

**Birchwood Village  
Regular Council  
Meeting  
July 10, 2018**

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**Supplemental Packet**

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**CITY OF BIRCHWOOD VILLAGE  
REGULAR CITY COUNCIL MEETING  
JUNE 12, 2018**

**MINUTES**

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

**Staff Present:** City Administrator Tobin Lay, City Attorney Alan Kantrud.

**Others Present:** Eugene Ruehle, Bryan McGinnis, Justin McCarthy, Jessa McCarthy, Alan Mitchell, Steve Wolgamot, Judy Duffy, Jim Harrod, Debbie Harrod, JD Walker, James Nelson, Charles Kaufman, David Dowdy.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

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

**APPROVE AGENDA**

**Councilmember Malvey:** Moved the Lake Links Update to precede the Roads Committee Update.

**Mayor Wingfield:** Added Beach / Dock Signage, Storage and Pickleball Update to Council Member Reports.

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

**OPEN PUBLIC FORUM**

**Brian McGinnis (262 Wildwood Ave):** Stated communication and means to gather community input could be improved.

**Jim Harrod (483 Lake Avenue):** Voiced concern about the potential of a portable toilet at Kay Beach.

**Alan Mitchell (23 Oakridge Drive):** Stated concern about City access to private property regarding tree inspections.

**Mayor Wingfield:** Volunteered to research tree inspection regulations and practices. Added to July's meeting agenda.

**ANNOUNCEMENTS**

- A. Marian Johnson Across the Lake Swim will be held July 7<sup>th</sup> beginning at 7am
- B. July 4<sup>th</sup> Parade will start at 9:30am beginning at 5 Birchwood Ave
- C. Music in the Park – Sundays beginning at 6pm except Father's Day & 4<sup>th</sup> of July weekends
- D. We are social, follow us on Facebook / Twitter and/or register for the email listserv
- E. Thank you Mary Wingfield, Kevin Woolstencroft, Bridget Sperl, Doug Hoff, James Nelson and White Bear Lake's Ambassadors for completing the Buckthorn Removal Project.

**ADMINISTRATIVE PRESENTATION**

- A. Sheriff's Report

**CITY BUSINESS – CONSENT AGENDA**

- A. Approval of Regular Meeting Minutes from April 10, 2018
- B. Approval of Regular Meeting Minutes from May 8, 2018
- C. Approval of Treasurer's Report
- D. Approve publication of election info (candidates, deadlines, etc.)
- E. Approve City Engineer's Request to waive CAD Requirement in ROW Ordinance

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

**CITY BUSINESS – REGULAR AGENDA**

A. Eagle Scout Bell Project

a. Approve Project Location

**David Dowdy (Boy Scout Troop 434) & Gene Ruehle (262 Wildwood Ave):** Updated Council and stated volunteers, wheelbarrows and posthole diggers would be welcome June 24 and June 29 at 9am.

**Mayor Wingfield:** Thanked those who donated and reiterated donations include a commemoration.

**Mayor and Council Members:** Approved the project location.

B. Parks Committee Update

a. Discuss and Approve Committee Recommendations

**Judy Walker (Parks Committee) and Jim Nelson (Parks Committee):** Updated Council. (Time Stamp 00:34:45)

MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WHITE TO ASSIGN MAINTENANCE-RELATED ITEMS AS IDENTIFIED BY THE PARKS COMMITTEE TO ADMINISTRATOR LAY TO BE EXECUTED AT HIS DISCRETION. ALL AYES. MOTION PASSED

**Mayor Wingfield:** Stated a parks inventory needs to occur and urged a joint meeting with the Parks Committee.

MOTION MADE BY COUNCILMEMBER WHITE AND SECONDED BY COUNCILMEMBER MALVEY TO AUTHORIZE THE USE OF \$5,000.00 FOR NEW PARKS EQUIPMENT, TO BE PURCHASED AT THE DISCRETION OF THE PARKS COMMITTEE. COUNCILMEMBERS WHITE, MALVEY AND LAFOY VOTE AYE. MAYOR WINGFIELD AND COUNCILMEMBER WOOLSTENCROFT VOTE NAY. MOTION PASSED.

b. Discuss Joint Council / Committee Meeting

MOTION MADE BY COUNCILMEMBER MALVEY AND SECONDED BY COUNCILMEMBER LAFOY TO SET A JOINT PARKS COMMITTEE MEETING FOR JUNE 26, 2018 AT 7PM. ALL AYES. MOTION PASSED.

