

City of Rainier
Regular City Council Meeting
June 22, 2020
6:00 PM
Rainier City Hall

Mayor called the Regular Council Meeting to order at 6:00 PM

Mayor Cole opened the Budget Hearing to accept public comment at 6:04pm
No public comment, closed Budget Hearing at 6:06pm

Council Present: Sloan Nelson, Robert duPlessis
James Bradfield, Steve Massey,
Richard Sanders- via phone

Council Absent: Mike Kreger, Jenna Weaver

City Staff Present: Sue Lawrence, Public Works Director;
Sarah Blodgett, Office Manager; Gregg Griffith, Police
Chief; Debbie Dudley, Budget Officer-via phone

City Attorney Present: No

Flag Salute

Additions/Deletions from the Agenda- Mayor Cole noted there was a sewer emergency at 7th St. West, and he is looking for a go back approval as he stated he gave the approval and the work has already been done. Bradfield asked the cost. Lawrence stated the cost to the city is \$8,200 and the homeowner's cost is \$5,100. Mayor Cole noted that this would be added to new business before the interview.

Mayor's Address: Mayor Cole stated that he talked to Byron and that Byron said if timber prices are down, we may hold off logging for a year. Mayor noted that Rainier Days committee decided to go forward with a parade, but it won't be along 'A' Street, so people can social distance and include our grand marshal. Mayor noted that parade will be June 11th.

Visitor Comments: None

Consider Approval of the Consent Agenda:

Consider Approval of the May 18, 2020 Regular Meeting Minutes-
Massey moved, Sanders 2nd, to approve minutes as presented. **Discussion** –
Nelson noted that in item 7c the decimal before the 4% needed to be removed-
motion passed unanimously

Consider Approval of the June 1, 2020 Budget Comm. Meeting Minutes- Massey moved, Bradfield 2nd to approve June 1, 2020 Budget Comm. Meeting Minutes as presented-**motion passed unanimously**

Consider Approval of May 19, 2020 Safety Meeting Minutes- Mayor Cole noted he just wanted this in the packet for council to review, not to approve.

Unfinished Business:

6a. Affordable /Senior Housing Update- none

b. A' Street Update- Lawrence noted the storm water DEQ assessment- notice of violation, has been responded to and is requesting a hearing. Lawrence noted we hired an attorney and the City is stating this is not on us, it was up to the contractor (Thompson Bros) to comply with the permit. Nelson asked what the alleged violation was. Lawrence stated there was multiple violations but two primary violations and the ones that they fined us for were one that was \$20,000 and it was for allegedly allowing sediment to discharge into Fox Creek and noted it didn't happen and we are fighting that one 100%. Lawrence stated the other one had to do with record keeping on the inspector's part and that they (Thompson Bros) were to maintain all the records and that it is her understanding that they did not fill out the correct form that the inspector wanted and the forms they did fill out were ODOT forms, but it was not what the DEQ inspector was requesting. Lawrence noted she believed that fine was about \$15,000. Nelson asked did we get our response turned in on time and Lawrence stated yes. Nelson asked how long they (DEQ) have to respond and Lawrence did not know. Nelson asked if Thompson Bros. has taken ownership of any of it and Lawrence stated yes, and ODOT and David Evans and noted that they stepped up and said they did not do the required documentation. Lawrence noted there is a question on the erosion control, stating it was changed from than plan but noted that best management practices apply and that as long as best management practices prevented any sediment from reaching the creek, it should be a mute point. Mayor Cole told Lawrence to keep track of the time she spends on this as well as any money we pay for consultants or attorneys as Mayor noted his expectation is that Thompson Bros. is to reimburse every penny including Lawrence's time. Nelson asked if worst case scenario, \$35,000 and Lawrence noted we are not paying any of it and it's not going to be on the City.

Lawrence stated that they have been running into a lot of underground piping that was not supposed to be where they were and it has slowed down the project due to having to installing new lateral connections and noted a lot of

misinformation on the plans. Lawrence explained a couple scenarios that have created problems with the stormwater install and these issues have pushed the project back to about the first week in August. Nelson asked if 3rd street could open and Lawrence stated she would talk to the contractor about it. Nelson asked about the added costs and Lawrence stated she does not have the change orders yet and Nelson asked her to pressure the contractor to get 3rd street open. Lawrence that a change order for 6th and D sewer line breakage is coming.

c. Fox Creek Update- Lawrence stated no responses on request for information and noted that she got the estimate for the study and scope of work as asked and gave it to all partners and no one has responded. Nelson stated he doesn't want this to not move forward. Nelson stated the City has done what they said they would do and would like a response to see what the committee wants to do. Lawrence stated she would reach out with a letter to the all the partners.

