS0517					\$ 1,123.48
05/12/2017	Minnesota Unemployment Insurance	EFTUIMNQ1	Late filing fee - Q1	N	Clerk - Treasurer	100-41401-140-	\$ 250.00
		EFTUIMNQ1					\$ 250.00
05/18/2017	MCFOA	29623	Clerk Annual Dues 2017	N	Data Processing	100-41920-433-	\$ 40.00

Fund Name: All Funds

Date Range: 05/09/2017 To 06/09/2017

Date	Vendor	Check #	Description	Void	Account Name	F-A-O-P	Total
05/24/2017	James Rydeen	29625	Reimbursement for Supplies: Aquaseal	N	Streets and Road Mintnc	100-45201-100-	\$ 4.81
		29625	Bulk Hardware				\$ 589.68
		29625	Concrete Block / x 24				\$ 589.68
		29625					\$ 35.57
05/24/2017	U S Bank	EFT052417	Debt Service Payment - Interest 12/1/16 - 1/1/2017	N	Bond Payment	305-47101-610-	\$ (8.93)
		EFT052417	1/1/2017 - 6/1/2017				\$ 191.92
		EFT052417					\$ 959.62
		EFT052417					\$ 1,142.61
05/25/2017	Heating & Cooling Exxperts, LLC	29626	A/C Replacement - Down Payment	N	General Government Buildings and Plant	100-41940-400-	\$ 1,970.00
		29626					\$ 1,970.00
05/26/2017	PERA	EFT052617	Employee Retirement	N	Clerk - Treasurer	100-41401-121-	\$ 274.40
		EFT052617					\$ 274.40
		EFT052617					\$ 1,575.80
06/01/2017	Payroll Period Ending 05/26/2017	29627	Payroll Period Ending 05/26/2017	N	Clerk - Treasurer	100-41401-100-	\$ 369.40
		29627					\$ 369.40
06/02/2017	Payroll Period Ending 05/31/2017	29628		N	Clerk - Treasurer	100-41401-100-	\$ 349.40
		29628					\$ 349.40
06/07/2017	Payroll Period Ending 06/07/2017	29629		N	Clerk - Treasurer	100-41401-100-	\$ 1,599.84
		29629					\$ 1,599.84
06/07/2017	City of White Bear Lake	29631	Fire Svnc - May 2017	N	Fire	100-42201-305-	\$ 13.83
		29631					\$ 13.83
06/07/2017	Lay, Tobin	29632	Reimbursement - Batteries & bank deposit bag Locksmith	N	Recording and Reporting	100-41420-200-	\$ 13.83

Fund Name: All Funds

Date Range: 05/09/2017 To 06/09/2017

<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>
		29632				100-41420-200-	\$ 34.01
		29632					\$ 47.84
	Total For Check						
06/07/2017	Wingfield, Mary	29633	Reimbursement for Office Supplies Stamps	N	General Government Buildings and Plant	100-41940-810-	\$ 336.20
	Total For Check	29633					\$ 336.20
06/07/2017	Ronnan, Kenny	29634	Council Meeting Services 5/9/17	N	Cable Eqpmt and Service	100-41950-305-	\$ 90.00
	Total For Check	29634					\$ 90.00
06/07/2017	Integra	29635	Analog Phone Line	N	Phone/IT	100-41955-320-	\$ 37.56
	Total For Check	29635					\$ 37.56
06/07/2017	FP Mailing Solutions	29636	Postage Machine 05/22/17 - 05/30/17 rental	N	Postage/Postal Permits	605-41430-200-	\$ 12.41
	Total For Check	29636					\$ 12.41
06/07/2017	Thatcher Engineering, Inc	29637	General Services	N	Engineer Service	100-41650-300-	\$ 45.00
	Total For Check	29637				100-41650-300-	\$ 340.00
	Total For Check	29637					\$ 385.00
06/07/2017	AirFresh Industries, Inc.	29638	Rental Monthly Units x2	N	Supervision	100-45201-305-	\$ 162.50
	Total For Check	29638					\$ 162.50
06/07/2017	Gopher State One Call	29639	Locates (38 Tickets)	N	Utility Locates	100-42805-305-	\$ 49.95
	Total For Check	29639					\$ 49.95
06/07/2017	TSE, INC	29640*	City Hall Janitorial Services X2 5/4/17 & 5/18/17	N	General Government Buildings and Plant	100-41940-305-	\$ 25.00
	Total For Check	29640*				100-41940-305-	\$ 25.00
	Total For Check	29640					\$ 50.00
06/07/2017	SL - serco	29642	Meter Read/Maintenance May 2017	N	Water Utility	601-43180-305-	\$ 325.50
	Total For Check	29642					\$ 325.50
06/07/2017	Washington County	29643	Assessment Billing 2017	N	Assessing	100-41550-305-	\$ 5,888.27
	Total For Check	29643					\$ 5,888.27
06/07/2017	J.N. Johnson Fire & Safety	29644	Fire Extinguisher Maintenance	N	General Government Buildings and Plant	100-41940-210-	\$ 67.75

Fund Name: All Funds

Date Range: 05/09/2017 To 06/09/2017

Date	Vendor	Check #	Description	Void	Account Name	F-A-O-P	Total
		Total For Check					67.75
06/07/2017	KEJ Enterprizes	29645	Sign Installation, black dirt and seed park, spring clean up	N	Leaf Pick-Up	100-43110-305-	1,870.00
		Total For Check			Street Signs	100-43155-305-	398.96
		Total For Check					2,268.96
06/07/2017	T.A. Schifsky	29646	City Wide Patching & Sweeping	N	Unallocated Expenditures	210-49201-305-	10,555.00
		Total For Check					10,555.00
06/07/2017	Amazon	EFT060717A	Office Supplies - Swingline 210 - Heavy Duty Stapler	N	Recording and Reporting	100-41420-200-	117.24
		Total For Check					117.24
06/07/2017	Xcel Energy	EFT060717B	Gas for Generator	N	Street Lighting	100-43160-380-	28.42
		Total For Check					28.42
06/07/2017	Xcel Energy	EFT060717C	Electric for Lift Stations /Warming House	N	General Government Buildings and Plant	100-41940-380-	145.65
		EFT060717C			Supervision	100-45201-380-	13.34
		EFT060717C			Sewer Utility	605-43190-380-	221.31
		EFT060717C				605-43190-380-	159.61
		Total For Check					520.43
		Total For Check					1,060.34
06/09/2017	City of Roseville	29647	March 2017 Phone Services	N	Phone/IT	100-41955-320-	50.63
		Total For Check					50.63
06/09/2017	Manship Plumbing & Heating Inc	29648	Monthly Standby/locates/services	N	Water Utility	601-43180-305-	910.00
		Total For Check					910.00
06/09/2017	City of Roseville	29649	Apr, May, Jun 2017 IT/Phone Services	N	Phone/IT	100-41955-320-	274.75
		29649	Adobe License			100-41955-320-	50.63
		29649				100-41955-320-	274.75
		29649				100-41955-320-	50.63
		29649				100-41955-320-	50.63
		29649				100-41955-320-	274.75
		Total For Check					21.00
		Total For Check					997.14

Fund Name: All Funds

Date Range: 05/09/2017 To 06/09/2017

<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>
06/09/2017	Menards - Oakdale	29650	Supplies	N	Supervision	100-45201-220-	\$ 12.98
		29650				100-45201-220-	\$ 27.32
		29650	Total For Check				\$ 40.30
06/09/2017	Steve Dean Tree Trimming	29651	Ash Path & Tighe Schmitz Park Trees	N	Tree Removal	100-43135-305-	\$ 450.00
		29651	Warming house parking lot			100-43135-305-	\$ 450.00
		29651			Wtr/Swr Emergency	601-43185-220-	\$ 100.00
		29651	Total For Check				\$ 1,000.00
06/09/2017	League of MN Cities	29652	Clerks Orientation Conference	N	Data Processing	100-41920-310-	\$ 275.00
		29652	Total For Check				\$ 275.00
06/09/2017	Lay, Tobin	29653	Clerks Orientation Conference Hotel	N	Data Processing	100-41920-810-	\$ 65.14
		29653	Total For Check				\$ 65.14
06/09/2017	Press Publications	29654	Legal Notice Publications x 4	N	Ordinances and Proceedings	100-41130-351-	\$ 62.72
		29654	Total For Check				\$ 62.72
06/09/2017	Uline	29655	Soap Dispensers x 3	N	General Government Buildings and Plant	100-41940-210-	\$ 79.46
		29655	Total For Check				\$ 79.46
06/09/2017	St. Anthony Village	29656	Q2 2017 UB Admin Envelopes	N	Financial Administration	601-41501-210-	\$ 204.00
		29656				601-41501-210-	\$ 241.00
		29656				601-41501-210-	\$ 36.69
		29656				601-41501-305-	\$ 1,837.42
		29656	Total For Check				\$ 2,319.11
06/09/2017	Toshiba Business Solutions, USA Inc	29657	Quarterly Maintenance 2st Qtr 2017	N	Recording and Reporting	100-41420-305-	\$ 48.89
		29657	Total For Check				\$ 48.89
06/09/2017	MN Dept of Health Drinking Water	29658	Water Supply Connection Svc Fee 04/01-06/30 2017	N	Water Utility	601-43180-430-	\$ 562.00
		29658	Total For Check				\$ 562.00
06/09/2017	Metropolitan Council Env. Service	29659	Wastewater Service July 2017	N	Sewer Utility	601-43190-217-	\$ 4,275.77
		29659	Total For Check				\$ 4,275.77

Fund Name: All Funds

Date Range: 05/09/2017 To 06/09/2017

Date Vendor
06/09/2017 IRS - US Treasury

Check #
EFTIRS0609
EFTIRS0609

Description
Q2 2017 Payment - May

Void Account Name
N Clerk - Treasurer

F-A-O-P
100-41401-100-

	Total
\$	661.88
\$	661.88
\$	71,207.67

Total For Check

Total For Selected Checks

As on 6/9/2017

Special Rev Projects

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Dock/Lift Permit Fee	0.00	300.00	300.00
Total Acct 322	0.00	300.00	300.00
Total Revenues	0.00	300.00	300.00
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)
Total Acct 451	0.00	200.00	(200.00)
Unallocated Expenditures			
Professional Services: Medical and Dental Fees	0.00	10,555.00	(10,555.00)
Total Acct 492	0.00	10,555.00	(10,555.00)
Total Disbursements	0.00	10,755.00	(10,755.00)
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		4,465.02	
Total Receipts and Other Financing Sources		300.00	
Total Disbursements and Other Financing Uses		10,755.00	
Cash Balance as of 06/09/2017		(5,989.98)	

As on 6/9/2017

Capital Improvement Projects

	<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		78,758.91	
Total Receipts and Other Financing Sources		0.00	
Total Disbursements and Other Financing Uses		0.00	
Cash Balance as of 06/09/2017		78,758.91	

As on 6/9/2017

Water	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Water Fee	0.00	26,989.76	26,989.76
Penalty - Late Water/Sewer	0.00	132.07	132.07
State and Misc fees	0.00	808.10	808.10
Total Acct 341	0.00	27,929.93	27,929.93
Total Revenues	0.00	27,929.93	27,929.93
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Financial Administration			
Operating Supplies (211 through 219)	0.00	481.69	(481.69)
Professional Services: Medical and Dental Fees	0.00	3,655.60	(3,655.60)
Total Acct 415	0.00	4,137.29	(4,137.29)
Water Utility			
Repair and Maintenance Supplies (221 through 229)	0.00	147.62	(147.62)
Professional Services: Medical and Dental Fees	0.00	23,542.99	(23,542.99)
Miscellaneous (431 through 499)	0.00	1,124.00	(1,124.00)
Wtr/Swr Emergency			
Repair and Maintenance Supplies (221 through 229)	0.00	600.00	(600.00)
Professional Services: Medical and Dental Fees	0.00	14,083.82	(14,083.82)
Sewer Utility			
Sewer - Wastewater Charge	0.00	25,654.62	(25,654.62)
Refunds and Reimbursements	0.00	11.92	(11.92)
Total Acct 431	0.00	65,164.97	(65,164.97)
Total Disbursements	0.00	69,302.26	(69,302.26)
Other Financing Uses:			
Total Other Financing Uses	0.00	0.00	0.00
Beginning Cash Balance		24,966.34	
Total Receipts and Other Financing Sources		27,929.93	
Total Disbursements and Other Financing Uses		69,302.26	
Cash Balance as of 06/09/2017		(16,405.99)	

As on 6/9/2017

Sewer	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Penalty - Late Water/Sewer	0.00	283.18	283.18
Sewer Fee	0.00	42,957.91	42,957.91
Total Acct 341	0.00	43,241.09	43,241.09
Total Revenues	0.00	43,241.09	43,241.09
Other Financing Sources:			
Total Other Financing Sources	0.00	0.00	0.00
Disbursements:			
Postage/Postal Permits			
OFFICE SUPPLIES (201 through 209)	0.00	137.75	(137.75)
Total Acct 414	0.00	137.75	(137.75)
Sewer Utility			
Operating Supplies (211 through 219)	0.00	26.71	(26.71)
Professional Services: Medical and Dental Fees	0.00	1,304.88	(1,304.88)
Utility Services (381 through 389)	0.00	3,507.70	(3,507.70)
Refunds and Reimbursements	0.00	0.18	(0.18)
Total Acct 431	0.00	4,839.47	(4,839.47)
Total Disbursements	0.00	4,977.22	(4,977.22)
Other Financing Uses:			
Transfer To Governmental Fund			
Interfund Transfers	0.00	25,194.03	(25,194.03)
Total Acct 493	0.00	25,194.03	(25,194.03)
Total Other Financing Uses	0.00	25,194.03	(25,194.03)
Beginning Cash Balance		59,912.00	
Total Receipts and Other Financing Sources		43,241.09	
Total Disbursements and Other Financing Uses		30,171.25	
Cash Balance as of 06/09/2017		72,981.84	

As on 6/9/2017

Birchwood In Re-hab Bond

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Receipts:			
Total Revenues	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Other Financing Sources:			
Transfer From General Fund	<u>0.00</u>	<u>25,194.03</u>	<u>25,194.03</u>
Total Acct 392	<u>0.00</u>	<u>25,194.03</u>	<u>25,194.03</u>
Total Other Financing Sources	<u>0.00</u>	<u>25,194.03</u>	<u>25,194.03</u>
Disbursements:			
Total Disbursements	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Other Financing Uses:			
Total Other Financing Uses	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Beginning Cash Balance		(25,194.03)	
Total Receipts and Other Financing Sources		25,194.03	
Total Disbursements and Other Financing Uses		<u>0.00</u>	
Cash Balance as of 06/09/2017		<u>0.00</u>	

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Right of Way Ordinance



Birchwood Village

Dear Mayor and Council Members,

The City Council has discussed many times over the past couple years the idea of introducing an escrow requirement for building permit holders to cover damages caused to City streets and parks.

Staff has learned that the City of Grant has already developed and uses an escrow requirement for its permit process. Grant's escrow program is incorporated into a new Right of Way ordinance. A Right of Way ordinance governs activities in the City's right of ways; it is a common feature in many cities but Birchwood does not have a Right of Way ordinance.