**Justin McCarthy (515 Lake Ave):** Requested the Parks Committee not spend money on a portable toilet at Kay Beach.

**Judy Duffy (505 Lake Ave):** Supported Mr. McCarthy. Reminded Council capital upgrades require maintenance costs.

**Debbie Harrod (483 Lake Ave):** Opposed a portable toilet at Kay Beach citing a waste receptacle there and handed a letter from Residents Mike & Candy Kramer to Administrator Lay. (Time Stamp 01:09:22)

**Councilmember Malvey:** Asked Administrator Lay to have the waste receptacle replaced.

**Councilmember LaFoy:** Asked the minutes reflect the consensus of Council is no portable toilet at Kay Beach.

**Charles Kaufman (543 Wildwood Ave):** Stated opposition to development of any kind in parks or public easements.

c. Discuss and Approve Committee Member Appointments

MOTION WAS MADE BY COUNCILMEMBER WHITE AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO REAPPOINT JAMES NELSON TO THE PARKS COMMITTEE. ALL AYES. MOTION PASSED.

MOTION WAS MADE BY COUNCILMEMBER WHITE AND SECONDED BY COUNCILMEMBER LAFOY TO TABLE THE APPOINTMENT OF A SEVENTH PARKS COMMITTEE MEMBER UNTIL THE CONCLUSION OF THE JUNE 26 JOINT PARKS COMMITTEE MEETING. ALL AYES. MOTION PASSED.

**Councilmember Malvey:** Thanked Houstoun Clinch for his work and TLC Veterinary Animal Hospital, White Bear Animal Hospital and Lake Animal Hospital for animal waste receptacle donations.

C. Lake Links Update

**Steve Wolgamot (Lake Links Association):** Updated Council and thanked the City for support.

D. Roads Committee Update

**John Anderson (Parks Committee) & Gene Ruehle (Parks Committee):** Updated Council & made recommendations regarding funding for Lake Avenue repaving.

**MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER WHITE TO EXTEND THE DISCUSSION BY 5 MINUTES. COUNCILMEMBERS MALVEY, LAFOY AND WHITE VOTE AYE. MAYOR WINGFIELD AND COUNCILMEMBER WOOLSTENCROFT VOTE NAY. MOTION PASSED.**

**Mayor and Council Members:** Decided to revisit the Lake Avenue repair project after further research.

E. MS4: Storm Water Pollution Prevention Program Review

a. Public Hearing

**Brian McGinnis (194 Wildwood Ave):** Commented on City codes related to MS4 requirements.

F. Planning Commission Recommendations

a. Discuss Recommendation to Repeal and Replace Sections 300.020.34 & 301.050 with Ordinance 2018-05-02, Non-Conforming Uses

Attorney Kantrud: Recommended against passing Ordinance 2018-05-02 in its current form because it is too similar to existing Section 301.050. He offered to work with the Planning Commission ~~to work~~ on additional changes. and recommended passing a first reading and sending it to Planning Commission for "role-playing and further review before a second reading, noting it is not urgent."

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO PASS THE FIRST READING OF ORDINANCE 2018-05-02 TO REPEAL AND REPLACE SECTIONS 300.020 & 301.050 AND SUBMIT TO PLANNING COMMISSION TO WORK WITH CITY ATTORNEY KANTRUD ON ADDITIONAL CHANGES. MAYOR WINGFIELD AND COUNCILMEMBERS MALVEY, WHITE AND WOOLSTENCROFT VOTE AYE. COUNCILMEMBER LAFOY VOTES NAY. MOTION PASSED.**

b. Discuss Recommendation to Amend Section 304.040 with Ordinance 2018-04-01, Amending Variance Provisions

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO EXTEND DISCUSSION BY 5 MINUTES. MAYOR WINGFIELD AND COUNCILMEMBERS MALVEY, WHITE AND WOOLSTENCROFT VOTE AYE. COUNCILMEMBER LAFOY VOTES NAY. MOTION PASSED.**

**Administrator Lay:** Displayed Section 034.040. (Time Stamp 02:17:30)

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO PASS THE FIRST READING OF ORDINANCE 2018-04-01 TO AMEND SECTION 034.040 AND SUBMIT TO PLANNING COMMISSION TO WORK WITH CITY ATTORNEY KANTRUD ON ADDITIONAL CHANGES. ~~MAYOR WINGFIELD AND COUNCILMEMBERS MALVEY, WHITE AND WOOLSTENCROFT VOTE AYE. COUNCILMEMBER LAFOY VOTES NAY~~ ALL AYES. MOTION PASSED.**

G. Dock Management Contract

a. Review of Dock Management Contract

**Mayor and Council Members:** Discussed the Dock Management Contract.

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO EXTEND DISCUSSION BY 10 MINUTES. MAYOR WINGFIELD AND COUNCILMEMBERS MALVEY, WHITE AND WOOLSTENCROFT VOTE AYE. COUNCILMEMBER LAFOY VOTES NAY. MOTION PASSED.**

**MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER MALVEY TO CALL THE QUESTION REGARDING THE DOCK MANAGEMENT CONTRACT. ALL AYES. MOTION PASSED.**

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WHITE TO APPROVE THE DOCK MANAGEMENT CONTRACT AS AMENDED AND TO HAVE IT FULLY EXECUTED WITHIN 30 DAYS. MAYOR WINGFIELD AND COUNCILMEMBER WOOLSTENCROFT VOTE AYE. COUNCILMEMBERS MALVEY AND LAFOY VOTE NAY. COUNCILMEMBER WHITE ABSTAINS. MOTION FAILED.**

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WHITE TO EXTEND DISCUSSION BY 10 MINUTES. MAYOR WINGFIELD AND COUNCIL MEMBERS WOOLSTENCROFT, WHITE AND MALVEY VOTE AYE. COUNCILMEMBER LAFOY VOTES NAY. MOTION PASSED.**

**MOTION WAS MADE BY COUNCILMEMBER WHITE AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO APPROVE THE DOCK MANAGEMENT CONTRACT AS AMENDED AND TO HAVE IT FULLY EXECUTED WITHIN 30 DAYS WITH COMMENTS FROM THE BIRCHWOOD DOCK ASSOCIATION (BDA). MAYOR WINGFIELD AND COUNCIL MEMBERS ~~MALVEY~~, WHITE AND WOOLSTENCROFT VOTE AYE. COUNCILMEMBERS MALVEY AND LAFOY VOTES NAY. MOTION PASSED.**

- b. Request Dock Committee Review Contract and Make Recommendations

**The contract was not passed to the Dock Committee for review.**

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

- a. Deliberation and Approval of First Reading

**Mayor and Council Members:** Tabled the item.

- I. Security Cameras at Ice Rink

**Mayor and Council Members:** Discussed the need for cameras at the Ice Rink.

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO ALLOCATE \$500.00 FOR THE PURCHASE OF SECURITY CAMERAS TO BE INSTALLED AT THE ICE RINK. ALL AYES. MOTION PASSED.**

- J. Grotto Easement

**Mayor and Council Members:** Directed Administrator Lay to contact John Waller for consultation and work as required.

- K. Council Member Reports

- a. Mayor Wingfield

- i. "BDA Members Only" Signage

**Mayor Wingfield:** Informed the Council that she had seen a sign at one of the City's easements stating that only members of the Dock Association were allowed. This is in direct violation of the agreement the City made with the BDA.

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO DIRECT ADMINISTRATOR LAY TO DRAFT A LETTER DIRECTING THE BDA TO REMOVE ALL UNAUTHORIZED SIGNS FROM THE CITY EASEMENTS. ALL AYES. MOTION PASSED.**

- ii. Dock & Beach Storage

**Mayor Wingfield:** Informed the Council that she had seen boat materials on each of the City's easements.

**MOTION WAS MADE BY MAYOR WINGFIELD AND SECONDED BY COUNCILMEMBER WOOLSTENCROFT TO DIRECT ADMINISTRATOR LAY TO DRAFT A LETTER DIRECTING THE BDA TO REMOVE ANY UNAUTHORIZED STORAGE FROM THE CITY EASEMENTS. ALL AYES. MOTION PASSED.**

**Mayor and Council Members:** Added Canoe/Kayak Rack Storage to the Joint Parks Committee meeting agenda.

- iii. Pickleball Update

**Mayor Wingfield:** Updated Council on status of the Pickleball court. Reported a solid turnout for the inaugural game.

- b. Councilmember LaFoy

- i. Cable / SCC Update

**Councilmember LaFoy:** Informed Council that negotiations between the Cable Commission and Comcast had not been completed and an extension to the existing contract was needed to allow more time. Stated questions may be directed to Tim [Finity-Finnerty](#) at 651-747-3802.

**MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER WHITE TO APPROVE THE COMCAST EXTENSION AGREEMENT TO MARCH 31, 2019. ALL AYES. MOTION PASSED.**

- ii. Plant Exchange & Garage Sale

**Councilmember LaFoy:** Reported a low turnout to the 22<sup>nd</sup> Annual Plant Exchange and Garage Sale. He wondered if support for these events was dying.

**L. City Administrator's Report**

- a. August 2018 Regular City Council Meeting

**Mayor and Council Members:** Confirmed August 15, 2018 will remain as the Regular City Council meeting date for August.

