

**CITY OF JOPLIN
COUNCIL AGENDA ITEM**

ITEM

Council Bill 2022-133 – adoption of a Marketing agreement between the City of Joplin and Utility Service Partners Private Label, Inc. d/b/a Service Line Warranties of America a Home Serve USA Company for the Service Line Program.

MEETING DATE

June 20, 2022

ORIGINATING DEPARTMENT

Public Works - Operations

ATTACHMENTS

Council Bill 2022-133; Marketing Agreement

REVIEWED BY

Interim Director of Public Works: Daniel Johnson; Director of Finance: Leslie Haase; City Attorney: Peter Edwards; City Manager: Nicholas Edwards.

SUMMARY

This Council Bill adopts a Marketing agreement between the City of Joplin and Utility Service Partners Private Label, Inc. d/b/a Service Line Warranties of America a Home Serve USA Company for the Service Line Program.

BACKGROUND

Ashley Shiwarski presented to Council the service line program that is endorsed by the National League of Cities (NLC). This program helps address public policy of aging infrastructure that benefits homeowners who carry this insurance. The program is no cost to the city. This program also educates homeowners on their responsibilities concerning their lateral lines. The warranty program uses locally licensed contractors to perform the work and these contractors are put through a rigorous vetting process to ensure the quality to the customer. This program can be done through a Royalty or a Non-royalty agreement with the city. The warranty provides the homeowner with coverage up to \$8,500 per repair incident. There are three types of policies that the homeowner can purchase, these policies include water, sanitary sewer and indoor plumbing. The program is voluntary for the homeowner.

FUNDING SOURCE

No City Funding

RECOMMENDATION

Staff recommends adoption of this Council Bill on First Reading.

MARKETING AGREEMENT

This MARKETING AGREEMENT (“**Agreement**”) is entered into by and between the City of Joplin, Missouri (“**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**”. This Agreement shall be effective on the last signature date set forth below (“**Effective Date**”).

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. **Grant of License.** City hereby grants to Company a non-exclusive license (“**License**”) to use City's branding (“**Marks**”), on marketing materials in accordance with Exhibit A 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. The City’s review and written approval may be provided via e-mail to Company. Company's use of the Marks in accordance with this Agreement will not infringe any other party's rights. In the event that City extends a similar license to a competitor of Company during the Term and any Renewal Term of this Agreement, the City shall provide thirty (30) days’ notice prior to such grant of license and Company may immediately terminate this Agreement. As used herein, “**Member**” means those Property Owners that purchase and are successfully enrolled in a Product by Company. Each Member’s name, address, phone number, email address and any other information that Company

collects from, on behalf of, or relating to a Member, is Company's property and subject to the confidentiality provision of this agreement.

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**"). Company will be permitted to complete any marketing initiative approved prior to termination of this Agreement after which time, neither Party will have any further obligations to the other and this Agreement will terminate. Either Party may terminate this Agreement, without cause, on thirty (30) days' written notice to the other Party.

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.** Company hereby agrees to protect, indemnify, and hold City, its officers, employees, contractors, subcontractors, and agents 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 City may suffer or which may be sought against or are recovered or obtainable from City, as a result of or arising out of any breach of this Agreement by Company, or any negligent or fraudulent act or omission of Company or its officers, employees, contractors, subcontractors, or agents in the performance of this Agreement; provided that City notifies Company of any such Claim within a time that does not prejudice the ability of Company to defend against such Claim. City 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 or (ii) deposited as registered or certified mail, return receipt requested, with the United States Postal Service, addressed as follows:

To: City:
ATTN: Lynden Lawson
City of Joplin
602 S Main Street
Joplin, MO 64801

Email: llawson@joplinmo.org
Phone: (417) 624-0820

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 Missouri, 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. Venue for litigation between the parties shall be solely and exclusively in Jasper County, Missouri. As used herein, “**Applicable Laws**” means applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, official guidelines, judgements, orders and interpretations, as well as licensing or registration requirements.

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.

13. **Consequential Damages.** In no event shall either Party be liable to the other Party for special, indirect, punitive, exemplary, or consequential damages in contract, tort, warranty, strict liability, or otherwise, including, but not limited to, loss of profits or data.

[Signature Page Follows]

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

CITY OF JOPLIN

Name: Nick Edwards

Title: City Manager

Date:

UTILITY SERVICE PARTNERS PRIVATE LABEL, INC.

Name: Michael Backus

Title: Chief Sales Officer

Date:

Exhibit A
NLC Service Line Warranty Program
City of Joplin
Term Sheet
May 17, 2022

- I. Initial Term. Three Years.
- II. License Conditions. Use of City logo and name on letterhead, advertising, signature line, and marketing materials.
- III. Products.
 - 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)

Pricing does not include taxes. Company may adjust the foregoing Product fees; provided, that any such monthly fee adjustment shall not exceed \$0.50 in any 12-month period. If such adjustment shall exceed \$0.50, both Parties must agree in writing.
- IV. Scope of Coverage.
 - A. External water service line plan:
 - i. Covers Property Owner responsibility: From the meter to the external wall of the home.
 - ii. Covers thawing of frozen external water lines.
 - iii. Covers well service lines if applicable.
 - B. External sewer/septic line plan:
 - i. Covers Property Owner responsibility: From the external wall of the home to the sewer main.
 - ii. Covers septic lines if applicable.
 - C. Interior plumbing and drainage plan:
 - i. Covers 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 (each campaign consists of two mailings) and such other channels as may be mutually agreed. Initially, Company anticipates offering the interior plumbing and drainage plan Product via in-bound phone or web only.

COUNCIL BILL NO. 2022-133

ORDINANCE NO.

AN ORDINANCE authorizing the City of Joplin, Missouri, to enter into a Marketing Agreement with Utility Service Partners Private Label, Inc., a Delaware Corporation, for the purpose of promoting a service line warranty program; and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That the Agreement by and between the City of Joplin, Missouri, and Utility Service Partners Private Label, Inc., a Delaware Corporation, for the purpose of promoting a service line warranty program, a true and accurate copy of said Agreement being attached hereto and incorporated as Exhibit “A,” be and the same is hereby approved.

Section 2. That the City Manager or his designee is hereby authorized and directed to execute said Agreement by and on behalf of the City of Joplin, Missouri.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this ____ day of _____, 2022, by a vote of _____.

Douglas W. Lawson, Mayor

ATTEST:

Holly Nagy, City Clerk

APPROVED AS TO FORM:

Peter C. Edwards, City Attorney