Staff requests Council's approval to request City Attorney Kantrud look over the enclosed escrow fee schedule and Right of Way ordinance from the City of Grant and make a recommendation to Council whether a similar structure and ordinance should be considered for Birchwood. Thanks!

Regards,
Tobin Lay



Ordinance No. 2017- 49 2017 FEE SCHEDULE FEES, CHARGES, AND ESCROW

CITY OF GRANT

Mailing Address: P.O. Box 577
Willernie, Minnesota 55090
Town Hall: 111 Wildwood Road
Phone: (651) 426-3383 Fax: (651) 429-1998
E-mail: clerk@cityofgrant.us

Make checks payable to City of Grant.

Under State and local planning laws, any property owner may petition for rezoning and/or platting. The City, upon receipt of such a petition, will process the application in accordance with the procedures and provisions of the ordinances.

The City charges the petitioner a filing fee for this processing, as well as requiring that he/she pay all costs the City may incur in processing and "hearing" the application. An escrow amount will be required at the time application fees and the application is received by the City's Consultant.

<i>For Each Application</i>	<i>Application Fees</i>	<i>Escrow*</i>	<i>TOTAL</i>
Minor Subdivision	\$400	\$4,000	\$400 plus \$4,000 escrow
Major Subdivision	\$1,000 + \$25 per lot	\$7,000	\$1,000 + \$25 per lot plus \$7,000 escrow
Variance	\$400	\$3,000	\$400 plus \$3,000 escrow
Conditional Use Permit (CUP) (Amended and New)	\$400	\$3,000	\$400 + \$3,000 escrow
Conditional Use Permit (CUP) Annual Review Fee	N/A		N/A
All other Land Use Issues	\$100	\$1,000	\$100 + \$1,000 escrow
Certificate of Compliance (COC)	\$50	\$900**	\$50 + \$950 escrow**
COC Amendment	\$50	\$200	\$50 + \$200 escrow
Grading Permit Fees	\$150 for 50 - 100 Cubic yards \$300 <100 Cubic Yards	No Escrow \$1000- \$3000 Escrow	Dependent upon number of yards

* Unused escrow amounts will be returned to the applicant.

* COC Escrow required only for issues that require City Planner analysis or review. Examples include:

- Accessory buildings in front of the primary structure
- Projects involving issues related to animal units per grazable acres
- Buildings meeting the state definition of an "agricultural building"
- Other complex zoning issues requiring Planner analysis or review

* For additional information, see also the Escrow Account Policies Form.

- Permits applied for after work has begun will be two times the standard fee.

Below are listed other permits required for various activities in the City of Grant.

<i>Other Permits</i>	<i>Permit Fees</i>
Sign Permit	\$50
Charitable Gambling Operations Permit	\$100

Demolition Permit	\$100
Mann Lake Parking Permit	\$10/resident OR \$50/non-resident
Burn Permits	\$10

Below are listed other fees associated with City services.

False Alarm Fees	Commercial	Residential
False Fire Alarms (Alarms 1-2)	No Charge	No Charge
False Fire Alarms (Alarms 3+)	Actual cost of response Minimum charge: \$50 Maximum charge: \$400	Varies with actual cost

Other False Alarms	Commercial	Residential
Alarms 1-2	No Charge	No Charge
Alarms 3-6	\$60 each	\$50 each
Alarms 7+	\$100 each	\$75 each

Permit/Escrow Fees	Application Fee	Escrow Fee
Qwest	\$200	\$3,000
Comcast	\$200	\$3,000
Koch Pipeline	\$200	\$3,000
Xcel Energy (gas/electric)	\$0	\$0

Liquor License Fees	Fee
On-Sale Liquor	\$2,000
On-Sale Sunday	\$200
On-Sale Beer 3.2	\$200
Off-Sale Liquor	\$200

Miscellaneous Fees	Fee
Subdivision Ordinance-Copy	\$20
Zoning Ordinance-Copy	\$25
Comprehensive Plan-Copy	\$10
Special Assessment	\$20
Dishonored Check	\$40
Copies	.25 per page
Notary Fee – Non-resident	\$5.00
Solicitor's License Fee	\$75
Meeting DVD-Copy	\$10
Wetland Review Specialist	\$100/\$500 Escrow
MLCCS Review Fee	\$75
Driveway Permit	\$50
Preapplication Meeting/Planner	\$300

**CITY OF GRANT
WASHINGTON COUNTY, MINNESOTA
ORDINANCE 2017-51**

**An Ordinance Amending the Grant Code of Ordinances
Amending Chapter 28 Streets, Sidewalks and Other Public Places**

The City Council of the City of Grant, Washington County, Minnesota, does hereby ordain as follows:

SECTION 1. AMENDMENT OF CHAPTER 28, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, OF THE CITY’S CODE OF ORDINANCES.

That City Code Chapter 28, Article IV is hereby AMENDED to ADD the following

Section 28-52. Findings, Purpose, and Intent.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in good repair and free from unnecessary encumbrances. Accordingly, the city enacts this Article IV of Chapter 28 of the Code establishing reasonable regulations concerning the placement and maintenance of facilities and equipment within the city’s rights-of-way and obstructions of such rights-of-way.

This Article is intended to implement Minnesota Statutes Sections 237.162 and 237.163 Minnesota Rules 7819.0050 – 7819.9950, and other applicable laws governing use of rights-of-way. Pursuant to Minnesota Statutes, Sections 237.163 subdivision 2(b), and all authority granted to the city, the city hereby elects to manage rights-of-way within its jurisdiction.

Section 28-53. Definitions.

Abandon Facility means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use.

Applicant means any person that has applied for a permit to excavate or obstruct a right-of-way.

City means the city of Grant, Minnesota, its elected officials, officers, employees and agents.

Commission means the Minnesota Public Utilities Commission.

Construction Performance Bond means any of the following forms of security provided at a permittee’s option:

- (1) Individual project bond;
- (2) Cash deposit;

- (3) Security of a form listed or approved under Minnesota Statutes, section 15.73, subdivision;
- (4) Letter of Credit, in a form acceptable to the city;
- (5) Self-insurance, in a form acceptable to the city;
- (6) A blanket bond for projects within the city, or other form of construction bond, for a time specific^{3d} and in a form acceptable to the city.

Degradation means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

Degradation Cost means the cost, subject to Minnesota Rules 7819.1100, to achieve a level of restoration as determined by the city at the time the permit is issued, not to exceed the maximum restoration shown in plates 1 to 13, set forth in Minnesota Rules parts 7819.9900 to 7819.9950.

Degradation Fee means the fee established by the city at the time of permitting in an amount estimated to recover the degradation cost.

Director means the City Engineer of the city, or his or her designee.

Delay Penalty is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

Emergency means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities in order to restore service to a customer.

Equipment means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Facility or Facilities means tangible asset in the public right-of-way required to provide utility service.

Local Representative means a local person authorized by a right-of-way user to accept service and to make decisions for that right-of-way user regarding all matters within scope of this Article IV.

Management Costs means the actual costs the city incurs in managing its rights-of-way, including costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment for the use of the right-of-way or the fees and costs of any litigation or appeals relating to this Article IV.

Obstruct means to place any tangible object in the right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

Patch or Patching means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions.

Pavement means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

Permit has the meaning given “right-of-way permit” in Minnesota Statutes, section 237.162.

Permittee means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this Article IV.

Person means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

Public Right-of-Way or Right-of-Way has the meaning given it in Minnesota Statutes, section 237.162, subdivision 3.

Restore or Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

Restoration Cost means the amount of money paid to the city by a right-of-way user to achieve the level of restoration according to plates 1 to 13 of Minnesota Rule 7819.1100 Subpart 1.

Right-of-Way User means any person who has or seeks to have its equipment or facilities located in any right-of-way.

Service or Utility Service means and includes (1) services provided by a public utility as defined in Minnesota Statutes 216B.02, subdivisions 4 and 6; (2) services of a telecommunications provided including transporting of voice or data information; (3) services of a cable communications system as defined in Minnesota Statutes, chapter 238.02, subdivision 3; (4) natural gas or electric energy or telecommunications services provided by a local government unit; (5) services provided by a cooperative electric association organized under Minnesota Statutes, chapter 308A.

Temporary Surface means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city’s pavement management plan, in which case it is considered full restoration.

Trench means an excavation in the right-of-way, with the excavation having a length equal to or greater than the width of the pavement of adjacent pavement.

Section 28-54. Administration

The City Engineer is the principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The City Engineer may delegate any or all of the duties hereunder.

Section 28-55. Conduct Prohibited.

Except as authorized pursuant to a permit issued by the city, no person shall:

- (a) Obstruct or excavate any right-of-way.
- (b) Place any equipment, facilities, or structures in any right-of-way.
- (c) Deposit snow or ice on any right-of-way.

- (d) Erect a fence or other barrier on or across any right-of-way.
- (e) Obstruct any ditch in or abutting a right-of-way.
- (f) Place any advertisement or sign other than a traffic control sign or other governmental sign in any right-of-way.
- (g) Deface, mar, damage or tamper with any sign, marker, signal, monument, equipment facility, structure, material, tools, or any appurtenance in any right-of-way.
- (h) Drive a vehicle over, through, around, or past any fence, barrier, sign, or obstruction erected to prevent traffic from passing over the right-of-way, or portion of the right-of-way.

Section 28-56. Registration and Right-of-Way Occupancy.

(a) *Registration.* Each right-of-way user, including persons with installation and maintenance responsibilities by contract, lease, sublease or assignment, must register with the city. Registration will consist of providing registration information and paying a registration fee.

(b) *Registration prior to work.* No person may construct, install, repair remove, relocate any equipment or facilities or perform any other work in any right-of-way without first being registered with the city.

(c) *Exceptions.* Persons shall not be required to register, obtain permits or satisfy any other requirements under this Section for the following:

- (1) Construction and maintenance of driveways, sidewalks, curb and gutter, or parking lots pursuant to a driveway permit, except repairs or restoration necessitated by utility cuts or other work;
- (2) Plowing and preparing the land for planting a perennial hay crop, and harvesting said crop;
- (3) Snow removal activities;
- (4) Placement of flexible fiberglass markers at the edge of the paved road to assist snow plow operators (metal posts are prohibited).

Nothing herein relieves a person from complying with the provisions of the Minnesota Statutes, chapter 216D, Gopher One Call Law.

Section 28-57. Registration Information.

(a) *Information Required.* The information provided to the city at the time of registration shall include, but not be limited to:

- (1) The right-of-way user's name, Gopher One-Call registration certificate number, address and e-mail address if applicable, and telephone and facsimile numbers;
- (2) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of local representative accessible for consultation at all times. Current contact information shall be provided at the time of registration.
- (3) A certificate of insurance or self-insurance:
 - i. Verifying that an insurance policy has been issued to the right-of-way user by an insurance company authorized to do business in the State of Minnesota, or a form of self-insurance acceptable to the city;
 - ii. Verifying that the right-of-way user is insured against claims for personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the right-of-way by the right-of-way user, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the right-of-way user, its officers, agents, employees and

- iii. Either naming the city as an additional insured or otherwise providing evidence satisfactory to the Administrator that the city is fully covered and will be defended;
- iv. Requiring that the city be notified thirty (30) days in advance of cancellation of the policy or material modification off a coverage term;
- v. Indicating comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage established by the city in amounts sufficient to protect the city and the public and to carry out the purposes and policies of this Article.
- vi. Evidencing adequate third part claim coverage and city indemnification for all actions included in Minnesota Rule part 7819.1250.

(4) Such evidence as the city may require to demonstrate that the person is authorized to do business in Minnesota.

(5) Such evidence as the city may require to demonstrate that the person is authorized to use or occupy the right-of-way.

(b) *Notice of Changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

Section 28-58. Reporting Obligations.

(a) *Operations.* Each right-of-way user shall, at the time of registration and by December 1 of each year, file a construction and maintenance plan for underground facilities with the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way.

(b) *Plan.* The plan shall include, but not be limited to, the following information:

- (1) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a “next-year project”); and
- (2) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five years following the next calendar year (in this section, a “five-year project”).

(c) *Failure to Include Projects in Plan.* The city may deny an application for a right-of-way permit for failure to include a project in the plan submitted to the city for next-year projects unless the right-of-way user demonstrates that it used commercially reasonable efforts to identify the project. The city may annually produce for inspection a list of all planned projects for inspection.

Section 28-59. Permit Requirement.

(a) *Permit Required.* A permit is required to excavate the right-of-way, to place equipment of facilities in or on the right-of-way, or to obstruct or otherwise hinder free and open passage over the right-of-way. The permit shall specify the extent and the duration of the work permitted.

(b) *Permit Extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

(c) *Delay Penalty.* In accordance with Minnesota Rule 7819.1000 subp. 3, the city may establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be established from time to time by city council resolution. A delay penalty will not be imposed for delays due to force majeure, including inclement weather, civil strife, acts of God, or other circumstances beyond the control of the applicant.

(d) *Permit Delay.* Permits issued under this Section shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

Section 28-60. Permit Applications.

An application for a permit is made to the city. Right-of-way permit applications shall contain, and will only be considered complete upon compliance with the following:

- (a) Registration with the city pursuant to this Article.
- (b) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.
- (c) Payment of money due to the city for:
 - (1) Permit fees, estimated restoration costs and other management costs;
 - (2) Prior obstructions or excavations;
 - (3) Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city;
 - (4) Franchise fees or other charges, if applicable.
- (d) Payment of disputed amounts due to the city by posting security or depositing in an escrow account an amount equal to at least 100% of the amount owing.
- (e) Posting an additional or larger construction performance bond should the city deem the existing construction performance bond inadequate.

Section 28-61. Issuance of Permit; Conditions.

(a) *Permit Issuance.* If the Applicant has satisfied the requirements of this Article IV the city shall issue a permit.

(b) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use. The city may establish and define location and relocation requirements for equipment and facilities to be located in the right-of-way.

Section 28-62. Permit Fee.

(a) *Fee Schedule and Fee Allocation.* The city's permit fees shall be designed to recover the city's actual costs and shall be based on an allocation among all users of the right-of-way, including the city.

(b) *Permit Fee Amount.* The city shall establish a permit fee sufficient to recover the following costs:

- (1) The city's management costs;
- (2) Degradation costs, if applicable
- (c) *Payment of Permit Fees.* No permit shall be issued without payment of permit fees. The city may allow an applicant to pay such fees within thirty (30) days of billing. Permit fees paid for a permit that the city has revoked for a breach are not refundable.

(d) *Application to Franchises.* Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

Section 28-63. Right-of-Way Patching and Restoration.

(a) *Timing.* The work to be done under a permit, and the required patching and restoration of the right-of-way, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the permittee or when work was prohibited as unseasonal or unreasonable under (INSPCTION # citation here).

(b) *Patching.* The permittee must patch its own work.

(c) *Restoration.* The city may choose either to have the permittee restore the surface and subgrading portions of right-of-way or the city may restore the surface portion of right-of-way itself. If the city restores the surface portion of right-of way, permittee shall pay the costs thereof within thirty (30) days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling, the permittee shall pay to the city, within thirty (30) days of billing, all costs associated with correcting the defective work. IF the permittee restores the right-of-way itself, it shall at the time of filing the permit application post a construction performance bond in accordance with the provisions of Minnesota Rule 7819.3000.