- b. 2018 Tree Inspection

**MOTION WAS MADE BY COUNCILMEMBER WHITE AND SECONDED BY MAYOR WINGFIELD TO APPROVE JOHN LUND'S OFFER TO PERFORM THE CITY'S 2018 TREE INSPECTIONS FOR \$1,300.00. ALL AYES. MOTION PASSED.**

- c. Lawn Maintenance Item Purchase Request

**MOTION MADE BY COUNCILMEMBER WHITE AND SECONDED BY COUNCILMEMBER LAFOY TO APPROVE \$150.00 TO PURCHASE A WEED TRIMMER FOR CITY MAINTENANCE PURPOSES. ALL AYES. MOTION PASSED.**

**ADJOURN**

**MOTION WAS MADE BY COUNCILMEMBER LAFOY AND SECONDED BY COUNCILMEMBER WHITE TO ADJOURN THE MEETING. ALL AYES. MOTION PASSED. MEETING ADJOURNED AT 10:22 PM CST.**

**ATTEST:**

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**Mary Wingfield**  
Mayor

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**Tobin Lay**  
City Administrator – Clerk

**RESOLUTION 2018-16**

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

**A RESOLUTION APPOINTING ELECTION JUDGES  
FOR THE AUGUST 14, 2018 PRIMARY ELECTION  
AND THE NOVEMBER 6, 2018 GENERAL ELECTION**

**WHEREAS**, the City of Birchwood Village will hold Primary Elections on August 14, 2018 and General Elections on November 6, 2018 at Birchwood City Hall; and

**WHEREAS**, the State requires the City to appoint Election Judges for the Primary and General Elections; and

**WHEREAS**, Primary Election Judges must be appointed by July 20<sup>th</sup>, 2018.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Birchwood Village, Washington County, Minnesota as follows:

1. The persons below named are hereby appointed judges for the Primary and General Elections to be held in the City of Birchwood Village, County of Washington, State of Minnesota, on Tuesday, August 14, 2018 and Tuesday, November 6, 2018 respectively.

<b>Name</b>	<b>Name</b>	<b>Name</b>
Ron Sternal	Ross Judkins	Lisa Rietveld
Gary Oakins	Sue Kapsner	
Alice Anderson	Shari Mitchell	
Charlene Engebretson	Dale Boettcher	

Voting in Favor:

Voting Against:

Resolution duly seconded and passed this 10<sup>th</sup> day of July, 2018.

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Mary Wingfield, Mayor

Attest:

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Tobin Lay, City Administrator-Clerk

**CONTRACT FOR DOCK MANAGEMENT**

This Contract, made and entered into this 10<sup>th</sup> day of July 2018, by and between The City of Birchwood Village (hereinafter referred to as the “City”), a municipal corporation organized under the laws of the state of Minnesota with offices at, 207 Birchwood Ave, Birchwood, MN 55110, and The Birchwood Dock Association (hereinafter referred to as the “Contractor”), a Minnesota corporation, with offices at 700 Hall Ave, Birchwood, MN 55110.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4. **Performance Standards and Operation**

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

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

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

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

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

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

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

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

<b>To the Contractor:</b>	<b>To the Owner:</b>
BDA (Auth. Agent) 700 Hall Avenue Birchwood, MN 55110	City Administrator City of Birchwood Village 207 Birchwood Avenue Birchwood, MN 55110 Phone: 651-426-3403

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

Any lapse of insurance coverage shall be cause for the City to immediately terminate the Contract. All policies evidencing insurance required by this paragraph shall insure the

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

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

services or any such rights or remedies in respect to any subsequent breach or default of the terms of this agreement. The rights and remedies of the City provided or referred to under the terms of the agreement will be cumulative and not mutually exclusive.

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

**16.1. Condition Upon Termination.** Upon termination of this Agreement the Contractor shall vacate entirely, leaving no equipment or storage not otherwise agreed between the parties and agree to return premises, including all city-owned equipment, to the City in the same condition and repair as it was upon occupancy, except for reasonable wear and tear, but not including breakage or damage caused by the Contractor’s actions or inaction. The City shall have rights-of-first-refusal to Contractor’s assets should the termination of this Agreement mean the dissolution of the Contractor’s business entity or the sale of assets.

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

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

**City of Birchwood Village**

By: \_\_\_\_\_  
Tobin Lay, Administrator

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mary Wingfield, Mayor

Dated: \_\_\_\_\_

**Birchwood Dock Association**

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

Dated: \_\_\_\_\_



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

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1. ~~1. Parties.~~ The Parties to this Contract are ~~The City of Birchwood Village, and the Birchwood Dock Association,~~

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2. ~~2. Recitals.~~ The above recitals are hereby incorporated into this Agreement by reference.