d. Riverfront Trail- Lawrence stated she asked for information on quotes for easements and received no response. Mayor Cole stated the Fox Creek Trail easement will terminate if it's not used in 5 years from the date the easement was granted. Mayor stated he has asked staff over and over again and that we need to move forward and stated he is getting frustrated that it is not. Lawrence noted she has a quote for \$18,000 for easements. Mayor noted El Tap and Post Office are behind this project and that the condo owners are not excited about the trail. Lawrence noted we need an access easement. Bradfield asked what section needs done and get focused on getting Fox Creek to Post Office section done. Nelson stated we know where the easement is in front of the condos and recommended getting the retaining wall in and get the trail rocked in for now. duPlessis stated from a cost perspective, we should gravel now and do the asphalt all at once. Mayor noted staff is very busy and stated him and Nelson could get bids on the retaining wall and just get it graveled. After further discussion on possible plans for temporary easements and how to move forward, Mayor noted he wants Malakoff to make the contact to the land owner for that temporary construction easement and Nelson and himself will work on getting this project going.

7 a. Consider Approval of Resolution #20-06-01 Adopting and Declaring the Tax Levy and General Obligation Bond for the Fiscal Year 2020/2021- Nelson moved, Massey 2nd to approve resolution #20-06-01 as presented-
motion passed unanimously

b. Consider Approval of Resolution #20-06-02 Declaring the City's Election to Receive State Revenues for the Fiscal Year 2020/2021-Massey moved, Nelson 2nd to approve resolution # 20-06-02 as presented- **motion passed unanimously**

c. Consider Approval of Resolution #20-06-03 Adopting the Budget and Making Appropriations for the Fiscal Year 2020/2021- Nelson moved, Massey 2nd to approve resolution #20-06-03 as presented-**motion passed unanimously**

d. Consider Approval of Resolution #20-06-04 Resolution Transferring Appropriations for the Fiscal Year 2019/2020-Massey moved, Bradfield 2nd to approve resolution #20-06-04 as presented- **motion passes unanimously**

e. Consider Approval of Rainier School District Library IGA for 20/21- Mayor Cole noted the Librarian recently resigned. duPlessis stated he appreciated the City's working relation with the school district and the library. Nelson moved, Massey 2nd to approve Rainier School District Library IGA as presented- **motion passed unanimously**

f. Utility Billing Shutoff Discussion- Mayor Cole stated he felt the City should be hand in hand with the state on shutoffs and evictions and that the moratorium has been extended to August 31st 2020 and feels we should keep people on until then. Sanders asked what Clatskanie and Columbia River PUD are doing? (no one really knew for sure) Blodgett noted that there was less than twenty people that would be on the shutoff list and stated the City had about thirty less than normal past due statements mailed out. After discussion on ideas of what to, it was decided to put a door hanger reminder on past due customers and to also let them know we have Covid Relief assistance if they qualify. Lawrence noted the door hangers could help prompt payments or payment plans to keep customers from getting too far behind. Nelson asked how many people have participated in the Covid Relief offer, Blodgett stated probably less than twenty. Bradfield asked what our current amount past due was and Blodgett stated approximately \$3,200 not counting a couple of businesses that have not paid for different reasons. Nelson noted that he felt that if staff was okay with door hangers, then that is fine and if not, that is fine too. Mayor Cole asked do we extend the moratorium or go back to life is normal scenario Sanders stated we are talking \$3,200 of acquired debt to this points and even if it goes up to \$6,500, he stated he would like to make a motion to extend the moratorium on shutoffs to August 31, 2020, 2nd by Massey as presented. Nelson asked Lawrence about a business in town that has a major water leak and asked if they are part of the people not paying? Lawrence stated they are part of the people not paying and their bill is over \$7,000. Nelson stated he felt they need

to be pulled from the moratorium. Nelson stated if we have somebody who has an active leak, and they are choosing not to resolve it, then they need an incentive to make that happen. Lawrence stated she would bring more information back to the next meeting as there is a bigger discussion to have regarding this customer as she did not get involved until recently. Sanders amended his motion to include residential customers only. **-motion passed unanimously to extend the moratorium to August 31, 2020 for residential customers only**

g. Consider Approval of Emergency Repair on Broken Sewer Line at West 'C' Street and 7th Street- Lawrence noted the City's portion is \$8,200 for the emergency sewer main line repair. Sanders motioned to approve the payment for the emergency sewer line repair, Nelson 2nd the motion as presented- **motion passed unanimously**

h. Interview City Administrator Candidate- City Council interviewed W. Scott Jorgensen in a public interview. After questions and answers, Mayor Cole recommended that Council make an employment offer to Scott Jorgensen. Mayor Cole stated the goal would be to bring back a contract for July 6th meeting. Sanders motioned for Nelson and Mayor Cole to negotiate a contract with Jorgensen, Massey 2nd – **motion passed unanimously**. Mayor Cole noted a background check would need to be completed.