(d) *Degradation fee in Lieu of Restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee in an amount identified by the city. However, the right-of-way user shall remain responsible for replacing and compacting the subgrade and aggregate base material in the excavation and degradation fee shall not include the cost to accomplish these responsibilities.

(e) *Standards.* The permittee shall perform patching and restoration according to the standards in Minnesota Rule 7819.1100, and with the materials specified by the city.

(f) *Duty to correct defects.* The permittee shall correct defects in patching, or restoration performed by permittee or its agents upon notification from the city, using the method required by the city.

(g) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city shall notify the permittee in writing of the specific alleged failure or failures and shall allow the permittee ten (1) days from receipt of notice to cure said failure or failures. In the even the permittee fails to cure, the city may at its option perform the necessary work and permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

Section 28-64. Other Obligations.

(a) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to apy all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws, including Minn. Statute 216D.01-.09 (Gopher One Call Excavation Notice System). A permittee shall perform all work in conformance with the applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work.

(b) *Prohibited Work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(c) *Interference with right-of-way.* A permittee shall not so obstruct or interfere with the natural passage of water through the gutters or other waterways. Private vehicles must be parked in conformance with city parking regulations. Unless specifically authorized by a permit, trucks must be loaded and unloaded within the defined permit area.

(d) *Traffic control.* A permittee shall implement traffic control measures in the area of the work and use traffic control procedures in accordance with the most recent manuals on uniform traffic control, traffic control devices and traffic zone layouts published by the State of Minnesota.

Section 28-65. Denial of Permit.

The City may deny a permit for failure to meet the requirements and conditions of this Article, to protect the public health, safety, and welfare, or to protect the right-of-way and its current use.

Section 28-66. Installation Requirements.

The installation of facilities in the right-of-way and associated excavation, backfilling, patching, and restoration work shall be done in conformance with Minnesota Rule 7819.1100 and other applicable local requirements.

Section 28-67. Inspection.

(a) *Notice of completion.* When the work under any permit hereunder is completed, the permittee shall furnish a completion certificate in accordance with Minnesota Rule 7819.1300.

(b) *Site Inspection.* The permittee shall make the work site available to the city for inspection at all reasonable times during the execution of and upon completion of the work.

(c) *Authority of Director.* The director may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, or order the permittee to correct work that does not conform to the terms of the permit or other applicable standards, conditions, or code. If the work failure is a “substantial breach” within the meaning of Minnesota Statute 237.163 subd. 4(c), the order shall state the failure to correct the violation will be cause for revocation of the permit after a specified period determined by the director. The permittee shall present proof to the director that the violation has been timely corrected. If the violation is not timely corrected, the director may revoke the permit.

Section 28-68. Work Done without a Permit.

(a) *Emergency Situation.* Each right-of-way user shall immediately notify the director of any event regarding its facilities that the right-of-way user considers to be an emergency. The right-of-way user may take whatever actions are necessary to respond to the emergency. Within two (2) business days after the occurrence of the emergency the right-of-way user shall apply for the necessary permits and fulfill the rest of the requirements necessary to comply with this Article.

(b) If the city becomes aware of an emergency affecting facilities in the right-of-way, the city will attempt to contact the local representative of each potentially affected right-of-way user. The city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by affected right-of-way users.

(c) *Non-Emergency Situation.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay an unauthorized work permit fee in an amount established from time to time by the city council, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all the requirements of this Article.

Section 28-69. Revocation of Permits.

(a) *Substantial Breach.* The city reserves its right to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of a permit'
- (2) An evasion or attempt to evade any material provision of a permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a permit;
- (4) The failure to complete work in a timely manner; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated in an order issued by the director.

(b) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of term or condition of any statute, ordinance, rule regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city to place additional or revised conditions on the permit to mitigate and remedy the breach.

(c) *Response to notice of breach.* Within a time established by the director following permittee's receipt of notification of the breach, permittee shall provide the city with a plan to cure the breach, acceptable to the city. Permittee's failure to submit a timely and acceptable plan, or permittee's failure to timely implement the approved plan, shall be cause for immediate revocation of the permit.

(d) *Reimbursement of city costs.* If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

Section 28-70. Mapping Data.

Each right-of-way user and permittee shall provide mapping informational a form required by the city in accordance with Minnesota Rules 7819.4000 and 7819.4100.

Section 28-71. Relocation of Facilities.

A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for the convenience of the city, in connection with: (1) a present or future city use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.

Section 28-72. Interference by Other Facilities.

When the city does work in the right-of-way and finds it necessary to maintain, support, or move a right-of-way user's facilities to carry out the work without damaging right-of-way user's facilities, the city shall notify the local representative as early as is reasonable possible. The city costs associated therewith will be billed to that right-of-way user and must be paid within thirty (30) days form the date of billing. Each right-of-way user shall be responsible for the cost of repairing any facilities in the right-of-way which it or its facilities damages.

Section 28-73. Right-of-Way Vacation.

If the city vacates a right-of-way that contains the facilities of a right-of-way user, the right-of-way user's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200.

Section 28-74. Indemnification and Liability.

By registering with the city, or by accepting a permit under this Article, a right-of-way user or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rule 7819.1250.

Section 28-75. Abandoned and Unusable Facilities.

(a) Discontinued Operations. A right-of-way user who has determined to discontinue all or a portion of its operations in the city must provide information satisfactory to the city that the right-of-way user's obligations for its facilities in the right-of-way under this Article have been lawfully assumed by another right-of-way user.

(b) Removal. Any right-of-way user who has abandoned facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless this requirement is waived by the city.

Section 28-75. Appeal.

A right-of-way user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that the fees imposed are not in conformity with Minnesota Statute 237.163, Section 410.06 may have the denial, revocation, or fee imposition reviewed, upon written request, by the city council. The city council shall act on a timely written request at its next regularly scheduled meeting. A decision by the city council affirming the denial, revocation, or fee imposition will be in writing.

Section 28-76. Reservation of Regulatory and Policy Powers.

A permittee's or right-of-way user's rights are subject to the regulatory and police power authority of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

Section 28-77. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Article IV is for any reason held invalid or unconstitutional by any court, regulatory body or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 28-78. Penalty.

Any person violating any provision of this Article IV, or any permit or order issued hereunder, shall, upon conviction thereof, be guilty of a misdemeanor punishable in accordance with Section 2-102 of the City Code.

SECTION 2. SEVERABILITY.

In the event that court of competent jurisdiction adjudges any part of this ordinance to be invalid, such judgment shall not affect any other provisions of this ordinance not specifically included within that judgment.

SECTION 3. EFFECTIVE DATE.

This ordinance takes effect upon its adoption and publication according to law.

WHEREUPON, a vote, being taken upon a motion by Council member _____ and seconded by Council member _____, the following upon roll call:

Voting AYE:

Voting NAY:

Whereupon said Ordinance was declared passed adopted this ____day of _____, 2017.

Jeff Huber, Mayor

Attest: Kim Points, City Clerk

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Resolution 2017-17: Fund Transfer



Birchwood Village

Dear Mayor and Council Members,

Each year the Council approves a transfer of funds to balance out the accounts between those that are over utilized and those underutilized.

It has been brought to staff's attention that the generator that was purchased last year for lift station #2 at Wildwood Park was paid for from the wrong account.

Accordingly, staff requests Council's approval for funds amounting in \$25,194.03 transferred from the Sewer Fund to the Birchwood in Re-hab Bond Fund. Thanks!

Regards,
Tobin Lay

RESOLUTION 2017-17

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA**

A RESOLUTION AUTHORIZING TRANSFERS AND CLOSING OF SPECIFIED FUNDS

WHEREAS, each year staff budgets certain operating and debt service transfers between funds; and

WHEREAS, each year, staff evaluates existing funds and identifies those funds in which all activity has concluded and obligations have been satisfied; and

WHEREAS, Capital Projects should be closed when all activity has concluded; any residual money and all assets should be transferred to the associated debt service fund or a capital project fund reserved for public projects and if a deficit exist, funding must be provided.

NOW THEREFORE BE IT RESOLVED, that the City Council of the City of Birchwood Village here approves the transfer of any funds noted, but subject to closing adjustments as needed:

	<u>From Fund</u>	<u>Amount</u>	<u>To Fund</u>	
<i>Debt Service Transfers:</i>				
	Sewer Fund	\$25,194.03	Birchwood in Re-hab Bond	

Adopted this 13th day of June, 2017.

Mary Wingfield
Mayor

Attest:

Tobin Lay
Administrator-Clerk

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Replace Check Valve at Lift Station #2



Birchwood Village

Dear Mayor and Council Members,

Last Friday afternoon, June 9, one of two check valves in lift station #2 went out. White Bear Township contacted me to inform me that replacement would cost \$1,000. Mayor Wingfield approved the emergency expense per City emergency policy.

Staff now requests Council's approval of this emergency expense. Thanks!

Regards,
Tobin Lay

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Recycling Grant Agreement



Birchwood Village

Dear Mayor and Council Members,

Staff has reapplied for and the City has once again been awarded a Washington County recycling grant that Birchwood has been a recipient of for several years. This grant supplements the City's recycling expenses with Tennis Sanitation.

Enclosed is the grant agreement from Washington County. City Attorney Kantrud has already reviewed the agreement to his satisfaction.

Staff requests Council's approval of the grant, as explained in the enclosed agreement, and approval to endorse the agreement.

Thanks!

Regards,
Tobin Lay

**2017-18
GRANT AGREEMENT
FOR
MUNICIPAL RECYCLING GRANT DISTRIBUTION**

THIS AGREEMENT made and entered into by and between the County of Washington, hereinafter referred to as the "County", and the City of Birchwood Village, 207 Birchwood Avenue, Birchwood, MN 55110, hereinafter referred to as the "Grantee".

WHEREAS, the County desires to encourage and provide opportunities for residential recycling to reduce the County's reliance on solid waste disposal facilities, and

WHEREAS, the Washington County Board of Commissioners has budgeted funds to be used to further develop recycling projects in the County.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term:

The term of the Agreement shall be from the date this Agreement is approved by the County to December 31, 2018.

2. The County's Obligations:

The County will pay the Grantee an amount of up to \$1,679.00 which is to be used for recycling program expenses in 2017 and 2018. Payment will be made in two installments, one in 2017 and one in 2018. The 2017 payment will be made within 60 days of execution of this Agreement and the 2018 payment will be made within 60 days of the county approving the grantee's 2017 recycling work plan projects.

3. The Grantee's Obligations:

- a. The Grantee agrees to follow their 2017-18 Municipal Recycling Grant Application and the guidelines therein (Exhibit A).
- b. The Grantee will use all recycling grant money received in 2017 and 2018 as a result of this Agreement, for base funding activities, recycling projects, and public education related to recycling, as indicated in Exhibit A. If all recycling grant funds are not used within the grant period, the Grantee must return unexpended funds to the County unless the County approves utilizing the unspent funds for recycling projects the following year.
- c. The Grantee shall sign and return this Agreement to the County by July 1, 2017. Failure to do so will result in a reduction or loss of grant funds.
- d. The Grantee agrees to support State efforts in obtaining hauler reports by ensuring compliance through ordinance, contract or license requirements and the ability to exercise punitive actions, if needed.
- e. The Grantee will prepare and submit annual work plan project reports to the County. The reports shall cover the time period from January 1 to December 31 and shall be submitted to the County by January 31st of the year following the reporting period. The annual reports are available on the County's Municipal Recycling Grant Application and Reporting software (Re-TRAC Connect).

- f. Pursuant to Minnesota Statutes Sections 115A.46 and 115A.471, all waste generated by city/township government activities (including city/town halls, public works buildings, parks, and for city/townships that arrange for waste services on behalf of their residents) shall be delivered to the Ramsey/Washington Recycling and Energy Center in Newport for disposal. Failure to comply with this provision shall constitute a breach of this Grant Agreement.
- g. The parties agree that if the Grantee contracts or otherwise arranges for municipal solid waste hauling service on behalf of its residents and/or businesses and the Grantee issues bills for this service, the Grantee shall bill the County Environmental Charge (CEC) as a separate line item on the solid waste bill and shall make reasonable effort to collect the CEC. Exception to this provision is if the licensed hauler collected the CEC for the previous year. All County Environmental Charges collected shall be remitted to the County according to section 14.5 of Washington County Ordinance #178 or its replacement, Ordinance #194, effective July 1st, 2014. Failure of the Grantee to comply with this provision shall constitute a breach of this Grant Agreement and will result in loss of grant funds.

4. Indemnification

The Grantee agrees it will defend, indemnify and hold harmless the County, its officers and employees against any and all liability, loss, costs, damages, and expenses which the County, its officers, or employees may hereafter sustain, incur, or be required to pay arising out of the negligent or willful acts or omissions of the Grantee in the performance of this agreement.

5. Insurance Requirements

The Grantee agrees that in order to protect itself, as well as the County, under the indemnity provisions set forth above, it will at all times during the term of this Agreement, keep in force the following insurance protection in the limits specified:

- A. Commercial General Liability and Professional Liability with contractual liability coverage in the amount of the County's tort liability limits set forth in Minnesota Statute 466.04 and as amended from time to time.
- B. Automobile coverage in the amount of the County's tort liability limits set forth in Minnesota Statute 466.04 and as amended from time to time.
- C. Worker's Compensation in statutory amount.

Prior to the effective date of this Agreement, the Grantee will furnish the County with a current and valid proof of insurance certificate indicating insurance coverage in the amounts required by this agreement. This certificate of insurance shall be on file with the County throughout the term of the agreement. As a condition subsequent to this agreement, Grantee shall insure that the certificate of insurance provided to the County will at all times be current. The parties agree that failure by the Grantee to maintain a current certificate of insurance with the County shall be a substantial breach of the contract and payments on the contract shall be withheld by the County until a certificate of insurance showing current insurance coverage in amounts required by the contract is provided to the County.

Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty days notice thereof to the County.

6. Data Practices:

All data collected, created, received, maintained, or disseminated for any purpose by the activities of the contractor, because of this agreement shall be governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (Act), as amended and the Rules implementing the Act now in force or as amended. The contractor/Grantee is subject to the requirements of the Act and Rules and must comply with those requirements as if it is a governmental entity. The remedies contained in section 13.08 of the Act shall apply to the contractor/Grantee.

7. Condition Subsequent:

It is understood and agreed that in the event that reimbursement to the County from state sources is not obtained and continued at a level sufficient to allow the Grant, the obligations of each party hereunder shall thereupon be reviewed to determine the necessity of renegotiating all or parts of this Agreement.

8. Records Availability and Retention:

Pursuant to Minnesota Statute Section 16C.05, Subd. 5, the Grantee agrees that the County, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc. which are pertinent to the accounting practices and procedures of the Grantee and involve transactions relating to this Agreement.

Grantee agrees to maintain these records for a period of six (6) years from the date of termination of this Agreement.

9. Independent Contractor:

Nothing contained in this Agreement is intended or should be construed as creating the relationship of co-partners or joint ventures with the County. No tenure or any rights or benefits, including Worker's Compensation, Unemployment Insurance, medical care, sick leave, vacation leave, severance pay, PERA, or other benefits available to County employees, shall accrue to the Grantee or employees of the Grantee performing services under this Agreement.