3. ~~3. Term.~~ The term of this Contract shall be from the day of execution until ~~October 31<sup>st</sup>, 2018; May 1, 2019.~~ This contract may be renewed after expiration of the initial term upon agreement of the parties.

~~3.1. Equipment Provided.~~ ~~4. Dock Installation and Maintenance.~~ The Contractor shall provide all equipment necessary to administer the contract without contribution by City in any way except by special agreement in writing.

~~3.2. Storage.~~ The Contractor is ~~be~~ responsible for providing for storage of its materials except that the City shall provide a location onsite that is accessible to the Contractor for storage of the docks and boat lifts when off-season ~~the installation~~ and not installed during the boating season, nominally from October to May.

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

~~3.4. Remuneration.~~ The Contractor shall be charged at the following rate:  
3.4.1. ~~— \$750 (\$650 per slip permitted plus \$100 per stored boat lift) payable in full by April 1 of the boating season. In the event of low water, the fee shall be at least the fee amount multiplied by the number of boat slip users at the end of the previous boating season or the number of boat slip users for the following boating season, whichever is greater.~~

~~4. Performance Standards, maintenance, and Operation removal of all docks on the public easements.~~

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~~4.1. Equipment Damage—5. Winter Storage.~~ The Contractor shall be responsible for safekeeping of its equipment, including, but not limited to, fire damage, theft, ~~may store the docks, and graffiti to the equipment. This provision shall in no way limit the Contractor's~~

~~right or ability to seek repayment for damages caused to its equipment from persons who are responsible for boat lifts on the damages.~~

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~~4.2 Customer Notice, public easements during the nonboating season, The Contractor shall be responsible for advising removing the docks and monitoring individual slip holders regarding their duty to safeguard their personal property from damage.~~

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

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~~4.4 Applicable Regulations. The Contractor shall comply with all applicable ordinances of the City and with all laws and rules of placing them in the County, the State of Minnesota and its agencies relating to the management proper storage area onsite. For each of the public easements where docks have been installed, the City agrees to provide a location for storage of the docks. The full text of Ordinance 617 is attached hereto as Exhibit A and incorporated by reference. Any terms that conflict shall be resolved in favor of the meaning and intent of the Ordinance and the boat lifts.~~

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~~6. Licenses Fees. The City acknowledges that the Contractor shall maintain always has paid all licenses fees required by state, county, and local government the City, for the services, including proper licensing 2018 boating season. The City shall not require the payment of any additional fees related to the installation of docks and the mooring of boats on those docks on the public easements for 2018.~~

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~~8. Ordinance Prevails. Any conflicts between the provisions of this Contract and the requirements of chapter 617 shall be resolved in favor of the ordinance.~~

~~4.6 9. Complaints. Complaint The procedure is addressed by for filing complaints about the conduct of the Contractor is set forth in the City Code, Section 617.460 and the Contractor shall establish and maintain an office with supervision and a telephone number for accepting complaints and other calls. The address and telephone number of such office shall be provided to the parties intend for complainants to follow those procedures. The City, and the Contractor shall promptly notify shall~~

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~~inform persons who wish to file a complaint about the conduct of the Contractor of the obligation to present the complaint in writing to the Contractor. The Contractor shall identify a person that the City in writing of any changes in either. The Contractor shall respond to all calls and can forward written complaints promptly and courteously to in accordance with the ordinance. The Contractor shall maintain a written record of all complaints received and the action taken in response. The Contractor shall notify the City of all written complaints that are received.~~

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~~5. **10. Contact Person.** It is expected that the City's primary The Contractor's contact with the Contractor person shall occur via its president. In the event that s/he is known or expected to be unavailable to accept communications from the City, then the Contractor shall provide an alternative be Lynn Hanson. The City's contact person's name and phone number for such purposes.~~

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~~6. **Payment.** For complete and satisfactory performance of the duties and actions assigned to the Contractor within this agreement, the Contractor is permitted to collect additional fees of slip holders as determined by the Contractor.~~

~~7. **Independent Contractor.** The Contractor and its employees, agents or subcontractors person shall be deemed an independent contractor for purposes of all services to be provided under this Contract. Nothing contained in this Contract is intended or should be construed as creating the relationship of co-partners or joint ventures. Unless otherwise agreed by the parties, the Contractor shall provide its own tools and equipment and shall select its own manner and method of performing its services. The Contractor and its employees, agents or subcontractors shall not be considered an employee of the City for any purpose, and shall waive, release, and not be entitled to any of the benefits usually accorded regular employees, including but not limited to severance pay, health insurance benefits, PERA, unemployment benefits, retirement credits, worker's compensation coverage, or any other rights or benefits that accrue to City's employees, if any Tobin Lay. Each party may designate an alternative person during periods when the main contact person will be unavailable.~~