Staff Reports: Lawrence stated we have SCA grants coming. Blodgett noted we have migrated over to the new server and are working on various issues as a result of the migration.

Council Reports- duPlessis thanked police for the senior graduate parade for and all their help and positivity

Meeting adjourned at 8:08PM

City Calendar/Announcements:
City Council Meeting July 13th at 6pm



CONTRACT CHANGE ORDER (Page 1)

PROJECT NAME (SECTION) A Street Rail Safety Improvements (Rainier) Sec.		KEY NO. 19462	REGION 2	CONTRACT NO. 15156
HIGHWAY A Street (City Street)	PROJECT MANAGER Dave Davies	AGENCY PROJECT MANAGER Bill Jablonski		F.A. PROJECT NO. S000(886)
CONTRACTOR NAME AND MAILING ADDRESS Thompson Bros. Excavating, Inc. 18211 NE Fourth Plain Rd. Vancouver, WA 98682		PM (CONSULTANT OR LOCAL AGENCY) NAME AND ADDRESS Dave Davies David Evans and Associates, Inc. 530 Center St. NE Suite 605		CHANGE ORDER # 14
EMAIL ADDRESS steve@tbeinc.us		EMAIL ADDRESS dhd@deainc.com		h-# # OF DAYS 7

THIS CONTRACT IS HEREBY MODIFIED AS FOLLOWS (DESCRIPTION AND LOCATION OF WORK COVERED BY THIS ORDER):

Repair failed sewer main on E. 3rd Street, including removing and reinstalling waterline in conflict with sewer, and installing a new collector line, connecting the 3rd St. sewer services to it, and connecting it to the sewer manhole on A Street.

Repair failed sewer above manhole on Hwy 30 at E. 6th Street to facilitate CIPP lining the existing sewer main between Hwy 30 and A Street.

Delete and reduce unneeded sanitary sewer and waterline bid items eliminated by this and other field modifications.

Modify Section 00180.50(h), adding 7 days of contract time.

SPECIFICATIONS AND PROVISIONS - THE WORK TO BE DONE UNDER THIS ORDER IS TO BE PERFORMED, MEASURED, AND PAID FOR IN ACCORDANCE WITH THE TERMS FOR THE ABOVE CONTRACT EXCEPT AS MODIFIED AS FOLLOWS:

Work shall comply with Section 00445 and 01140 of the Specifications.

Modify Section 00180.50(h), changing the specified completion date for the contract to July 31, 2020.

ESTIMATED NET COST EFFECT OF THIS AGREEMENT ON THE CONTRACT:	INCREASE	<input type="text"/>	
	DECREASE	<input checked="" type="checkbox"/>	(\$1,867.34)

CONTRACTOR SIGNATURE Is Required Is Not Required (explain in Supporting Data)

CONTRACTOR SIGNATURE MAKES THIS CONTRACT CHANGE ORDER A SUPPLEMENTAL AGREEMENT

FOR SUPPLEMENTAL AGREEMENTS ONLY: Contractor: Please indicate your agreement by signing, dating and returning the original to the Project Manager. Work shall not begin until you are notified that the agreement has either been approved or that work may commence under advance approval. Your signature further indicates agreement that payments in accordance with the agreement constitute full and complete compensation for all costs, both direct and indirect, arising out of the described work covered by this agreement, and releases and discharges the State from other costs except as provided herein.

CONTRACTOR SIGNATURE <input checked="" type="checkbox"/> Unilateral DATE	AGENCY PM (ODOT only) <input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Approved DATE
Print _____ Sign _____	Print _____ Sign _____
RECOMMENDED BY LOCAL AGENCY DATE	AREA MANAGER: <input type="checkbox"/> Noted <input type="checkbox"/> Recommended <input type="checkbox"/> Approved DATE
Print _____ Sign _____	Print _____ Sign _____
RECOMMENDED BY PM (IF EXTERNAL TO ODOT) DATE	CONSTRUCTION SECTION: <input type="checkbox"/> Noted <input type="checkbox"/> Approved DATE
Print _____ Sign _____	Print _____ Sign _____

ODOT (Internal): After obtaining Contractor's signature, the Project Manager signs and submits the original through the Area Manager to Construction Section.	CONSTRUCTION SECTION:
ODOT (Outsourced): After obtaining Contractor's signature, the Project Manager submits original to Agency PM (ODOT PM or Local Agency Liaison), as appropriate, who then submits through the Area Manager to Construction.	
All Projects: Construction will distribute fully signed copies to the Project Manager, Agency PM, Contractor, and others as appropriate.	
THIS CCO MEETS THE CRITERIA UNDER HB 2375	
<input type="checkbox"/> No Legal Advice Received	
<input checked="" type="checkbox"/> Legal Advice Received	