10. Nondiscrimination:

During the performance of this Agreement, the Grantee agrees to the following: No person shall, on the grounds of race, color, religion, age, sex, sexual preference or orientation, disability, marital status, public assistance status, criminal record, creed or national origin, be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all applicable Federal and State Laws against discrimination.

11. Firearms Prohibited:

Unless specifically required by the terms of this contract, no provider of services pursuant to this contract, including but not limited to employees, agents or

subcontractors of the Grantee shall carry or possess a firearm on county premises or while acting on behalf of Washington County pursuant to the terms of this agreement. Violation of this provision shall be considered a substantial breach of the Agreement; and, in addition to any other remedy available to the county under law or equity. Violation of this provision is grounds for immediate suspension or termination of this contract.

12. Noncompliance by Grantee:

If the County finds that there has been a failure to comply with the provisions of this Agreement, the County may terminate the Agreement at any time following seven (7) days written notice to the Grantee and upon failure of the Grantee to cure the default within the seven day period. The County will require the Grantee to repay the grant funds in full or in a portion determined by the County. Nothing herein shall be construed so as to limit the County's legal remedies to recover grant funds.

13. Termination:

This Agreement may be canceled by either party upon thirty (30) days written notice. Notice to the Cities shall be mailed to the City Administrator or to the City Clerk if there is no Administrator. Notice to Townships shall be mailed to the Township Clerk. Notice shall be sent to the official business address of the City or Township. Notice to the County shall be mailed to: Department of Public Health and Environment, 14949 62nd Street N, PO Box 6, Stillwater, MN 55082-0006.

14. Merger and Modification:

- a. It is understood and agreed that the entire Agreement between the parties is contained here and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.
- b. Any material alterations, variations, modifications, or waivers of provisions of this Agreement shall be valid only when they have been reduced to writing as an Amendment and signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

GRANTEE

BY _____

TITLE _____

DATE _____

FEDERAL ID # _____

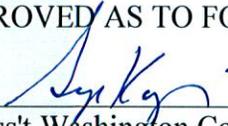
WASHINGTON COUNTY

BY _____

Lowell Johnson, Director
Department of Public Health
and Environment

DATE _____

APPROVED AS TO FORM

BY  _____

Ass't Washington Co. Attorney

DATE 4/2/17 _____

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
 FROM: Tobin Lay, City Administrator
 SUBJECT: Community Solar Garden Offer – US Solar



Birchwood Village

Dear Mayor and Council Members,

In 2013, the Minnesota Legislature directed Xcel Energy to create a program for community solar gardens. Since that time, solar gardens have been springing up all over the state and many cities have entered subscription agreements with a growing number of solar energy companies.

Staff was recently approached by a representative from US Solar LLC, with an offer to enter a subscription agreement with a new community solar garden soon to be developed in the metro area. Upon further investigation, staff discovered that many organizations had already signed similar agreements with this company, including St. Anthony Village, with whom Birchwood has a close relationship. Indeed, many of the communities that staff have asked about this to have already subscribed or are considering doing so.

According to the US Solar representative, the City of Birchwood Village could save up to an estimated \$98,859 over 25 years at our current energy consumption level; see below cost/savings table:

Years	1	2	3	4	5	6-10	11-15	16-20	21-25	TOTAL
Subscribed Energy (kWh)	85,052	84,627	84,204	83,783	83,364	410,608	400,445	390,533	380,867	2,003,481
Average Enhanced Bill Credit from Xcel (\$/kWh)	\$ 0.14798	\$ 0.15118	\$ 0.15446	\$ 0.15782	\$ 0.16127	\$ 0.17222	\$ 0.19222	\$ 0.21486	\$ 0.24046	\$ 0.19486
Average Subscription Rate to US Solar (\$/kWh)	\$ (0.1444)	\$ (0.1444)	\$ (0.1444)	\$ (0.1444)	\$ (0.1444)	(0.1444)	(0.1444)	(0.1444)	(0.1444)	\$ (0.1444)
Average Net Value per kWh (\$/kWh)	\$ 0.0036	\$ 0.0068	\$ 0.0101	\$ 0.0134	\$ 0.0169	0.0278	0.0478	0.0705	0.0961	\$ 0.0505
Net Value	\$ 304	\$ 574	\$ 847	\$ 1,124	\$ 1,406	\$ 11,408	\$ 19,134	\$ 27,496	\$ 36,566	\$ 98,859

Assumes 2.5% escalation to ARR, 0.5% degradation in subscribed energy

Late last year, the Council asked staff to research other energy supplier options. Staff discovered that our region of Minnesota has been long awarded by the state legislature to Xcel Energy; there are no other energy suppliers available in our market.

Not only are community solar gardens the only feasible energy alternative for small communities like Birchwood but they offer a great advantage to the traditional energy model.

Representatives from US Solar are present at tonight's meeting. Staff requests Council consider the offer being presented and direct staff accordingly. Thanks!

Regards,
 Tobin Lay

US Solar Flat Rate SunscriptionSM Agreement

This Flat Rate SunscriptionSM Agreement (this “**Agreement**”) is entered into by and between US Solar LLC (together with its successors and assignees, “US Solar” or “we”) and the Subscriber described below (together with any permitted transferees, “Project Subscriber” or “you”) (each a “**Party**” and collectively the “**Parties**”) and is effective as of the date signed by the Parties (the “**Effective Date**”).

Project Subscriber:		US SolarSM:	
Name and Address	City of Birchwood Village 207 Birchwood Ave St Paul, MN 55110 Attention: Tobin Lay	Name and Address	US Solar LLC 100 N 6 th Street, Suite 218C Minneapolis, MN 55403 Attention: MN CSG Notices
Phone	(651) 426-3403	Phone	(612) 294-6978
E-mail	tobin.lay@cityofbirchwood.com	E-mail	info@us-solar.com
Premises and Account Numbers	Account: 51-4586612-4 302567785 302873184 302585432 303011102 Premises: 302261406		
Community Solar Garden Allocation	An amount expected to produce up to 85,052 kWh, equal to 120% of Project Subscriber's average annual electricity consumption (“AAEC”) (net of any other distributed generation resources serving a relevant Premises) over the prior twenty-four (24) months with respect to its eligible Account and Premises numbers, allocated to multiple projects. Project Subscriber’s AAEC is equal to approximately 70,877 kWh.		

This Agreement sets forth the terms and conditions of your subscription to the Community Solar Garden(s) described in **Exhibit B** (individually and collectively, as context requires, a “**Project**”) and installed at the Community Solar Garden Site(s) described in **Exhibit B** (individually and collectively, as context requires, a “**Project Site**”). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Standard Contract for Solar Rewards Community contract (“**SRC Contract**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit A** Definitions
- Exhibit B** Project(s) and Project Site(s)
- Exhibit C** Bill Credit Types, Current Bill Credit Rates, and Current SunscriptionSM Rates
- Exhibit D** Estimate of Subscribed Energy
- Exhibit E** [Reserved]
- Exhibit F** Form of SRC Contract

Exhibit G Form of Agency Agreement

Exhibit H Project Subscriber Data

ARTICLE 1 SUBSCRIPTION

1.1 Subscribing to Project Capacity. You are subscribing to the Community Solar Garden Allocation (“**CSG Allocation**”) identified for each Project on the front page of this Agreement on the terms and conditions set forth herein.

1.2 Bill Credit Value. As more fully detailed in the SRC Contract, your CSG Allocation entitles you to receive a Bill Credit against your monthly retail electrical bill equal to the product of (i) the amount of your Subscribed Energy for each Production Month, and (ii) your applicable Bill Credit Rate. Bill Credits are the dollar amounts paid by NSP to you as a credit on your retail electric bill to compensate you for your beneficial share of the solar electricity produced by the Project and delivered to NSP from the Project.

1.3 Bill Credit Rate. Bill Credit Rates are found in the CSG Tariff. The Bill Credit Rates in effect as of the Effective Date are as follows:

Customer Class	Bill Credit Type	Bill Credit Rate per kWh (AC) for Energy Delivered to Company
Small General Service	Standard	\$0.12798
	Enhanced – Solar Gardens > 250kW (AC)	\$0.14798
General Service	Standard	\$0.10296
	Enhanced – Solar Gardens > 250kW (AC)	\$0.12296

Your Bill Credit Rate will be updated annually (or otherwise as provided by order of the MPUC) during the Term only to reflect any updates in the applicable retail rate (labeled the “Standard” rate in the chart above) with respect to your customer class, as reflected in the CSG Tariff. The amount of the CSG “Enhanced” rate premium over the Standard rate reflects the value of the Project’s RECs sold and delivered by us to NSP. Per the CSG Tariff, the amount of CSG “Enhanced” rate premium over the Standard rate will not change over the Term. Please see Exhibit C for your account by account Bill Credit Type, current Bill Credit Rates, and current SunscriptionSM Rates.

1.4 Subscribed Energy. The estimated amount of Subscribed Energy produced by your CSG Allocation over the Term is set forth in Exhibit D.

1.5 SunscriptionSM Rate and Payments.

(a) Your SunscriptionSM Rate for each Project for each Production Month shall be equal to \$0.1199/kWh for each of your General Service accounts and \$0.1444/kWh for each of your Small General Service accounts. Please see Exhibit C for additional details about Bill Credit types, current Bill Credit Rates, and current SunscriptionSM Rates.

(b) The monthly payment amount you owe to US Solar (each, a “**SunscriptionSM Payment**”) is equal to the product of (i) your Subscribed Energy produced in a given Production Month, and (ii) your SunscriptionSM Rate.

(c) SubscriptionSM Payments will be invoiced monthly, beginning the first month after the Date of Commercial Operation (“**COD**”) of each particular Project, and you agree to make the full monthly SubscriptionSM Payment within forty (40) days of receiving our invoice.

1.6 No Additional Funds. The SubscriptionSM Payments represent full payment by you for your CSG Allocation subscription, and we shall not have any right to compel you to advance or pay any additional funds for the construction or maintenance of the Project or your CSG Allocation.

1.7 Ownership Limitation. Project Subscriber is not purchasing, and US Solar is not selling or transferring to Project Subscriber:

- (a) Any ownership or lien in any specific modules or tangible component of the Project;
- (b) Any ownership or membership interests or rights in US Solar or any entity which owns or may subsequently own the Project (for each Project, a “**Project Owner**”) or any financial rights or distributions associated with such ownership;
- (c) Any right to any payment by NSP to US Solar or the Project Owner with respect to Unsubscribed Energy;
- (d) Any right to manage, direct, control or operate the Project, US Solar or Project Owner; or
- (e) Any RECs produced by the Project or any payment by NSP to US Solar or Project Owner with respect to the RECs.

1.8 Term. The term of the Agreement (“**Term**”) shall begin on the Effective Date and shall end, with respect to each Project, twenty five years after the COD of such Project unless otherwise provided for in this Agreement or to allow for any extension provided under the related SRC Contract.

ARTICLE 2 STANDARD CONTRACT FOR SOLAR REWARDS COMMUNITY

2.1 SRC Contract. With respect to each Project, US Solar or the applicable Project Owner will enter into the SRC Contract once offered by NSP. Please see Exhibit F for the form of SRC Contract. Among other things, the SRC Contract provides for the following:

- (a) US Solar acting as the Community Solar Garden Operator;
- (b) Sale and delivery to NSP of all electricity and RECs generated by the Project for a term of twenty five (25) years;
- (c) Allocation to Subscribers by NSP of Bill Credits in exchange for delivery by US Solar, or the applicable Project Owner, of the electricity and RECs generated by the Project; and
- (d) US Solar ensuring compliance with the Community Solar Garden Statutory Requirements (“**Eligibility Requirements**”), which include eligibility requirements relating to both the Project and Subscribers.

2.2 Subscriber Agency Agreement and Consent Form. Attached to the SRC Contract is a Subscriber Agency Agreement and Consent Form (“**Agency Agreement**”) that you will be required to sign. Please see Exhibit G for the form of Agency Agreement. Among other things, the Agency Agreement provides for the assignment of energy and RECs to NSP and provides information regarding the following:

- (a) Data access, control, and disclosure;
- (b) Contacting NSP about certain questions regarding your Bill Credits; and
- (c) Contacting US Solar about questions regarding this Agreement, NSP’s data policies, and Project-related items.

ARTICLE 3 ELIGIBILITY AND EXCESS BILL CREDIT PURCHASE

3.1 Eligibility Data. You acknowledge that the account data contained in Exhibit H is complete and accurate and that US Solar may use the data for purposes of confirming your conformance with the applicable Eligibility Requirements. You agree to provide US Solar and the applicable Project Owner with any additional information we request to determine, verify, or confirm your eligibility at any time during the Term.

3.2 Authorization to Access Data. You authorize US Solar and the applicable Project Owner to use all eligibility data set forth in Exhibit H, as well as your electric bills for each Eligible Address for the most recent twenty-four (24) months, to assist US Solar and the applicable Project Owner in confirming your eligibility.

3.3 Credit Information. Subject to the confidentiality and privacy provisions of Section 8.1, you agree to provide US Solar with information reasonably necessary for US Solar, the Project Owner, or its Financing Parties to confirm your creditworthiness.

3.4 Excess Bill Credit Purchase. As per the SRC Contract, any excess Bill Credits (i.e., Bill Credits in a billing period that exceed the amount you owe NSP for your regular retail service in that period) will be carried forward and credited against all charges for at least a twelve (12) month cycle. Under the SRC Contract, NSP will be required to purchase from you all such Bill Credits with the billing statement that includes the last day of February and restart the credit cycle the following period with a zero credit balance.

ARTICLE 4 US SOLAR RESPONSIBILITIES

4.1 Design and Implementation. We agree to develop, design, finance and construct the Project(s), including, but not limited to, site acquisition, the filing of interconnection applications and procurement of an interconnection agreement with NSP, the selection and procurement of Project components, and the installation and testing of all Project components.

4.2 Application Process. We shall submit each Project to NSP for approval as a Community Solar Garden (“**CSG**”) in accordance with the CSG Tariff and shall provide all information required by NSP to determine the completeness of our application and technical viability of each Project. Once offered by NSP, we (or the applicable Project Owner) shall enter into the SRC Contract, interconnection agreement, and other agreements with NSP that may be

necessary to qualify each Project as a CSG and for the Project to operate and deliver energy to NSP.

4.3 Timeliness. In keeping with the time requirements set forth in the SRC Contract, we shall use commercially reasonable efforts to finish construction and installation of each particular Project within twenty four (24) months after NSP has deemed complete our CSG application with respect to such Project.

4.4 Eligibility Compliance. US Solar is responsible for confirming compliance with the Eligibility Requirements, including verification of the eligibility information you have provided to US Solar.

4.5 Maintenance. We will maintain the Project in a prudent manner and in accordance with industry standards throughout the Term. We will provide you with notice of any material repair or replacement event that is reasonably anticipated to exceed one hundred eighty (180) days.

ARTICLE 5 FURTHER INFORMATION

5.1 Unsubscribed Energy. Unsubscribed Energy will be purchased by NSP from the Project in accordance with the SRC Contract and Applicable Laws.

5.2 Reserves. US Solar will establish reserve funds available for use to maintain the Project and pay Project operating expenses such as taxes, maintenance, insurance, and management services for the Term.