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~~8. **11. Notice to parties.** Notices required to be provided pursuant to this Contract shall be given by United States Mail to the following addresses, by personal service, or fax, or by e-mail if the parties agree:~~

<del>To the Contractor:</del>	<del>To the Owner:</del>
<del>BDA (Auth. Agent) 418 Birchwood Court Birchwood, MN 55110</del>	<del>City Administrator, City of Birchwood Village, 207 Birchwood Avenue, Birchwood, MN 55110</del>

Phone: 651-426-3403

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9. **12. Insurance.** The Contractor shall maintain appropriate insurance coverage to cover its activities at all times while this Contract is in effect, in at least the following amounts:

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- General Comm. Liability: \$2,000,000/\$2,000,000
- Worker's Comp: Per Statute or \$500,000 per injury, whichever is greater

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Any lapse of insurance coverage shall be cause for the City to immediately terminate the Contract. All policies evidencing insurance required by this paragraph shall insure the Contractor for any act or omission, including negligence of the Contractor or of the Contractor's employees or agents, in connection with the performance of the services herein, including claims arising out of the use of or operation of any vehicles used by the Contractor or the Contractor's employees or agents in performing the services. agents, in connection with maintenance of the docks and boats.

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10. **Indemnity.** The Contractor agrees to defend, indemnify and hold harmless the City, its agents, officers, and employees from any and all demands, claims, causes of action, liabilities, losses, damages, costs, expenses including reasonable attorney's fees, suits, demands and judgments of any nature, because of bodily injury to, or death of, any person or persons and/or because of damages to property of the Contractor or others, including loss of use from any cause whatsoever, which may be asserted against the City on account of any act or omission, including negligence of the Contractor or the Contractor's employees or agents, in connection with the Contractor's performance. The Contractor agrees to defend any action brought against the City on any such matters, and to pay and satisfy any judgment entered thereon together with all costs and expenses incurred in connection therewith. Contractor shall provide for the City to be named as an additional insured on its Declarations Page and provide the same to the City within 14 days of this Agreement being fully executed. Additionally, Contractor shall ensure that any Cancellations or changes of Endorsement communications are copied to City during the active terms of the Agreement

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14. **13. Transfer of Rights and Obligations.** The Contractor shall not assign, transfer, or subcontract its obligations under this Contract without notice to and approval of the City. Any attempt to assign or transfer or subcontract this Contract in whole or in part without prior approval of the City shall be grounds for immediate termination of the Contract.

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~~12. Nondiscrimination.~~ The Contractor agrees that during the term of this Contract, it will not within the State of Minnesota discriminate against any employee or applicant for employment because of race, color, creed, sex, national origin, or ancestry and will include a similar provision in all subcontract(s) entered into for the performance hereof. This paragraph is included in this Contract to comply with provisions of Minnesota Statutes § 181.59. Violation of this statute is a misdemeanor, and if violated, will permit the City to cancel this Contract.

~~13. 14. Costs and Attorneys Fees.~~ The prevailing party in any dispute arising out of this Contract shall be entitled to reimbursement of its costs and attorneys' fees in asserting or defending its rights hereunder against the non-prevailing party.

~~14. 15. Merger, Amendment & Savings Clause.~~ It is understood and agreed that the entire Contract between the parties is contained herein and that this Contract supersedes all oral agreements, negotiations, and past practices between the parties relating to the subject matter. This Contract may be amended at any time by mutual agreement of the City and the Contractor. Any amendments shall be in writing to be effective. If any section of this Contract is found to be invalid or not enforceable, the remainder of the Contract shall remain in force and binding.

~~15. Non-Conforming Services.~~ The acceptance by the City of any services non-conforming with the terms of this agreement or the foregoing by the City of any rights or remedies it is entitled to under the terms of this agreement shall not constitute a waiver of the City's rights to conforming services or any such rights or remedies in respect to any subsequent breach or default of the terms of this agreement. The rights and remedies of the City provided or referred to under the terms of the agreement will be cumulative and not mutually-exclusive.

~~16. 15. Termination.~~ This Contract shall terminate upon the expiration of the term as provided in Paragraph 3. Upon termination of the Contract, the relationship shall end, except for the damage obligations of the parties under Paragraph 4 and the indemnity obligations of the Contractor under Paragraph 10. If the Contractor fails to perform any of the provisions of this Contract or so fails to administer the work as to endanger the performance of the Contract, this shall constitute default. Unless the Contractor's default is promptly remedied, the City may, upon written notice, immediately cancel this Contract in its entirety. The Contractor may terminate this Agreement at anytime any time in writing if the City fails to perform any of its requirements within this Agreement upon written notice of same.