CONTRACT CHANGE ORDER (Page 2)

PROJECT NAME (SECTION)				CONTRACT NO.		CCO NO.
A Street Rail Safety Improvements (Rainier) Sec.				15156		14
PAY ITEM	SUB JOB	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	AMOUNT
4014a	010	E. 3rd & 6th St Sewer Repair	1.00	LS	\$60,232.66	\$60,232.66
4014b	010	Modify 00180.50(h) 7-31-20	1.00	LS	\$0.00	\$0.00
4014c	010	Delete BI 56 10x6 tees	-1.00	EACH	\$350.00	(\$350.00)
4014d	010	Delete BI 57 12x6 tees	-2.00	EACH	\$400.00	(\$800.00)
4014e	010	Delete BI 58 8x6 tees	-1.00	EACH	\$250.00	(\$250.00)
4014f	010	Delete BI 59 10x6 Wyes	-1.00	EACH	\$300.00	(\$300.00)
4014g	010	Delete BI 61 12x6 Wyes	-9.00	EACH	\$400.00	(\$3,600.00)
4014h	010	Del BI 138 Recon 2" Water Svc	-12.00	EACH	\$1,000.00	(\$12,000.00)
4014i	010	Reduce BI 139 Rel 2" WM Assmbly	-8.00	EACH	\$2,000.00	(\$16,000.00)
4014j	010	Delete BI 145 10" Slv & 10" vlv	-1.00	EACH	\$5,000.00	(\$5,000.00)
4014k	010	Delete BI 146 10" Slv & 8" vlv	-4.00	EACH	\$4,800.00	(\$19,200.00)
4014l	010	Reduce BI 147 10" SLV & 6" vlv	-1.00	EACH	\$4,600.00	(\$4,600.00)
CCO TOTAL						(\$1,867.34)
CONTRACTOR SIGNATURE			DATE	PROJECT MANAGER OR LOCAL AGENCY LIAISON SIGNATURE		DATE



CONTRACT CHANGE ORDER (Page 1)

PROJECT NAME (SECTION) A Street Rail Safety Improvements (Rainier) Sec.		KEY NO. 19462	REGION 2	CONTRACT NO. 15156
HIGHWAY A Street (City Street)	PROJECT MANAGER Dave Davies	AGENCY PROJECT MANAGER Bill Jablonski		F.A. PROJECT NO. S000(886)
CONTRACTOR NAME AND MAILING ADDRESS Thompson Bros. Excavating, Inc. 18211 NE Fourth Plain Rd. Vancouver, WA 98682		PM (CONSULTANT OR LOCAL AGENCY) NAME AND ADDRESS Dave Davies David Evans and Associates, Inc. 530 Center St. NE Suite 605		CHANGE ORDER # 15
EMAIL ADDRESS steve@tbeinc.us	EMAIL ADDRESS dhd@deainc.com		h-# h	# OF DAYS 2

THIS CONTRACT IS HEREBY MODIFIED AS FOLLOWS (DESCRIPTION AND LOCATION OF WORK COVERED BY THIS ORDER):

Compensate Contractor for additional costs associated with reconstructing underground vaults at the hardware store and modifying the sidewalk foundation, including falsework at the Cornerstone Café.

Compensate Contractor for permanent signs deleted from the project after they were already purchased.

Modify Section 00185.50(h), adding 2 days of contract time to complete the work.

SPECIFICATIONS AND PROVISIONS - THE WORK TO BE DONE UNDER THIS ORDER IS TO BE PERFORMED, MEASURED, AND PAID FOR IN ACCORDANCE WITH THE TERMS FOR THE ABOVE CONTRACT EXCEPT AS MODIFIED AS FOLLOWS:

Modify Section 00185.50(h), changing the specified completion date to August 2, 2020.

ESTIMATED NET COST EFFECT OF THIS AGREEMENT ON THE CONTRACT:	INCREASE	<input checked="" type="checkbox"/>	\$7,855.27
	DECREASE	<input type="checkbox"/>	

CONTRACTOR SIGNATURE Is Required Is Not Required (explain in Supporting Data)

CONTRACTOR SIGNATURE MAKES THIS CONTRACT CHANGE ORDER A SUPPLEMENTAL AGREEMENT

FOR SUPPLEMENTAL AGREEMENTS ONLY: Contractor: Please indicate your agreement by signing, dating and returning the original to the Project Manager. Work shall not begin until you are notified that the agreement has either been approved or that work may commence under advance approval. Your signature further indicates agreement that payments in accordance with the agreement constitute full and complete compensation for all costs, both direct and indirect, arising out of the described work covered by this agreement, and releases and discharges the State from other costs except as provided herein.