5.3 Other Agreements and Documents.

(a) Upon your request we will provide the following when and as available:

- i. Copy of the SRC Contract between NSP and the Project Owner;
- ii. Copy of the solar module warranty;
- iii. Certificate(s) of insurance; and
- iv. Long-term maintenance plan.

(b) We will provide you with any other information that you may request, or that we may be required to deliver, under the CSG Tariff.

(c) You agree to sign an acknowledgment of receipt of any such materials.

5.4 Information Sharing. The Parties acknowledge the Agency Agreement contains certain provisions relating to “Subscriber Account Information” and “Subscriber’s Energy Use Data” and agree to adhere to those provisions.

5.5 Fair Disclosure. You acknowledge that, prior to entering into this Agreement and becoming a Subscriber, we fairly disclosed to you the future potential costs and benefits of your Subscription and provided you with a copy of the SRC Contract. US Solar will comply with all other requirements of the MPUC and CSG Tariff with respect to communications with you.

5.6 Taxes. You recognize that neither we nor NSP makes any representations or warranties concerning the taxable consequences, if any, to you with respect to your Bill Credits, your SunscriptionSM Payments, or your participation in the Project. We are responsible for paying the Minnesota Solar Energy Production Tax, if any, as in effect as of the Effective Date under Minnesota Statutes 272.0295. You are responsible to either pay or reimburse us for any and all other Taxes assessed on the generation, sale, delivery, or consumption of your Subscribed Energy or your Bill Credits.

5.7 Securities Laws. Neither we nor NSP makes any representations or warranties concerning the implication of any federal or state securities laws with respect to this Agreement or your CSG Allocation. Neither this Agreement nor your CSG Allocation has been registered under the Securities Act of 1933, as amended, or any state securities laws. US Solar does not believe this Agreement or the CSG Allocation constitute a security governed by such laws but, in the event any such securities laws may apply, Project Subscriber represents that, as of the Effective Date, it is an “accredited investor” as that term is defined in Rule 501 of the Securities and Exchange Commission under the Securities Act of 1933, as amended. Project Subscriber agrees that it is not entering into this Agreement or acquiring the Bill Credits for the purpose of making a market in such interests or trading them on any securities market or equivalent thereof which might fall within the scope of such laws. You are urged to seek your own professional advice on these matters.

ARTICLE 6 TRANSFERABILITY

6.1 General. This Agreement and your Bill Credits are your personal property. Your ability to continue to receive Bill Credits is dependent upon your continuing compliance with the applicable Eligibility Requirements and your payment of the SunscriptionSM Payments. This Agreement and the Bill Credits are transferable only as set forth below. This Agreement and the Bill Credits are not transferable by you, whether voluntarily or by operation of law, at any time when you are in default under this Agreement, unless as approved by US Solar.

6.2 Sale or Transfer to Other Eligible Subscribers. You may voluntarily sell or transfer this Agreement, or any portion of your CSG Allocation (but not less than the minimum set by Eligibility Requirements), for any reason (but not more than once in any twelve (12) month period) and to any person or entity who, at the time of the sale or transfer meets applicable Eligibility Requirements for the relevant Project(s). Any amounts you collect from a transferee in respect of your transfer of this Agreement, or any portion of your CSG Allocation, belongs to you. Neither US Solar nor a Project Owner will have any claim or right to any such amounts you may receive.

Your sale or transfer of your CSG Allocation for any Project is expressly conditioned upon:

- (a) US Solar receiving at least ninety (90) days’ prior written notice identifying the prospective purchaser or transferee, providing the physical address at which it takes electric service from NSP, the NSP account number and all other information needed to determine its eligibility to be a Subscriber, as well as any other subscriptions in the relevant Project or other CSGs held by the proposed

transferee, and any solar facility owned or leased by the proposed transferee at the address associated with the proposed transfer;

- (b) Receipt by US Solar of authorizations from the proposed transferee needed to access their NSP account data, and receipt by US Solar of usage data at the proposed transferee's address needed to calculate its historic electrical usage;
- (c) Determination by US Solar that the proposed transferee is eligible to be a Subscriber in the relevant Project and that its participation as a Subscriber will not cause the Project to fail any Eligibility Requirement or otherwise fail to comply with any Applicable Laws or contractual obligations to NSP;
- (d) The proposed transferee's (i) express written assumption of this Agreement or execution and delivery of a new subscription agreement with US Solar as to the CSG Allocation on terms acceptable to US Solar, including the cure of any prior defaults arising under this Agreement; and (ii) execution of an Agency Agreement or any other document reasonably required by US Solar or NSP to effectuate the transfer and maintain compliance with the Eligibility Requirements;
- (e) The proposed transferee meeting our credit requirements; and
- (f) US Solar receiving any applicable Cover Cost Amount from Project Subscriber.

US Solar shall notify NSP of any such transfer so that NSP may change the applicable Subscriber benefits to apply to the transferee's retail NSP electric account.

6.3 Relocation/Sale of Eligible Address.

- (a) If during the Term you move from an Eligible Address and are no longer the NSP account-holder at that address, you may transfer all or part of your CSG Allocation to another Eligible Address of yours (new or existing) conditioned on the following:
 - i. You provide us with at least ninety (90) days' notice of such transfer; and
 - ii. We determine that the new address, including the prior electrical usage at that address, will allow for the transferred CSG Allocation to continue to meet the applicable Eligibility Requirements.
- (b) If during the Term you move from or sell an Eligible Address and are no longer the NSP account-holder at that address, and you are not relocating to a new Eligible Address or do not have sufficient subscription capacity at another Eligible Address, before moving you must either:
 - i. Sell or transfer the relevant portion of your CSG Allocation in accordance with Section 6.2. If requested by you, we will use commercially reasonable efforts for up to one hundred eighty (180) days to assist you in this process; or
 - ii. Cancel the relevant portion of your CSG Allocation pursuant to Section 10.1 (a)(iii) below.

- (c) You are obligated to maintain compliance with the applicable Eligibility Requirements and to notify us if you plan to be out of compliance. You acknowledge that your failure to maintain compliance with the applicable Eligibility Requirements may result in NSP not paying you Bill Credits and our cancellation of the relevant CSG Allocation.
- (d) This Agreement confers to us no right to interfere with, or require our consent to, your sale or transfer of your real property.

ARTICLE 7 FINANCING

7.1 Consent. We may, without your prior consent, in whole or in part, (i) assign, mortgage, pledge or otherwise collaterally assign our interests in this Agreement and the Project to any Financing Party, (ii) directly or indirectly assign this Agreement and the Project to a Project Owner or an affiliate or subsidiary of ours, (iii) assign this Agreement and the Project to any entity through which we are obtaining financing or capital for the Project; and (iv) assign this Agreement and the Project to any person succeeding to all or substantially all of our assets. In the event of any such assignment (other than a collateral assignment), we shall be released from all our liabilities and other obligations under this Agreement (only upon assumption of our obligations hereunder by the assignee). However, any assignment of our rights and/or obligations under this Agreement shall not result in any change to your rights and obligations under this Agreement. A Financing Party may assign its interest at any time, and without your consent, to another person or another Financing Party. If the Financing Party or its successor becomes the owner of our interest by foreclosure or otherwise, it may sell or transfer that interest to any third party without your consent.

7.2 Changes. You acknowledge that we may obtain construction and long-term financing from one or more Financing Parties. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with any assignment by us (or the Financing Parties, as described below), you agree to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties. If this Agreement applies to more than one Project, you also agree to execute a separate Agreement for each Project if requested by us in connection with such assignment.

7.3 Notice and Opportunity to Cure. You may not terminate or suspend your performance due to our Event of Default unless you have given the Financing Parties prior written notice of your intent to so terminate or suspend this Agreement. In your notice you will describe the circumstances giving rise to our default, and provide the Financing Parties with the opportunity to cure the default within thirty (30) days after receipt of such notice or any longer period provided for in this Agreement. If our default reasonably cannot be cured by the Financing Parties within the period provided and the Financing Parties commence and pursue to cure of such default within that period, the period for cure will be extended for a reasonable period of time under the circumstances, but not to exceed an additional sixty (60) days. The Parties' respective obligations under this Agreement will otherwise remain in effect during the cure period. If the Financing Parties or an assignee (including any buyer or transferee) acquires

title to or control of our assets and within the applicable time periods cures all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third party or entity, then such Financing Parties or third party transferee will no longer be in default under this Agreement, and this Agreement will continue in full force and effect.

ARTICLE 8 PRIVACY; CONFIDENTIALITY; PUBLICITY

8.1 Subscriber Data. Other than in accordance with the Agency Agreement, US Solar will not disclose Project Subscriber's Account Information, Subscriber Energy Usage Data, Bill Credits or any other personal information of Project Subscriber to any person except (i) to NSP, to the extent required by Applicable Laws or the SRC Contract, for the purpose of administration of the Project, Project CSG eligibility, and Project Subscriber CSG eligibility; (ii) to attorneys, accountants, advisors, and agents of US Solar to the extent necessary for them to render advice or perform professional services associated with the Project or this Agreement; (iii) as otherwise required by Applicable Laws.

8.2 Publicity. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement or related to Project Subscriber's participation in a Project, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Notwithstanding the foregoing, the Parties agree to the use each other's logos in their respective marketing materials.

ARTICLE 9 DISPUTE RESOLUTION

9.1 NSP Disputes.

- (a) Any dispute or question which you have with respect to the application by NSP of the Bill Credits to your retail electric bill, in particular the applicable Bill Credit Rate that NSP used to determine the amount of your Bill Credits, shall be directed by you to NSP for resolution. You may request that US Solar assist you in this respect. You acknowledge that your obligation to make your SunsubscriptionSM Payments is independent of the amount of your Bill Credits.
- (b) All disputes arising with respect to the contract between NSP and US Solar shall be resolved by negotiation and, in the absence of a resolution, by the Minnesota Public Utilities Commission ("**MPUC**"), as per the SRC Contract. Any issue or dispute identified by you with respect to NSP's actions with respect to the Project or the Bill Credits other than as described in Section 9.1(a) shall be referred to US Solar. If the dispute or question is not resolved to the Project Subscriber's satisfaction, you have the right to refer the issue directly to the MPUC at the following address:

Minnesota Public Utilities Commission
121 7th Place East, Suite 350

St. Paul, MN 55101
Tel: (651) 296-7124
Toll free: (800) 657-3782
Fax: (651) 297-7073
consumer.puc@state.mn.us

9.2 Disputes between Parties.

- (a) Any dispute or issue a Party may have arising from or related to this Agreement, which are not resolved by communications between Project Subscriber and US Solar representatives in person, over the phone, or electronically shall be submitted to the other Party in writing. Each Party shall assign an officer or senior management executive to address or negotiate a resolution with the other Party. The Parties agree to attempt to reach a resolution of such dispute within ten (10) days or such longer period as the Parties may agree.
- (b) We shall perform any calculation called for hereunder and do so in a commercially reasonable manner and in accordance with industry accepted standards. Any dispute regarding the results of any such calculation shall be resolved by having an independent consultant having nationally recognized credentials, such as Navigant Consulting, Inc. or Leidos, Inc., perform the calculation at the disputing party's expense. Such consultant's results shall be binding on the Parties absent manifest error.
- (c) Any dispute arising from or relating to this Agreement not resolved by the Parties under Section 9.2(a)-(b) above shall be arbitrated in Minneapolis, MN. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration.

**ARTICLE 10
CANCELLATION EVENTS; EVENTS OF DEFAULT; REMEDIES**

10.1 Cancellation Events.

- (a) You may cancel all or part of your CSG Allocation relating to a particular Project to the extent that:
 - i. Construction of that Project is not completed within twenty-four (24) months of our receipt of NSP determining that Project's CSG application is complete, as extended by Force Majeure, and additional Project capacity does not exist;
 - ii. That Project becomes ineligible, in whole or in part, as a CSG during the Term and the related SRC Contract is terminated, and additional Project capacity does not exist; or
 - iii. You become aware that, due to relocation or other material changes, your CSG Allocation will no longer satisfy the applicable Eligibility Requirements

and you elect not to sell or transfer, or cannot sell or transfer, your CSG Allocation to another eligible NSP customer.

- (b) We may cancel all or part of your CSG Allocation relating to a particular Project to the extent that:
 - i. You fail to meet the applicable Eligibility Requirements at any time during the Term;
 - ii. Your CSG Allocation is transferred by operation of law as defined in Section 10.7 to an ineligible person or entity and is not sold to an eligible transferee within the time provided;
 - iii. Prior to the start of Project construction, we are not able to confirm your creditworthiness; or
 - iv. Prior to the start of Project construction, we determine to terminate the development of Project(s) for which your CSG Allocation relates, and additional Project capacity does not exist.
- (c) Cancellation will be effective upon written notice by the cancelling Party to the other Party, including a description of the circumstances giving rise to the Cancellation Event and the specific portion of CSG Allocation canceled.

10.2 Events of Default. Each of the following events shall be an Event of Default under this Agreement:

- (a) A Party breaches any material representation or warranty or fails to perform a material obligation set forth in this Agreement and does not cure such breach or failure within thirty (30) days of written notice of the breach from the non-defaulting Party.
- (b) With respect to Project Subscriber, failure to make any SunsubscriptionSM Payment when due, and failure to cure the default within ten (10) days after written notice of such failure from US Solar.

10.3 Cancellation Remedies.

- (a) In the case of a cancellation pursuant to Sections 10.1(a)(i) or (ii) or 10.1(b)(iii) or (iv), you will owe nothing with respect to the amount of CSG Allocation cancelled.
- (b) In the case of a cancellation pursuant to Sections 10.1(a)(iii) or 10.1(b)(i) or (ii) (each, a “**Covered Cancellation Event**”), you will be responsible for paying the Cover Cost Amount, if any, with respect to the amount of CSG Allocation cancelled, subject to the following:
 - i. We will use commercially reasonable efforts for up to one hundred eighty (180) days after such cancellation (“**Cancellation Replacement Period**”) to secure one or more Eligible Transferee who will subscribe to the entire cancelled portion of your CSG Allocation at no less than your SunsubscriptionSM Rate. If we are successful, your Cover Cost Amount will be zero.

- ii. To the extent during the Cancellation Replacement Period we are unsuccessful in securing one or more Eligible Transferees who will subscribe to the entire cancelled portion of your CSG Allocation, the Unsubscribed Energy rate provided for in the CSG Tariff will be used in lieu of a transferee SunscriptionSM Rate for purposes of determining the Cover Cost Amount.
- (c) During the Cancellation Replacement Period and before paying any Cover Cost Amount or other cancellation related amounts, you will be responsible for making SunscriptionSM Payments that will be deemed to equal the full amount of your SunscriptionSM Payments had no cancellation occurred.
- (d) At the end of the Cancellation Replacement Period, we will determine the Cover Cost Amount and other amounts owing by you and provide you written notice of same. These amounts will become due and payable by you within ten (10) days of your receipt of this notice.
- (e) After paying the Cover Cost Amount, your remaining SunscriptionSM Payments will reflect your appropriately reduced CSG Allocation.
- (f) You will be responsible for reimbursing us for any costs we reasonably incur in identifying an Eligible Transferee who will subscribe to the cancelled portion of your CSG Allocation and in the execution of related documentation.
- (g) Upon cancellation of the entire CSG Allocation, we may terminate this Agreement in its entirety.