~~16.1. Condition Upon Termination.~~ Upon termination of this Agreement the Contractor shall vacate entirely, leaving no equipment or storage not otherwise agreed between the parties and

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agree to return premises, including all city-owned equipment, to the City in the same condition and repair as it was upon occupancy, except for reasonable wear and tear, but not including breakage or damage caused by the Contractor's actions or inaction. The City shall have rights of first refusal to Contractor's assets should the termination of this Agreement mean the dissolution of the Contractor's business entity or the sale of assets.

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

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

forth below.

**City of Birchwood Village**

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Tobin Lay, Administrator

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mary Wingfield, Mayor

**Birchwood Dock Association**

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

Dated: \_\_\_\_\_

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**CONTRACT FOR DOCK MANAGEMENT**

**EXPLANATION OF TERMS**

**FIRST WHEREAS CLAUSE.** It would be good to put some limits of what areas fall within the jurisdiction of the City for purposes of this contract. The definition of “Public Lake Tract” in section 617.111 is a good reference to the beaches that are included within the terms of this Agreement.

**SECOND WHEREAS CLAUSE.** They are called public easements in the first Whereas Clause so it is good to clarify that we’re talking about the same public easements here.

**THIRD WHEREAS CLAUSE.** Same change about identifying the public easements. Delete the word “local” since there is no other ordinance the City of Birchwood can adopt.

**FOURTH WHEREAS CLAUSE.** It would be good to identify the specific provision of chapter 617 that addresses the need for a contract like this. By the way, it is unfortunate that 617.560 is entitled “Civil Action” rather than “Contract.” The actual language also says that the Contract shall “summarize the duties and obligations contained in this chapter,” not repeat them verbatim.

**FIFTH WHEREAS CLAUSE.** It doesn’t seem necessary or correct to say the Birchwood Dock Association was organized specifically to manage the docks. I haven’t checked the Dock Association Article of Incorporation or bylaws but you might want to take language from one of them if you want to address the issue of why the Association was organized.

**SIXTH WHEREAS CLAUSE.** The previous Whereas clauses refer to “public easements” so we should use the same term here.

**3. Term.** Since the Dock Association will be storing the docks and the boat lifts on the public easements over the course of the winter, it seems that the contract should continue over the winter months also. May 1, 2019, seems like the date by which this contract should expire and be replaced with a new one covering next year’s boating season if deemed necessary by the parties. If a new contract is agreed to before May 1 next year, there is no problem in revoking any previously agreed to contracts.

The subparts to this paragraph 3 do not relate to the matter of the “Term” of the Contract. As explained below, separate paragraphs should be drafted to cover the issues that these subparts relate to.

**4. Dock Installation and Maintenance.** This is a new paragraph that simply says the Dock Association is responsible for installing the docks in the spring, maintaining them during the summer, and removing them in the fall.

**3.1 Equipment Provided.** This provision should be deleted. It is unclear what this provision is intended to cover. It seems that new paragraph 4 saying the Dock Association has the sole responsibility to install, maintain, and remove the docks should cover any concern that the Dock Association have the equipment to do that (or that its agents have the equipment to do that).

**3.2. Storage.** The provision says the Dock Association is responsible for providing for storage of equipment but since the docks and lifts will be stored onsite, it is unclear what is intended here. A separate paragraph saying the Dock Association is responsible for removing the docks and lifts onsite for winter storage should cover this point. See new paragraph 5.

**3.3. Direction.** This intent of this provision is unclear. The title “Direction” is confusing. The “deployment of resources” term is undefined. It should be deleted. If there is something that is intended here that is not covered by other provisions, the City should make that known.

**5. Winter Storage.** This new paragraph covers the storage of the docks and the boat lifts. It provides that the City shall identify where on the public easements the docks and lifts should be stored and the Dock Association has the burden and cost of removing the docks and lifts and putting them in the right place for winter storage.

**6. Fees.** This new paragraph simply recognizes that the Dock Association has paid all the fees that are required for 2018 and that the City will not require any additional fees for this season. A new contract may be drafted for next year and that contract can cover the matter of the 2019 fees.

**3.4 Remuneration.** The term “remuneration” is not appropriate here. There is no remuneration required. With regard to fees, that is covered in new paragraph 6. 2019 Fees can be addressed in a new contract next year if necessary.

**4. Performance Standards and Operation.** This paragraph 4 is a mix of a number of matters, some of which are already covered in other provisions and some that don’t fit under the heading of Performance Standards and Operation. The subparts should either be deleted or revised and given their own paragraph number.