CONTRACTOR SIGNATURE <input checked="" type="checkbox"/> Unilateral DATE Print _____ Sign _____	AGENCY PM (ODOT only) <input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Approved DATE Print _____ Sign _____
RECOMMENDED BY LOCAL AGENCY DATE Print _____ Sign _____	AREA MANAGER: <input type="checkbox"/> Noted <input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Approved DATE Print _____ Sign _____
RECOMMENDED BY PM (IF EXTERNAL TO ODOT) DATE Print _____ Sign _____	CONSTRUCTION SECTION: <input checked="" type="checkbox"/> Noted <input type="checkbox"/> Approved DATE Print _____ Sign _____

<p>ODOT (Internal): After obtaining Contractor's signature, the Project Manager signs and submits the original through the Area Manager to Construction Section.</p> <p>ODOT (Outsourced): After obtaining Contractor's signature, the Project Manager submits original to Agency PM (ODOT PM or Local Agency Liaison), as appropriate, who then submits through the Area Manager to Construction.</p> <p>All Projects: Construction will distribute fully signed copies to the Project Manager, Agency PM, Contractor, and others as appropriate.</p>	<p>CONSTRUCTION SECTION:</p> <p>THIS CCO MEETS THE CRITERIA UNDER HB 2375</p> <p><input type="checkbox"/> No Legal Advice Received</p> <p><input checked="" type="checkbox"/> Legal Advice Received</p>
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1 Chapter 12.25 - PUBLIC PARKS

12.25.010 - Definitions.

For the purposes of this chapter:

"Person" means any person, firm, corporation, but excluding those acting under direct authority of the city council.

"Public parks" means all property owned or controlled by the city, whether within or without the city limits, and operated for the use of the public for park purposes.

12.25.020 - Regulations.

A. It is unlawful for any person to:

1. Be in any public park between the hours of ten p.m. and five a.m., except vehicular or pedestrian traffic utilizing public streets, sidewalks, or designated paths and trails, persons attending events sanctioned by the city, persons acting under special permit issued by the city, persons staying at approved campsites in a public park or licensed fishermen going directly to or from fishing activities; said hours are designated as "quiet hours." During said hours, noises and sounds of all types that are audible from a distance of more than 15 feet are prohibited.
2. Litter any public park or deposit any litter, garbage, trash or other rubbish in receptacles in public parks except such as is generated incidental to use of the park;
3. Build a fire in a public park except in a stove or fireplace provided for this purpose, leave a fire unattended or fail to extinguish a fire when leaving the area;
4. Operate or park a motor vehicle in a public park except on roads or designated parking areas;
5. While in a public park, hunt, pursue, trap, kill or disturb any animal or bird or its habitat;
6. Sell any goods or services in a public park without permission of the city;
7. Erect any signs, markers or written notices without permission of the city;
8. Ride or operate a skateboard on any brickwork, or ornamental surface, picnic table, tennis court, fountain area, wading pool, planter, or sculpture located in a public park or cemetery.
9. Use tobacco in any public park. To "use tobacco" shall mean the possession of any lighted pipe, lighted cigar, the use of an electronic cigarette or a similar device intended to emulate smoking, which permits a person to inhale vapors or mists that may or may not include nicotine, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited to, any tobacco or cannabis product, or any other weed or plant capable of being smoked. In addition, to "use tobacco" shall mean to ingest or place within the mouth or nose any type of tobacco product, including chewing tobacco, snus, snuff or dip.

- B. The city administrator or other entity designated by the mayor is hereby authorized to adopt such additional rules and regulations not in conflict with the ordinances of the city as the manager finds necessary for the control and management of the city's parks. If any person feels aggrieved by any such rule or regulation, the person may request city council review regarding the adoption, amendment or repeal of the rule or regulation by filing with the city recorder a petition that shall be presented to the city council at its next regular meeting. Until and unless amended or repealed by the council, any rule or regulation made by the director shall be in full force and effect as if it were an ordinance.

12.25.030 - Group picnics.

Any group desiring to reserve any portion of a public park for picnics or social functions shall make written application therefor to the city manager at least one week prior to the event.

12.25.040 - Camping prohibited.

- A. It is unlawful to camp in or upon any sidewalk, street, alley, lane, public right-of-way, public park or any other place to which the general public has access.
- B. "To camp" is defined as setting up or remaining at a campsite.
- C. "Campsite" is defined as any place where any bedding, sleeping bag or other sleeping matter, or any stove or fire is placed, established or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof, for the purpose of maintaining a temporary place to live.
- D. It shall be an affirmative defense to this section that the individual charged had written consent of the person or other authority owning or entitled to possession of the location where the campsite was located.