10.4 Default Remedies. In the event a defaulting Party fails to cure an Event of Default within the applicable cure period, the non-defaulting Party may:

- (a) With respect to an Event of Default by Project Subscriber:
 - i. We may terminate this Agreement immediately by notifying you in writing.
 - ii. We may direct NSP to remove you as a subscriber with respect to the Project, and you will no longer receive Bill Credits associated with the CSG Allocation.
 - iii. You will owe the Cover Cost Amount, if any.
 - 1. We will use commercially reasonable efforts for sixty (60) days after your Event of Default (“**Default Replacement Period**”) to secure one or more Eligible Transferee who will subscribe to your entire CSG Allocation at no less than your SunscriptionSM Rate. If we are successful, your Cover Cost Amount will be zero.
 - 2. To the extent during the Default Replacement Period we are unsuccessful in securing one or more Eligible Transferee who will subscribe to your entire CSG Allocation, the Unsubscribed Energy rate provided for in the CSG Tariff will be used in lieu of a transferee SunscriptionSM Rate for purposes of determining the Cover Cost Amount.

- iv. You will owe an amount equal to the SunscriptionSM Payments that would have been payable by you during the Default Replacement Period absent the Event of Default.
- v. At the end of the Default Replacement Period, we will determine the Cover Cost Amount and other default-related amounts owing by you and provide you with written notice of same. These amounts will become due and payable immediately by you upon your receipt of this notice.
- vi. You will be responsible for reimbursing us for any costs we reasonably incurred in attempting to identify an Eligible Transferee and in the execution of related documentation.
- vii. Upon termination of this Agreement, we shall have no further obligations to you hereunder.

(b) With respect to an Event of Default by US Solar:

- i. Prior to the COD of the final Project, you may terminate this Agreement at any time by notifying us in writing.
- ii. After the COD of the final Project, you may terminate this Agreement only if our default results in your CSG Allocation not producing any Subscribed Energy for one hundred eighty (180) consecutive days or more.
- iii. Upon termination, you shall have no further obligation to us except for obligations arising or accruing prior to termination.

10.5 No Consequential Damages. No Party shall be liable to the other Party for any indirect, special, punitive, exemplary, incidental, or consequential damages, whether arising in contract, tort, under statute, or in equity, and each Party waives its rights to any such damages. In no event will the Cover Cost Amount constitute, or be deemed to constitute, indirect, special, punitive, exemplary, incidental, or consequential damages.

10.6 No Warranty; Exclusive Remedies. NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be the Parties' sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

10.7 Involuntary Transfers. Upon transfer of title or control of the Eligible Address or your CSG Allocation, or portion thereof, due to bankruptcy, foreclosure or operation of law for other reasons, you or the transferee must notify US Solar immediately. During any period of time in which a trustee, receiver, or creditor is in possession of the Eligible Address and assumes responsibility as the account-holder with NSP at the Eligible Address, such transferee shall be deemed to have succeeded to your rights and obligations under this Agreement at the Eligible Address during the period of its possession. Upon the transfer of title to the property at the Eligible Address and the CSG Allocation to a creditor or other third party, the transferee shall notify US Solar of the transfer. If the transferee(s) meet all relevant Eligibility Criteria, the transfer shall be treated as a sale or transfer of the CSG Allocation to such transferees upon completion of the conditions set forth in Section 6.2. If the transferee does not meet the transfer

conditions, then the transferee(s) shall be required immediately to sell or transfer the CSG Allocation or applicable portion to an eligible buyer in accordance with Section 6.2.

ARTICLE 11 MISCELLANEOUS

11.1 Notices. Notices, or other documents required or permitted by this Agreement must be given by personal delivery, reputable overnight courier, email, or U.S. certified mail postage prepaid and shall be sent to the respective parties at the address listed on the first page of this Agreement. Notice shall be deemed delivered (i) the day of delivery, if delivered by hand during the receiving party's regular business hours or by e-mail before or during the receiving party's regular business hours, (ii) upon the date of actual delivery or refusal shown on the courier's delivery receipt if sent by overnight courier, and (iii) on the fourth business day after deposit in the U.S. mail if sent by certified mail. Any party may change the address for notice by notice to the other party.

11.2 No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or liability to, any person not a party to this Agreement. Excepting the rights of Financing Parties and assignees expressly provided for herein, no provision of this Agreement is intended to nor shall it in any way provide any rights to any third party or inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

11.3 Entire Agreement; Amendments. It is mutually understood and agreed that this Agreement, and the Exhibits attached hereto, constitutes the entire agreement between Project Subscriber and US Solar and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representations or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both parties; provided, however, that, US Solar may amend Project and Project Site information and allocate your CSG Allocation among Projects and Project Sites (prior to relevant CODs) without Project Subscriber's prior consent.

11.4 Governing Law. This Agreement is made in Minnesota and shall be governed by the laws of the State of Minnesota.

11.5 SRC Contract and CSG Tariff. This Agreement contains summaries of, and makes reference to, certain provisions of the SRC Contract and CSG Tariff. While we believe these summaries and references to be accurate and fair, any conflict between such summaries and references shall be resolved in favor of the relevant provisions contained in SRC Contract and CSG Tariff. You are urged to review these documents.

11.6 Waiver. Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

11.7 Relationship of Parties. The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between the Parties or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. US Solar and Project Subscriber shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

11.8 Severability. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in full force. The Parties will, however, use commercially reasonable efforts to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Agreement as a whole.

11.9 Counterparts. This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

(SIGNATURE PAGES TO FOLLOW)

City of Birchwood Village

US Solar LLC

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

DEFINITIONS

1. **Applicable Laws.** Any law, statute, rule, regulation, ordinance, order (including orders issued by the MPUC), tariff, judgment, or other legally binding restriction or ruling issued by a governmental authority which is applicable to the Project, US Solar, Subscribers, CSGs or this Agreement.
2. **Bill Credit Rate.** A dollar amount per kilowatt-hour reflected in the CSG Tariff with respect to specific classes of NSP customers to be used for determining a Subscriber's Bill Credit.
3. **Cancellation Event.** One or more event described in Section 10.1(a)-(b).
4. **Cover Cost Amount.**
 - (a) With respect to a sale or transfer by you pursuant to Section 6.2, the positive difference, if any, of:
 - i. the net present value (using a discount rate of 4%) of the projected payments by you over the Term post-transfer with respect to the transferred portion of your CSG Allocation, had this Agreement remained unchanged for the remaining Term (plus any other amounts previously accrued and owed by you); minus
 - ii. the net present value (using a discount rate of 4%) of the projected payments to be made by your transferee with respect to the transferred portion of your CSG Allocation over the remaining Term.
 - (b) With respect to a Covered Cancellation Event, the positive difference, if any, of:
 - i. the net present value (using a discount rate of 4%) of the projected payments by you over the Term post-cancellation with respect to the cancelled portion of your CSG Allocation, had this Agreement remained unchanged for the entire Term (plus any other amounts previously accrued and owed by you); minus
 - ii. the net present value (using a discount rate of 4%) of the projected payments to be made by an Eligible Transferee (or, as applicable, by NSP for the Unsubscribed Energy associated with the portion CSG Allocation not transferred) with respect to the cancelled portion of your CSG Allocation over the remaining Term.
 - (c) With respect to an Event of Default by you, the positive difference, if any, of:
 - i. the net present value (using a discount rate of 4%) of the projected payments by you over the Term post-default, had this Agreement remained unchanged with respect to your entire CSG Allocation for the entire Term (plus any other amounts previously accrued and owed by you); minus
 - ii. the net present value (using a discount rate of 4%) of the projected payments to be made by an Eligible Transferee (or, as applicable, by NSP for the Unsubscribed Energy associated with the portion CSG Allocation not transferred) with respect to the entire CSG Allocation over the remaining Term.

5. **CSG Tariff.** The Solar Rewards Community Program tariff of NSP's rate book, as amended or updated and any successor thereto.
6. **Eligible Address.** A Subscriber's NSP service address that meets the Eligibility Requirements.
7. **Eligible Transferee.** A person or entity who meets the applicable Eligibility Requirements and meets the conditions set for in Section 6.2(a)-(e)
8. **Financing Party.** A person or persons providing construction or permanent financing in connection with construction, ownership, operation and maintenance of the Project, or if applicable, any person to whom the ownership interest in the Project has been transferred, subject to a leaseback of the Project from such person.
9. **JAMS.** JAMS, formerly known as Judicial Arbitration and Mediation Services, Inc.
10. **MPUC.** Minnesota Public Utilities Commission.
11. **NSP.** Northern States Power Company, a wholly owned subsidiary of Xcel Energy Inc.
12. **SunscriptionSM Rate.** A dollar amount per kilowatt-hour with respect to the Subscribed Energy produced by Project Subscriber's CSG Allocation, as set forth in Section 1.5(a), used for determining Project Subscriber's SunscriptionSM Payments.
13. **Taxes.** Any federal, state, or local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, or transaction tax, other taxes, regulatory fees, surcharges, or other similar charges, but does not include any income taxes imposed on US Solar for payments made by you and received by us under this Agreement.

Any conflict in the meaning of a term used both herein term and in the SRC Contract shall be resolved in favor of the meaning given to such term in the SRC Contract.

EXHIBIT B

PROJECT(S) AND PROJECT SITE(S)

To be assigned closer to construction.

EXHIBIT C

BILL CREDIT TYPES, CURRENT BILL CREDIT RATES, CURRENT SUNSCRIPTIONSM
RATES

Account Number	Premise Number	Account Type
51-4586612-4	302567785	Small General Service
51-4586612-4	302873184	Small General Service
51-4586612-4	302585432	Small General Service
51-4586612-4	303011102	Small General Service
51-4586612-4	302261406	Small General Service

General Service subscription rate: \$0.1199/kWh
Small General Service subscription rate: \$0.1444/kWh

Bill Credit Value. We make no representation or warranty as to the likelihood that any Bill Credits will create any specific amount of economic benefit at any time or over any period of time or over the Term of this Agreement as a whole, or that the Bill Credits will create a positive economic benefit to you. The estimate of potential benefits contained herein are based on a number of assumptions about estimated Subscribed Energy Bill Credit Rates, Applicable Laws currently in place, NSP's retail electrical rates, and a number of other factors beyond the control of US Solar. Any estimate by US Solar herein or elsewhere given to Project Subscriber as to any expected benefit to Project Subscriber from the Bill Credits at any time or over any period of time is purely an estimate based on the information available to US Solar and related assumptions at the time and is not a guarantee that any positive economic benefit will accrue to Project Subscriber from the Bill Credits or that any specific amount of benefits will accrue to Project Subscriber at any time, or over any period of time, or over the Term of the Agreement.

EXHIBIT D

ESTIMATE OF SUBSCRIBED ENERGY

85,052 kWh in year 1.

Production. US Solar makes no representation or warranty as to the likelihood that the Project will generate any specific amount of electricity or sufficient electricity so as to create any specific or minimum Bill Credits to Project Subscriber during any period of time or over the Term of the Agreement as a whole. The production estimate described herein is based on a number of assumptions about expected solar insolation at the Project Site, and performance of the modules and other Project equipment, the accuracy of production estimating software and other factors affecting possible production which are not within the control of US Solar. Circumstances experienced at the Project will deviate from historical data and other assumptions and projections. The actual production of energy of electricity by the Project and delivery of energy, including Subscribed Energy, by the Project is also subject to lack of sunlight, other adverse weather, equipment failures, curtailments or outages by NSP, Force Majeure events, and other events beyond the control of US Solar. The production estimate and any other estimate communicated by US Solar to Project Subscriber of expected energy production from the Project at any time or over any period of time is purely an estimate based on the information available to US Solar at the time and is not a guarantee that any such production will occur or that any particular amount of Subscribed Energy will be received by Project Subscriber at any time or over any period of time, including the Term of this Agreement.

EXHIBIT E

[RESERVED]

EXHIBIT F

FORM OF SRC CONTRACT

This is a standard contract from Xcel (template can be found on Xcel's website at <https://www.xcelenergy.com/staticfiles/xe-responsive/Marketing/MN-Availible-solar-options-SRC-contract.pdf>). To be executed and inserted as Projects near construction.

EXHIBIT G

FORM OF AGENCY AGREEMENT

This is a standard contract from Xcel (template can be found on Xcel's website at <https://www.xcelenergy.com/staticfiles/xcel/Marketing/Files/MN-SRC-Subscriber-Agency-Agreement.pdf>). To be executed and inserted as Projects near construction.

EXHIBIT H

PROJECT SUBSCRIBER DATA

1. Project Subscriber (name as shown on NSP account) Birchwood City of
2. NSP service address (Eligible Address): 207 Birchwood Ave
White Bear Lake, MN 55110-1610
3. NSP account number: 51-4586612-4
4. Average annual electrical consumption: 70,877 kWh ("AAEC")
5. 120% of AAEC: 85,052 kWh

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Comprehensive Plan Update



Birchwood Village

Dear Mayor and Council Members,

During the last Planning Commission meeting on June 6, Commissioners voted unanimously to recommend Council approve the enclosed agreement with SHC for consultation services with the Comprehensive Plan and Local Water Plan.

Jennifer Haskamp, a representative from SHC, is present at tonight's meeting to explain her services and answer any of your questions. She has agreed to work with the City to structure an agreeable arrangement that balances her professional services along with Birchwood resident volunteers to keep the consultant services at or below \$10,000 – the grant amount.

Enclosed is a quote for the Local Water Plan and a contract that covers both the Local Water Plan and the Comprehensive Plan. Much of the work creating the Local Water Plan will also be used throughout the rest of the Comprehensive Plan. Accordingly, it makes sense to use the same consultant for the entire Comprehensive Plan, including the Local Water Plan.

Staff requests Attorney Kantrud's feedback and recommendations related to the enclosed contract. Staff also requests Council's consideration of the offer and the recommendations from both the Planning Commission and Attorney Kantrud.

Staff and Commissioners also request Council provide input regarding the City's vision, to be incorporated in the Comprehensive Plan and to direct the writing of the plan. Thanks!

Regards,
Tobin Lay

June 5, 2017

City of Birchwood Village
Attn: Mr. Dennis Sonnek
207 Birchwood Avenue
Birchwood, MN 55110

Transmitted via email to:
dennis.sonnek@cityofbirchwood.com
tobin.lay@cityofbirchwood.com

Dear Mr. Sonnek,

Thank you for reaching out to me regarding the City's Local Water Plan Update which is a part of the larger 2040 Comprehensive Plan Update process. As discussed, I have briefly reviewed the City's Local Water Management Plan originally completed in the late 1990s, the City's 2008 Water Management Plan Amendment, and the Rice Creek Watershed District's (RCWD) checklist for the current update process.