**7. Equipment Damage.** If a paragraph on equipment damage is necessary, it can simply say that the City is not responsible for any damage to its docks, boats, and boat lifts, and any other items related to the boats or boating. However, the City and the Dock Association are not contracting for the benefit of third parties, i.e., the individual boat owners or the members of the public who bring personal items on the docks, like cell phones and fishing poles. The Dock Association is not agreeing to be responsible for any such damage or loss incurred by boat owners or dock users.

**4.2. Customer Notice.** It is not clear who falls under the definition of “customer.” If what is intended is the individual boat owners, then that should be made clear. But it hardly seems unnecessary to provide in the contract that the Dock Association is responsible for informing its members with boats that they are responsible for safeguarding their personal property.

**4.3 Employee Safety.** The Dock Association has no employees. There is no one to whom this provision applies. It should be deleted. The City is covered by the indemnification language in paragraph \_\_\_\_\_.

**4.4 Applicable Regulations.** This provision purports to bind the Dock Association to complying with all laws relating to the docks, without any attempt to identify what laws those might be. If such a paragraph is to be included, it seems that compliance should be binding on both parties to this Agreement – the Dock Association and the City. As far as specifying compliance with chapter 617, section 617.560 provides that the contract shall “summarize” the obligations under the City Code. There is no need to incorporate the entire chapter. It might be a good idea to provide that any conflicts between the contract and chapter 617 should be resolved in favor of the ordinance.

**4.5 Licenses.** This provision is confusing and cumbersome and should be deleted. What is meant by “services?” What licenses are expected to be covered by this provision? The Dock Association has no employees. If the parties are expected to be responsible for the licensing of people it hires to do work, then the requirement should apply to both parties to the contract.

**4.6 Complaints.** Replace this subpart of paragraph 4 with a separate paragraph regarding complaints.

**8. Complaints.** Both the City and the Dock Association have obligations under section 617.460 regarding complaints. The contract should recognize that both parties have to follow those procedures.

**9. Contact Person.** Each party should designate a contact person, and an alternate.

**6. Payment.** There is no reason for this provision to be in the contract. The Dock Association is a duly incorporated body with its own bylaws that allow it to conduct business as permitted by its Articles of Incorporation and state statutes. This paragraph should be deleted.

**7. Independent Contractor.** The City is not hiring the Dock Association to work for the city. The Dock Association is no performing any services for the City. There is no need to include this paragraph.

**9. Insurance.** The Dock Association has no employees. The Dock Association is performing no services for the City. Simply recognizing the need to maintain insurance in a certain amount is all that is necessary here.

**10. Indemnity.** An indemnity paragraph is okay but it needs to recognize that the Dock Association is not indemnifying the City from liability for its own negligence. There should be language including addressing the City's liability.

**12 Nondiscrimination.** This paragraph has no application to the situation. The Dock Association is not hiring any employees.

**15. Nonconforming Services.** The Dock Association is not performing any services for the City. The City is not hiring the Dock Association for anything. This paragraph has no application.

**16.2 Conditions Upon Termination.** Again, this paragraph has no application to the situation. And the City certainly doesn't get first rights to the Dock Association's assets should it decide to dissolve.

**RESOLUTION NO. 2018-17**

**A RESOLUTION ACCEPTING RESIGNATION AND DECLARING A VACANCY.**

**WHEREAS**, the City Council of the City of Birchwood Village has received the written resignation of Megan Malvey, effective on July 30, 2018.

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

1. The council accepts Megan Malvey's resignation as described above.

The council declares that a vacancy exists on council effective on July 31, 2018.

Passed by the City Council of the City of Birchwood Village, Minnesota this 10<sup>th</sup> day of July, 2018.

\_\_\_\_\_  
Mary Wingfield, Mayor

Attested:

\_\_\_\_\_  
Tobin Lay, City Administrator-Clerk

***Warming House Camera Installation Costs***

300\$ - Samsung Wisenet 4 Channel Full HD Video All-In-One Security System with 4 Bullet Cameras.

250\$ -Labor costs for researching products and installation.

55\$ -White Label 2 Terabyte (2TB) 16MB Cache 7200RPM SATA2 3.5" Internal Desktop Hard Drive (For PC, Mac, CCTV DVR (for increased playback)  
- 18-Inch SATA 6Gbps Cable with Locking Latch, Blue

70\$ -Sceptre E205W-1600 20" 75Hz Ultra Thin LED Monitor HDMI VGA Build-in Speakers, Metallic Black (2018 version)

*25\$ - Material Costs , misc*

Total = \$700