12.25.050 - Possession of alcoholic beverages prohibited.

It is unlawful for any person to possess, control or consume any alcoholic beverage in Rainier City Parks unless as permitted by the Mayor for special events.

12.25.060 – Animals

Animals in parks shall be limited to domesticated canines and felines, including certified companion animals. Animals must always be under physical control, not just voice commands or eye contact. A collar and leash must always be in use, with the leash not being longer than seven feet in length.

Feces produced by the animals shall be collected and properly disposed of by the handler in possession of the animal. Proper disposal is defined as placed in a refuse receptacle or removed from park property for disposal.

12.25.070 - Violation—Penalty.

Any person convicted of a violation of this chapter shall be fined in a sum not to exceed five hundred dollars.

12.25.080 - Park exclusions.

- A. In addition to other remedies provided for violation of this code, or of any of the laws of the state of Oregon, any municipal police officer may exclude any person who violates any applicable provision of law in any park from the city's parks in accordance with the provisions of this section. Nothing in this section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the state or federal constitutions. However, a person engaged in such protected activity who commits acts that are not protected, but that violate applicable provisions of law, shall be subject to exclusion as provided by this section.
- B. For purposes of this section, "applicable provision of law" includes any applicable provision of Rainier Municipal Code, of any city ordinance, or of any rule or regulation promulgated by the mayor or other designated entity, any applicable criminal or traffic law of the state of Oregon, any law regarding controlled substances or alcoholic beverages and any applicable county ordinance or regulation. For purposes of this section, "applicable" means relating to the person's conduct in the park.
- C. An exclusion issued under the provisions of this section shall be for thirty days. If the person to be excluded has been excluded from city parks at any time within two years before the date of the present exclusion, the exclusion shall be for ninety days. If the person to be excluded has been excluded from city parks on two or more occasions within two years before the date of the present exclusion, the exclusion shall be for 180 days.
- D. An exclusion shall not be issued if the person promptly complies with the direction and desists from the violation. Notwithstanding the provisions of this subsection, no warning shall be required if the person is to be excluded for engaging in conduct that:
 1. Is classified as a felony or as a misdemeanor under the following chapters of the Oregon Revised Statutes, or is an attempt, solicitation or conspiracy to commit any such felony or misdemeanor defined in ORS:
 - a. Chapter 162—Offenses Against the State and Public Justice;
 - b. Chapter 163—Offenses Against Persons;
 - c. Chapter 164—Offenses Against Property, except for ORS 164.805, Offensive Littering;
 - d. Chapter 165—Offenses Involving Fraud or Deception;
 - e. Chapter 166—Offenses Against Public Order; Firearms and Other Weapons; Racketeering;
 - f. Chapter 167—Offenses Against Public Health, Decency and Animals;
 - g. Chapter 475—Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors; or
 2. Otherwise involves a controlled substance or alcoholic beverage; or

3. Has resulted in injury to any person or damage to any property; or
 4. Constitutes a violation of any of the following provisions of this code:
 - a. RMC 12.25.050—Possession of Alcohol;
 - b. RMC 12.25.020—Park Regulations;
 - c. RMC 12.25.040—Camping; or
 - d. RMC 12.25.050—Possession of Alcoholic Beverages
 5. Is conduct for which the person previously has been excluded for committing in any park.
- E. Written notice shall be given to any person excluded from the city's parks under this section. The notice shall specify the date and length of the exclusion, shall identify the provision of law the person has violated and shall contain a brief description of the offending conduct. The notice shall inform the excluded person of the right to appeal, including the time limit and the place of delivering the appeal. It shall be signed by the issuing party. Consequences for failure to comply shall be prominently displayed on the notice.
- F. A person receiving such notice of exclusion may appeal to the City of Rainier Municipal Court. Any appeal must be filed within ten days of the exclusion being issued. The municipal court shall uphold the exclusion if, upon judicial review, the preponderance of evidence admissible convinces the court that, more likely than not, the person in fact committed the violation, and if the exclusion is otherwise in accordance with law.
- G. At any time within the period of exclusion, a person receiving such notice of exclusion may apply in writing to the city administrator for a waiver of some or all of the effects of the exclusion for good reason. If the city administrator grants a waiver under this subsection, the city administrator shall promptly notify the police department and the director of public works of such action. In exercising discretion under this subsection, the city administrator shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be in a city park during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (without regard to the content of any speech associated with that event), and any other criterion the city administrator determines to be relevant to the determination of whether or not to grant a waiver. Notwithstanding the granting of a waiver under this subsection, the exclusion will be included for purposes of calculating the appropriate length of exclusions under Section 12.25.070(C). The decision of the city administrator to grant or deny, in whole or in part, a waiver under this subsection is committed to the sole discretion of the city administrator and is not subject to appeal or review.
- H. If an appeal of the exclusion is timely filed under Section 12.25.070(F), the effectiveness of the exclusion shall be stayed, pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of exclusion shall be effective immediately upon the issuance of the municipal court decision, unless the municipal court specifies a later effective date.