I have prepared a rough scope to address what items must be updated to prepare a revised Local Water Plan that will meet the RCWD's requirements, while also satisfying the 2040 Comprehensive Plan Update process with the Metropolitan Council. The good news is that several of the components contained in the Local Water Plan update will do 'double-duty' and will be integrated into your overall 2040 Comprehensive Plan to fulfill some of the regulatory requirements of that process. A summary of the general scope of services that I anticipate SHC performing relating to the Water Plan Update are as follows:

- ***Review and synthesize all existing and available plans with applicable information for incorporation into the Local Water Plan, in compliance with checklist items.*** This will then reveal the 'holes' of what must be further review and/or updated to complete the checklist. Since SHC has not worked with Birchwood before, we do not know the extent or accuracy of the information available, therefore, we have estimated what costs/time may be associated with this effort. If this process proves to be less time consuming than anticipated, the proposed budget would simply be adjusted to reflect only time spent on this effort.
- ***Prepare and update GIS Mapping.*** This process will include setting up the GIS information for Birchwood Village, creating a set of maps and acquiring regional information to assist with completion of the Water Plan update. The GIS information will be completed in a form that is also usable in the overall 2040 Comprehensive Plan Update. (i.e. The zoning map/existing land use/coverage will be prepared and updated so that acreages and quantities can be calculated easily for purposes of the Water Plan, and then used to fill in necessary information into the Land Use Chapter of your overall 2040 Comprehensive Plan).



- **Prepare draft text and an analysis of sections not contained in the existing/adopted water plan.** There are new requirements and/or sections that must be drafted to comply with the requirements of the RCWD and also the Metropolitan Council. SHC will draft relevant sections for your review and consideration.
- **Collect technical information.** There are some pieces of technical data that SHC may need to coordinate and/or collected from the RCWD, and/or may need the assistance of the City’s engineer (if available). In the event the City does not have a City engineer, and technical information is needed, SHC has several strong partnerships with local engineers that could provide the necessary assistance. SHC will work with Birchwood Village to identify the appropriate resource and work collaboratively with the city through that process, if needed. Based on preliminary information it appears that this may not be needed, or that any assistance can be obtained from RCWD.
- **Meeting Attendance.** SHC will attend Planning Commission and/or City Council meetings to present the draft Water Plan and to solicit feedback. This includes holding a public hearing for consideration of the draft document prior to submittal to the RCWD and Metropolitan Council for review.

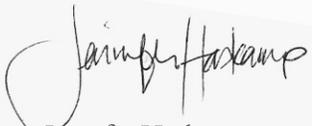
Based on the above summary scope of services, SHC estimates the budget as the following:

Research, Review and Synthesis:	\$900
Document Preparation (drafting):	\$2,475
Mapping Services:	\$1,125
Meeting Attendance:	\$500
TOTAL Estimate:	\$5,000

The estimates above would be billed against the task using SHC’s hourly rate schedule, which is provided as Attachment 1 to this letter proposal. SHC is proposing a flat meeting rate for Planning Commission and City Council meetings to prevent large overruns that can sometimes occur with public meetings. As previously stated, SHC will only bill for hours worked. If the anticipated budget appears to be compromised at any time we will seek your authorization for any additional budget prior to completing work.

If you have any questions please do not hesitate to contact me. Again, I sincerely appreciate you reaching out to me, and I look forward to working with the City of Birchwood Village to update your Local Water Plan.

Sincerely,



Jennifer Haskamp

Owner & Principal Planner
SHC, LLC



Attachment 1: Rate Schedule

(2017)

Service	Rate
Principal Planner (Haskamp, SHC) <ul style="list-style-type: none"> ▪ Report & Document Preparation/Review ▪ Research and Analysis ▪ Meeting Attendance 	\$120/Hour
Project Planner (Yahner, SHC) <ul style="list-style-type: none"> ▪ Meeting Attendance ▪ Research and Analysis 	\$95/Hour
Hourly Rate - Technical Analysis <ul style="list-style-type: none"> ▪ GIS Mapping ▪ Document Layout ▪ Graphics 	\$90/Hour
Flat Meeting Rate <ul style="list-style-type: none"> ▪ Planning Commission Meeting Attendance ▪ City Council Meeting Attendance 	
Mileage rate (Standard IRS rate)	\$0.54/mile
Printing and Mailing Services**	Actual Expenses

**Billing will be submitted on an hourly rate up to the estimated costs, and billed per task. Authorization to exceed estimated costs will be obtained prior to completing any additional work.*

****Daily printing and small print will not be charged. Large scale or large quantity print jobs will be billed at actual expense rates.*

MASTER SERVICES AGREEMENT
 BETWEEN SWANSON HASKAMP CONSULTING, LLC
 AND THE CITY OF BIRCHWOOD VILLAGE FOR PLANNING SERVICES RELATED TO
 THE 2040 COMPREHENSIVE PLAN UPDATE

The Agreement ("Agreement") is made as of June 13, 2017 and between, the City of Birchwood Village ("Client"), 207 Birchwood Avenue, Birchwood, MN 55110, and Swanson Haskamp Consulting, LLC ("SHC"), 246 Albert Street S., Suite 2A, St. Paul, MN 55105, to provide Professional Planning Services ("Services") by SHC for the 2040 Comprehensive Plan Update project ("Project") as directed by the Client.

Description of Services (Scope of Services)

Jennifer Haskamp, President of SHC shall be the primary contact and project manager assigned to perform planning and project management services for the Project. SHC will work at the direction of City Staff to assist on the Project as requested. SHC will coordinate with City Staff to identify desired deliverables, and estimated anticipated costs to provide and perform the requested work. The Project will generally include the following tasks:

- Update of the City's Water Management Plan (aka Local Water Plan) in compliance with the Metropolitan Council and Rice Creek Watershed District requirements; and
- 2040 Comprehensive Plan Update for compliance with Metropolitan Council's System Statement for the City of Birchwood Village; and
- Update and development of GIS mapping for incorporation and analysis.

Standard of Care.

SHC's services shall be performed based on the standard of reasonable professional care for services similar in scope, schedule, and complexity to the services being provided by SHC. All warranties, express or implied, under the Proposal or otherwise, in connection with SHC's services are expressly disclaimed.

Period of Service

This contract shall be effective through completion of the draft 2040 Comprehensive Plan, which anticipated to be completed no later than December 2018.

Compensation

SHC shall be paid for Services, as directed by the Client, in relation to the Project in accordance with the following methods: on an hourly basis and as described per Attachment 1 Rate Schedule, plus reimbursable expenses where reimbursable expenses are described as but not limited to, plotting charges, Fed Ex, UPS, messenger delivery charges, and mileage, plus all taxes, fees, or stamps required by state federal, municipal or other government agencies.

Payments are due upon presentation of SHC's invoices, and the Client agrees to pay bills within 30 days of receipt. SHC and the Client shall work together to establish the method for reporting and submitting invoices to assist with the ease of monthly billing and budget management. Client hereby acknowledges that sufficient funds are currently available, or methods to obtain funds, are assigned to pay for the cost of the Project contemplated by the Agreement. SHC has the right, at its sole discretion, to stop work and withhold work product or Services, if payments have not been received within 30 days of invoicing date. If Payments are not made within 30 days, a service charge of one (1) percent per month (12% annum), or as permitted by law, will be charged on any unpaid balance. Service charges may be compounded.

If Client fails to make payments to SHC consistent with the Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at SHC's option, cause for suspension of performance of the Services under the Agreement. If SHC elects to suspend Services, prior to suspension of Services, SHC shall give seven days written notice to Client. In the event of a suspension of Services, SHC shall have no liability to Client for delay or damage caused to Client because of such suspension of Services. Before resuming Services, SHC shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of SHC's services. SHC's fees for the remaining Services and the time schedules shall be equitably adjusted.

In the event of termination not the fault of SHC, SHC shall be compensated for Services performed prior to termination, together with reimbursable expenses due.

Client's Responsibilities

Client shall provide full information in a timely manner regarding requirements for and limitations for successful execution of the Services, including objectives, schedule, constraints and criteria, requirements and relationships and any other pertinent information that will assist SHC in achieving the expectations of the Client.

The Client shall designate a representative authorized to act on the Client's behalf with respect to the Project and will serve as the Project point of contact throughout the duration of this contract. The Client, or such designated representative, shall render decisions in a timely manner pertaining to documents submitted by SHC to avoid unreasonable delay in the orderly and sequential progress of the Project.

Termination

The Agreement may be terminated by either party at any time should the other party fail to perform in accordance with its terms through no fault of the party initiating the termination. Such termination shall be effective after giving ten days written notice. Client agrees to pay SHC for all Services provided up to the effective date of termination.

Miscellaneous

Work Product

The documents prepared by SHC for the Project are instruments of SHC's service for use solely with respect to the Client and, unless otherwise provided and agreed, SHC shall be deemed the author of these documents. All documents shall be the property of the Client, and both the Client and SHC shall retain all common law, statutory and other reserved rights, including the copyright. The Client and SHC shall be permitted to retain copies, including reproducible copies, of SHC's documents for the Client's information, reference and use in connection with the Services.

Claims and Consequential Damages

SHC and Client waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's terminating in accordance with the termination clause.

Any claim, dispute or other matter in question arising out of or relating to the Project or breach thereof ("Claim") shall be resolved by litigation in the State or (assuming subject matter jurisdiction) Federal Court located in Washington County, Minnesota.

Interpretation and Severability

Each provision of this Agreement is severable from the others. Should any provision of the Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of the Agreement. Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable.

Assignment

The Client and SHC, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Client nor SHC shall assign this Agreement without the written consent of the other.

Team Relationship

The Client and SHC agree to work together on the basis of trust, good faith and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner.

Entire Agreement

The terms and conditions set forth herein constitute the entire understanding of the parties relating to the services to be provided by SHC. Only a written instrument signed by both parties may amend the Agreement.

Governing Law

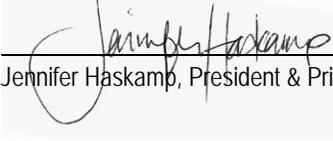
The Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Minnesota, excluding its conflict of laws. SHC and Client expressly consent to the exclusive personal jurisdiction and venue of the Minnesota courts for all purposes relating to the Project. The parties waive trial by jury.

Execution

In witness whereof, the parties hereto have made and executed the Agreement as of the day and first above written.

CITY OF BIRCHWOOD VILLAGE

SWANSON HASKAMP CONSULTING, LLC



Jennifer Haskamp, President & Principal Planner

6/13/2017

Printed Name

Date



Attachment 1: Rate Schedule

(2017)

Service	Rate
Principal Planner (Haskamp, SHC) <ul style="list-style-type: none"> ▪ Report & Document Preparation/Review ▪ Research and Analysis ▪ Meeting Attendance 	\$120/Hour
Project Planner (Yahner, SHC) <ul style="list-style-type: none"> ▪ Meeting Attendance ▪ Research and Analysis 	\$95/Hour
Hourly Rate - Technical Analysis <ul style="list-style-type: none"> ▪ GIS Mapping ▪ Document Layout ▪ Graphics 	\$90/Hour
Flat Meeting Rate <ul style="list-style-type: none"> ▪ Planning Commission Meeting Attendance ▪ City Council Meeting Attendance 	
Mileage rate (Standard IRS rate)	\$0.54/mile
Printing and Mailing Services**	Actual Expenses

**Billing will be submitted on an hourly rate up to the estimated costs, and billed per task. Authorization to exceed estimated costs will be obtained prior to completing any additional work.*

****Daily printing and small print will not be charged. Large scale or large quantity print jobs will be billed at actual expense rates.*

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Dock Association Review



Birchwood Village

Dear Mayor and Council Members,

I was asked to include the following letter from Mayor Wingfield in the Council Packet for your consideration and discussion:

“The Birchwood Dock Association currently owns and manages the docks at four of the city’s easements (Ash, Birch, Elm and Dellwood). The docks are private and only members are allowed to use them. Fees are charged for boat slips and winter lift storage. User fees of \$35 per household are also charged to those who do not have a boat slip. The city is paid \$200 by each boat slip user and \$100 for each lift stored over the winter.

While the issue of private docks at city easements was restructured seven years ago (See Chapter 617), there remain issues that are unresolved: lack of payment by the slip owners until after the season (see 617.350 (2)) and no payment of lift storage fees , no proof of insurance documents submitted by boat slip owners (see 617.390), difficulty in staff and residents contacting dock association personnel for information, and requiring swimmers to pay for dock access at a city beach when the city can provide such without incurring additional insurance costs. Legal issues arise from the fact the organization is not incorporated and every member is exposed to liability for any claims made against the group that are not covered by its insurance policy.

These matters should be reviewed by the city council to ensure the relationship is proper and effective. I am asking that the Birchwood Dock Association representative appear at the next City Council Meeting to further discuss these concerns” – Mayor Mary Wingfield.

Thanks!

Regards,
Tobin Lay

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Roads Committee Requests



Dear Mayor and Council Members,

I was asked by Mayor Wingfield to include the following letter in the Council packet for your consideration and discussion:

“MATTERS TO BE REFERRED TO ROADS COMMITTEE

Some residents along Birchwood Ave (between E Co Line Rd and City Hall) have noticed an uptick in traffic volume and speeds. This may be a result of traffic cutting through to avoid the stop sign at Cedar and Oak Ridge. At this time, there is no clear consensus on what should be done. It would be helpful if the Roads Committee can review the situation, including possibly posting the Wash Co Traffic trailer.

Also, Wildwood Park continues to experience people parking cars on the median perpendicular to the road. The area was signed “Parallel Parking Only” at both ends of the park. The Wash Co sheriff has suggested more signage. Perhaps the Roads Committee has other suggestions. Continued communication with the residents is also appropriate, especially with summer get-togethers generating more parking issues” – Mayor Wingfield.

Thanks!

Regards,
Tobin Lay

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Water Rate Increase



Dear Mayor and Council Members,

I was asked by Mayor Wingfield to include the following letter in the Council packet for your consideration and discussion:

“WATER RATE INCREASE RESTRUCTURING

The City Water Fund has been “below water” after the city experienced a third water main break this past winter. The current rate structure is based on only two such failures per year. The Utility committee met to address this deficit and recommended a temporary rate increase via a “surcharge” to cover the expense of the third break. This spring, the council approved this rate increase.

Although other cities adopt similar cost increases, our city attorney has suggested it would be better legally to increase our rates across the boards rather than by temporary surcharge.

Shelly Rueckert, our financial advisor, has agreed to put together a proposed rate structure that takes into account expenses for the third water main break and new increases being imposed on the city by White Bear Lake for legal fees related to lake levels.

The target for the water fund is \$30,000. If these rates cause a sufficient surplus above that target for a sustained period of time, the city can review the rate structures and adjust them accordingly. It should be noted that the target number has not been met in a number of years due to reduced demand of low flow, less use and wet summers.

The Utility Committee will convene to discuss Shelly’s proposed rate structure once it is available and will provide a recommendation to council at that point.

Council should consider ordering a public hearing for this rate increase at either the July or August council meeting, publication in the White Bear Press newspaper, and target implementation by the next round of utility billing” – Mayor Wingfield.

Thanks!

Regards,
Tobin Lay

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Birch Easement Rain Garden Update



Birchwood Village

Dear Mayor and Council Members,

I was asked by Mayor Wingfield to include the following letter in the Council packet for your review and consideration:

“UPDATE ON BIRCH EASEMENT DRAINAGE AREA

Last month (May 31st) City Administrator Lay and I met with the Washington County Soil and Water Representative Bryan Pynn, the RCWD drainage project coordinator Samantha Berger and a neighbor to discuss the current status of the Birch Easement Rain-garden. The rain-garden was built in 2008 and has a “life-expectancy” of ten years. We walked the entire length of the rain-garden including the outfall spillway into White Bear Lake.

The representatives told us the water project is functioning as designed, but we were told there new ways of improving the efficiency of it. That includes widening the area where water spills out of the small holding pond and widening the area of the trench. (This is counter to thinking the water should be held back longer before flowing to the lake.) Soil Conservation rep Pynn will draw up a plan to make the swale larger than it is now. He also can assist in providing a laser line to ensure the water flows consistently to the lake. RCWD rep Berger said that matching funds should be available at a 75/25 ratio (city would pay 25%). Plants such as Pagoda dogwood* would be appropriate vegetation along with some sedges. That will allow the area to remain ‘wild’ as mowing is not beneficial to nutrient containment. They expected cost would be \$2000-3000.

Soil conservation rep Pynn also has drafted long term solutions that can be implemented efficiently *if* the city does any significant future road reconstruction in the area. However, those plans are not expected to be incorporated as stand-alone projects due to the high cost of construction.

In the meantime, the ‘holding pond’ area by the street was cleaned out in 2009 and best management practices suggest that such structures be cleaned out every –ten years or so depending on sediment levels. The reps suggested that the city could clean out the silt at this time. This is a short term solution until the remediation project can be planned and initiated next year--which will be the end of the 10-year life of the current rain-garden.

*I have Pagoda dogwood on my property and I can donate a number of plants to aid in the replanting of the swale” – Mayor Wingfield.

Thanks!

Regards,
Tobin Lay

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: East County Line Road Parking



Birchwood Village

Dear Mayor and Council Members,

As you drive north of County Road E on East County Line Road (ECL Rd), traveling toward Birchwood Village, you will see “No Parking” signs along both sides of the road – that is, until you reach Birchwood Village. The shoulder along Birchwood’s border with ECL Rd is the only portion of this stretch that permits parking, despite there being very little shoulder to do so.

Staff has received complaints from Birchwood residents living along this stretch about the dangers they face entering ECL Rd because of the parked cars blocking their view of traffic. Enclosed is a letter from Tom and Sue Heinz, along with photos showcasing the dangers they face. Staff has redacted the Heinz’s contact information; Council may request this information from staff if contact is desired.

City Code 502.040 states that “the City Council may, from time to time, designate and post any part or all of any street or roadway in said City as a ‘No Parking Zone,’ and when so posted, no person shall park a motor vehicle thereon in violation of such posting.”

Accordingly, staff requests Council consider the dangers faced by Birchwood residents living along this stretch of road and requests Council approve the designation of ECL Rd as a no parking zone. If approved, staff requests Council assign the Roads and Streets Committee to oversee the installation of no parking signs along the newly designated no parking zone. Thanks!



(This photo shows the no parking signs that are posted up and down ECL Rd from County Road E to the Birchwood border)

Regards,
Tobin Lay

To: Members of the Birchwood Village City Council

Date: June 7, 2017

Topic: Parking on East County Line Road

Unlike Mahtomedi and White Bear Lake, the Birchwood Village City portion of East County Line Road does not restrict parking along the shoulder. We would like to have the Council authorize the placement of 'No Parking' signs along the Birchwood Village section of the road due to the following safety concerns:

- East County Line road is a major thoroughfare with lots of traffic. Cars parked on the shoulder obscure our view when exiting our driveway to travel south-bound onto the road (see photos 2, 3). We have heard a similar concern from the neighbors to our south whose view of south-bound traffic is also obstructed by cars parked on the shoulder in front of our home.
- Similarly, south-bound drivers are not able to see us exiting our driveway until they are very close. We have witnessed cars swerving onto the opposite shoulder in response. This feels like an accident waiting to happen.
- Parked cars along the narrow shoulder create a hazard to oncoming traffic when they are near or on the fog line (photo 3 shows a vehicle parked on fog line.) Cars are occasionally parked overnight as well.
- Pedestrians and cyclists are at increased risk of injury when they are required to use the north-bound traffic lane to bypass vehicles parked on the shoulder.

Other photos show multiple vehicles and vehicles of varying sizes parked on the shoulder. One or several, large or small, these vehicles obstruct our view of south-bound traffic.

We have also sustained damage to the fir trees and have seen soil erosion on the edge of our property from vehicle use of the shoulder in front of our home. (See Photo 6)

Summary

Parking along a major thoroughfare like East County Line road is dangerous – for residents, pedestrians and the owners of the vehicles themselves. Parking along this road will continue unless the Council votes in favor of posting 'No Parking' signs, thus making it illegal to park along the Birchwood Village side of the road.

It is our sincere hope that you share our concerns and proceed with the necessary funding and actions to approve this request for 'No Parking' signs. We believe this measure will contribute to making our community a safer place for all.

If you have any questions, we may be reached at [REDACTED].

Tom and Sue Heinz

[REDACTED] E County Line Road



Photo 1



Photo 2



Photo 3

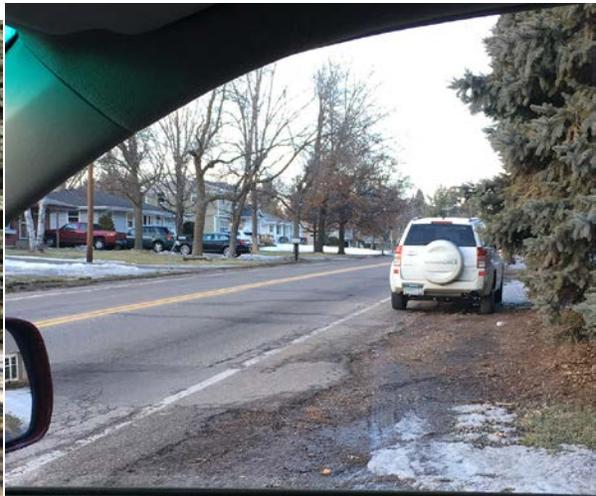


Photo 4



Photo 5



Photo 6



Photo 7

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: 2020 U.S. Census – LUCA Volunteers



Birchwood Village

Dear Mayor and Council Members,

This July the Federal Government will begin preparing for the 2020 US Census by organizing "Local Update of Census Addresses" (LUCA) programs in each community.

Birchwood will need to create a taskforce of residents willing to serve on the LUCA to make sure the gov. has a complete and accurate list of addresses in Birchwood.

Accordingly, staff requests Council form a voluntary taskforce to represent the City in the LUCA program. Members of this taskforce must be willing and able to keep confidential, all the private information they are exposed to during this program. Details about the LUCA programs will be disseminated this July. LUCA flier enclosed. Thanks!

Regards,
Tobin Lay

Census 2020 is starting now

An important message from the Minnesota State Demographic Center

Make sure your community gets its fair share of funding in the decade ahead

Before 2020 Census forms appear in mailboxes, the Census Bureau needs addresses. If the Bureau doesn't know that a new subdivision or apartment building has sprung up, residents could go uncounted. And that would mean less federal and state funding for your community.



In July 2017, the Census Bureau will invite local governments to help verify and update a database of all residential addresses through its Local Update of Census Addresses (LUCA) program. Counties, cities, and townships will be asked to review the Census Bureau's address file, check it for accuracy, and supplement the file with new or additional addresses. The review itself will begin in early 2018.

What do you need to do?

Just look for the Census Bureau's LUCA invitation in July. The Bureau will mail packets to the highest elected official of your county, city, or township and "cc" any additional contacts it has on file. You can help by making sure that that packet doesn't get accidentally overlooked. LUCA registrations must be returned to the Census Bureau by December 2017.



Have more questions? Send us an email: demography.help@state.mn.us
We're pretty friendly.

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Code Book and Website Taskforces



Birchwood Village

Dear Mayor and Council Members,

As you know, the City's code book is in need of an overhaul. Recently, a group of Hamline University interns looked into this issue and compared Birchwood's procedure for maintaining city ordinances with other surrounding communities. During this process, the interns discovered just how much work is required to get out ordinances organized. The interns recommended hiring professional codifiers to perform this work for upwards of \$4,000 and lasting as long as two years.

Additionally, the City website is also in need of a cleanup.

Birchwood is fortunate to have many experts of law and computers residing in the community; many of which are anxious to volunteer their knowledge and skills with the City. Staff is aware of at least three resident lawyers who are willing to assist with the organization of the code book, and at least two residents willing to assist with organizing the website.

Staff requests Council form two taskforces to work under the City Administrator's direction; one to organize the City code book and the other to organize the website. The following list of names are a few residents that may be willing to serve in this capacity.

CODE BOOK TASKFORCE:

- Alan Mitchell
- Jay Brunner
- John McCormick

WEBSITE TASKFORCE:

- Bridget Sperl
- Mary Sue Simmons

Thanks!

Regards,
Tobin Lay

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Steve Dean Tree Work



Birchwood Village

Dear Mayor and Council Members,

John Lund informed staff recently of several tree related problems at Wildwood Park that need attention.

The first problem is a pine tree that has been overtaken by carpenter ants, shown as follows:



The damage to this tree is worse than is pictured. Ants are completely devouring this pine tree and if the infestation isn't stopped soon, this tree will die and need to be removed from the park.

The second problem is an Ash tree that has several dead and broken limbs hanging over the July 4th parade route, shown as follows:



Staff asked Steve Dean to look at both of these trees and provide his professional opinion. Steve warned that if the pine tree is not treated soon, it will die; it may already be too late. It will cost the City more money to cut the entire dead tree down than to stop the infestation now. Steve said he could attempt to kill the ants and seal off the wound for at or under \$100. Staff recommends trying to save this tree.

As for the Ash tree, Steve agreed that the tree was due for a trim and that some of the broken limbs could fall with a big wind. He said he could do a basic clean up of the most dangerous branches for \$200 and could do a thorough trim of the entire tree for \$500. He said the entire tree really needed a trim but admitted that it is highly likely that the tree, as well as all Ash trees in the area, will be diseased from the Emerald Ash Borer within the next 10 years. Staff recommends this tree be trimmed as it is immediately over the July 4th parade route. To what degree of trimming, staff defers to Council's wishes.

Accordingly, staff requests Council approve hiring Steve Dean to kill the ants and seal up the wound on the pine tree and trim up the Ash tree. Staff requests Council's preference on what level of trim to have done on the Ash tree. Thanks!

Regards,
Tobin Lay

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Workers Comp Insurance Quote



Birchwood Village

Dear Mayor and Council Members,

Recently, Council approved having staff renew the City's workers comp insurance. Enclosed are the proposed rates for the insurance.

Staff recommends signing up for the Regular Premium Option, which has been the option selected by the City historically.

It has been suggested to staff that some of the staff positions could be restructured to be independent contractors rather than employees and that this would reduce the insurance cost. Although this may be true, if this is to be done, it must be decided immediately as there is no time to lose in renewing this coverage.

Staff requests Council's direction and Attorney Kantrud's recommendation, if desired. Thanks!

Regards,
Tobin Lay

League of Minnesota Cities Insurance Trust
Group Self-Insured Workers' Compensation Plan
 145 University Avenue West St. Paul, MN 55103-2044 Phone (651) 215-4173

Notice of Premium Options for Standard Premiums of Less than \$25,000

BIRCHWOOD VILLAGE, CITY OF
 207 BIRCHWOOD AVENUE
 BIRCHWOOD, MN 55110-1610

Agreement No.: WC 1003175_Q-1
 Agreement Period:
 From: 06/12/2017
 To: 06/12/2018

Enclosed is a quotation for workers' compensation deposit premium. **Note: Renewal Coverage will be bound as per the expiring coverage arrangement, including coverage for elected and appointed officials, with the premium indicated on the quote, unless the member or agent sends a written request not to bind renewal coverage.**

<u>PAYROLL DESCRIPTION</u>	<u>CODE</u>	<u>RATE</u>	<u>ESTIMATED PAYROLL</u>	<u>DEPOSIT PREMIUM</u>
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SEE ATTACHED SCHEDULE FOR DETAILS

	Manual Premium		1,510
Credit		0.90	-151
	Standard Premium		1,359
	Deductible Credit	0.00%	0
	Premium Discount		0
	Net Deposit Premium		1,359

Agent:
 00003 Bearence Management Group LLC
 2010 Centre Pointe Blvd
 Mendota Heights, MN 55120-1200

Notice of Premium Options for Standard Premiums of Less than \$25,000 (Con't)

OPTIONS

Please indicate below the premium option you wish to select. You may choose only one option and you cannot change options during the agreement period.

NET DEPOSIT PREMIUM

1. **Regular Premium Option**

1,359

2. **Deductible Premium Option**

Deductible options are available in return for a premium credit applied to your estimated standard Premium of \$ 1,359. The deductible will apply per occurrence to paid medical costs only. There is no aggregate limit.

	<u>Deductible per Occurrence</u>	<u>Premium Credit</u>	<u>Credit Amount</u>	<u>Net Deposit Premium</u>
<input type="checkbox"/>	\$250	0.90%	-12	1,347
<input type="checkbox"/>	\$500	1.70%	-23	1,336
<input type="checkbox"/>	\$1,000	2.90%	-39	1,320
<input type="checkbox"/>	\$2,500	5.00%	-68	1,291
<input type="checkbox"/>	\$5,000	7.50%	-102	1,257
<input type="checkbox"/>	\$10,000	11.00%	-149	1,210
<input type="checkbox"/>	\$25,000	16.50%	-224	1,135
<input type="checkbox"/>	\$50,000	22.50%	-306	1,053

This quotation is for a deposit premium based on your estimate of payroll and selected options. Your final actual premium will be computed after an audit of payroll subsequent to the close of your agreement year and will be subject to revisions in rates, payrolls and experience modification. While you are a member of the LMCIT Workers' Compensation Plan, you will be eligible to participate in dividend distributions from the Trust based upon claims experience and earnings of the Trust.

If you desire the coverage offered above, please return this signed document for the option you have selected.

This quotation should be signed by an authorized representative of the city requesting coverage.

Signature
Title
Date

**Notice of Premium Options for Standard Premiums of Less than \$25,000
(Con't)**

CONTINUATION SCHEDULE FOR QUOTATION PAGE

<u>REMUNERATION</u>	<u>RATE</u>	<u>CODE</u>	<u>DESCRIPTION</u>	<u>EST. PREM</u>
5,000	9.48	5506	GENERAL MAINTENANCE	474
63,028	0.71	8810	CLERICAL OFFICE EMPLOYEES NOC	448
6,500	9.04	9016	SKATING RINK OPERATION	588
			Manual Premium	1,510

MEMORANDUM

DATE: June 13, 2017

TO: Birchwood City Council
FROM: Tobin Lay, City Administrator
SUBJECT: Schedule Closed Meeting for Staff Review



Birchwood Village

Dear Mayor and Council Members,

As you know, I am currently employed as the Interim City Administrator. That appointment expires in August. Accordingly, I am requesting Council schedule a closed meeting before the July Council meeting to review my performance and discuss my permanent relationship with the City in this role. I forwarded a Doodle.com link with some possible meeting dates/times to each of you last Friday, requesting your selection of available times prior to this meeting.

I respectfully request Council discuss the feedback from this poll and select a date accordingly. Thanks!

Regards,
Tobin Lay