- I. If a person is issued a subsequent exclusion while a previous exclusion is stayed pending appeal (or pending judicial review, should a court stay the exclusion), the stayed exclusion shall be counted in determining the appropriate length of the subsequent exclusion under Section 12.25.070(C). If the predicate exclusion is set aside, the term of the subsequent exclusion shall be reduced, as if the predicate exclusion had not been issued. If multiple exclusions issued to a single person are simultaneously stayed pending appeal, the effective periods of those which are affirmed shall run consecutively.
- J. No person shall enter or remain in any park at any time during which there is in effect a notice of exclusion issued under this section excluding that person from that park.

DRAFT

MARKETING AGREEMENT

This MARKETING AGREEMENT (“**Agreement**”) is entered into as of [_____, 20__] (“**Effective Date**”), by and between the City of Rainier, Oregon (“**City**”), and Utility Service Partners Private Label, Inc. d/b/a Service Line Warranties of America (“**Company**”), herein collectively referred to singularly as “**Party**” and collectively as the “**Parties**”.

RECITALS:

WHEREAS, sewer and water line laterals between the mainlines and the connection on residential private property are owned by individual residential property owners residing in the City (“**Property Owner**”); and

WHEREAS, City desires to offer Property Owners the opportunity, but not the obligation, to purchase a service plan and other similar products set forth in Exhibit A or as otherwise agreed in writing from time-to-time by the Parties (each, a “**Product**” and collectively, the “**Products**”); and

WHEREAS, Company, a subsidiary of HomeServe USA Corp., is the administrator of the National League of Cities Service Line Warranty Program and has agreed to make the Products available to Property Owners subject to the terms and conditions contained herein; and

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound hereby, the Parties agree as follows:

1. **Purpose.** City hereby grants to Company the right to offer and market the Products to Property Owners subject to the terms and conditions herein.

2. City Obligations.

A. Grant of License. City hereby grants to Company a non-exclusive license (“**License**”) to use City's name and logo or other branding (“**Marks**”), on letters, bills and marketing materials to be sent to Property Owners from time to time, and to be used in advertising (including on the Company's website), all at Company's sole cost and expense and subject to City's prior review and approval, which will not be unreasonably conditioned, delayed, or withheld. Company's use of the Marks in accordance with this Agreement will not infringe any other party's rights. City agrees that it will not extend a similar license to any competitor of Company during the Term (as defined in Section 3 below).

B. Property Owner Data. If City elects to do so, City may provide Company with Property Owner Data for use by Company in furtherance of the advertisement, marketing, and sale of the

Products. Any name, service address, postal address, and any other appropriate or necessary data for Property Owners in City is defined as “**Property Owner Data**”. Property Owners Data shall be and remain City’s property. For any Property Owner Data provided by City to Company, City warrants that Property Owner Data has been and will be collected in compliance with all laws, statutes, treaties, rules, codes, ordinances, regulations, permits, official guidelines, judgments, orders and interpretations (“**Applicable Laws**”); and City is permitted by Applicable Laws and by any applicable privacy policy to provide Property Owner Data to Company and to permit Company to use Property Owner Data for the purposes of this Agreement. A Property Owner who has purchased a Product is a member (“**Member**”) and, following such purchase, all data in Company’s control or possession relating to Members is Company’s property.

3. **Term.** The term of this Agreement (“**Initial Term**”) shall be for three (3) years from the Effective Date. The Agreement will automatically renew for additional one (1) year terms (each a “**Renewal Term**”, and collectively with the Initial Term, the “**Term**”) unless one of the Parties gives the other written notice at least ninety (90) days prior to end of the Initial Term or of a Renewal Term that the Party does not intend to renew this Agreement. In the event that Company is in material breach of this Agreement, the City may terminate this Agreement thirty (30) days after giving written notice to Company of such breach, if said breach is not cured during said thirty (30) day period. Company will be permitted to complete any marketing initiative initiated or planned prior to termination of this Agreement after which time, neither Party will have any further obligations to the other and this Agreement will terminate.

4. **Confidentiality.** Each party will treat all non-public, confidential and trade secret information received from the other party as confidential, and such party shall not disclose or use such information in a manner contrary to the purposes of this Agreement. Notwithstanding the foregoing, the City shall not be liable for any disclosure of confidential information that is required to be disclosed under any applicable public records act or under court order. City shall provide notice to Company prior to any such disclosure.

5. **Code Change.** The Parties understand that the pricing of the Products and compensation provided for in this Agreement are based upon the currently applicable City, municipal or similar codes. In the event Company discovers a code change, Company shall have the ability to reassess the pricing of this Agreement.

6. **Indemnification.** Each Party (the “**Indemnifying Party**”) hereby agrees to protect, indemnify, and hold the other Party, its officers, employees, contractors, subcontractors, and agents (collectively or individually, “**Indemnitee**”) harmless from and against any and all third party claims, damages, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees and court costs (individually or collectively, “**Claim**”), which an Indemnitee may suffer or which may be sought against or are recovered or obtainable from an Indemnitee, as a result of or arising out of any breach of this Agreement by the Indemnifying Party, or any negligent or fraudulent act or omission of the Indemnifying Party or its officers, employees, contractors, subcontractors, or agents in the performance of this Agreement; provided that the applicable Indemnitee notifies the Indemnifying Party of any such Claim within a time that does not prejudice the ability of the Indemnifying Party to defend against such Claim. Any Indemnitee

hereunder may participate in its, his, or her own defense, but will be responsible for all costs incurred, including reasonable attorneys' fees, in connection with such participation in such defense.

7. **Notice.** Any notice required to be given hereunder shall be deemed to have been given when notice is (i) received by the Party to whom it is directed by personal service, (ii) sent by electronic mail (provided confirmation of receipt is provided by the receiving Party), or (iii) deposited as registered or certified mail, return receipt requested, with the United States Postal Service, addressed as follows:

To: City:
ATTN: Jerry Cole
City of Rainier
PO Box 100
Rainier, OR 97048
Email: jcole@cityofrainier.com
Phone: (503) 556-7301

To: Company:
ATTN: Chief Sales Officer
Utility Service Partners Private Label, Inc.
4000 Town Center Boulevard, Suite 400
Canonsburg, PA 15317
Phone: (866) 974-4801

8. **Modifications or Amendments/Entire Agreement.** Except for the list of available Products under the Agreement, which may be amended from time to time by the Parties in writing and without signature, any and all of the representations and obligations of the Parties are contained herein, and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a Party unless in writing signed by that Party.

9. **Assignment.** Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party unless such assignment or delegation is to an affiliate or to an acquirer of all or substantially all of the assets of the transferor.

10. **Counterparts/Electronic Delivery; No Third Party Beneficiary.** This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any Party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by email and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this agreement any third- party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

11. **Choice of Law/Attorney Fees.** The Parties shall maintain compliance with all Applicable Laws with respect to its obligations under this Agreement. The governing law shall be the laws of the State of Oregon, without regard to the choice of law principles of the forum state. THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THAT MAY EXIST TO HAVE A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON OR ARISING OUT OF, UNDER, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT.

12. **Incorporation of Recitals and Exhibits.** The above Recitals and Exhibit A attached hereto are incorporated by this reference and expressly made part of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

CITY OF RAINIER

Name:

Title:

UTILITY SERVICE PARTNERS PRIVATE LABEL, INC.

Name: Michael Backus

Title: Chief Sales Officer

Exhibit A
NLC Service Line Warranty Program
City of Rainier
Term Sheet
July 10, 2020

I. Initial Term. Three years

II. License Conditions.

City logo and name on letterhead, advertising, signature line, billing, and marketing materials.

III. Products. In exchange for the license conditions above, Company will offer the following discounted rates to Property Owners:

A. External water service line plan (initially, \$5.25 per month)

B. External sewer/septic line plan (initially, \$7.25 per month)

C. Interior plumbing and drainage plan (initially, \$9.49 per month)

Company may adjust the foregoing Product fees; provided, that any such adjustment shall not exceed \$.50 per month in any 12-month period, unless otherwise agreed by the Parties in writing.

IV. Scope of Coverage.

A. External water service line plan:

- Property Owner responsibility: From the meter and/or curb box to the external wall of the home.

- Covers thawing of frozen external water lines.

- Covers well service lines if applicable.

B. External sewer/septic line plan:

- Property Owner responsibility: From the external wall of the home to the main.

- Covers septic lines if applicable.

C. Interior plumbing and drainage plan:

- Water supply pipes and drainage pipes within the interior of the home.

V. Marketing Campaigns. Company shall have the right to conduct up to three campaigns per year, comprised of up to six mailings and such other channels as may be mutually agreed. Initially, Company anticipates offering the Interior plumbing and drainage plan Product via in-bound channels only.