

CITY OF YUBA CITY
STAFF REPORT

Date: April 21, 2020
To: Honorable Mayor & Members of the City Council
From: Public Works Department
Presentation by: Diana Langley, Interim City Manager

Summary

Subject: NLC Service Line Warranty Program

Recommendation: Adopt a Resolution authorizing the City Manager to execute a Non-Royalty Marketing Agreement with Utility Service Partners Private Label, Inc. of Delaware to provide residential property owners with the option to purchase water and wastewater service line warranties, with the finding that it is in the best interest of the City.

Fiscal Impact: Minimal staff time.

Purpose:

To provide increased customer service and consumer protection opportunities for City utility customers.

Background:

Per Title 6 Chapters 5 (Wastewater) and 6 (Water) of the City's Municipal Code, property owners are responsible for the maintenance and repair of their water service line and wastewater collection lateral. These repairs can often be costly and unexpected for utility customers.

In order to help mitigate the effects on residents, the National League of Cities endorsed the Service Line Warranty Program in 2010, provided by Utility Service Partners Private Label, Inc. (USP). Through this partnership, the program has been implemented in over 400 cities across the country.

Bill Coffey of USP delivered a presentation to Council on February 18, 2020 regarding the program. At that time, Council directed staff to bring a Non-Royalty Marketing Agreement to Council for authorization in order to initiate the program for City customers.

Analysis:

The program offers three low-cost warranties for utility customers:

1. Water Line Warranty – Covers the outside water service line from the meter to the house, at a cost of \$6.00 /month. Warranty provides coverage of up to \$8,500 per repair.

2. Sewer Line Warranty – Covers the outside wastewater collection lateral from the City sewer main to the house, at a cost of \$9.00 /month. Warranty provides coverage of up to \$8,500 per repair.
3. In-Home Plumbing Warranty – Covers residential in-home water and sewer plumbing, at a cost of \$9.49 /month. Warranty provides coverage of up to \$3,000 per repair.

During the February 18th presentation, Council identified a few areas of concern with USP's template Non-Royalty Agreement and requested clarification in order to best protect consumers and businesses.

- City Logo:
 - While the agreement will continue to require the use of City logos on the warranty program's advertisements in order to notify customers that the program is not a scam, all notices and advertisements will first be vetted by City staff before publishing.
 - Use of the City logos by USP will not make the City liable for any of the warranty or services provided by the program.
- Competition:
 - The exclusivity clause has been removed from the agreement in order to provide opportunity for industry competition in the future. At this point, USP's program is the largest of its type and has the advantage of economy of scale.
 - The USP program utilizes regional contractors only, bringing jobs to local businesses through individually negotiated rates.
- Consumer Protection:
 - The agreement is a Non-Royalty Agreement, which means the customer will not be paying for more than the warranty service they are requesting – no hidden charge by the City.
 - The City will have the opportunity to review all notices and advertisements in order to ensure that the message does not conflict with City programs and regulations nor implicate the City as the responsible party for warranty services.

Fiscal Impact:

There is no fiscal impact on the City outside of minimal staff time to coordinate and administer the agreement. There is no monetary benefit to the City, as Council as elected to enter into a non-royalty agreement.

Alternatives:

1. Do not enter into the agreement.
2. Authorize the City Manager to execute the royalty version of the agreement.

Recommendation:

Adopt a resolution authorizing the City Manager to execute a Non-Royalty Marketing Agreement with Utility Service Partners Private Label, Inc. of Delaware to provide residential property owners with the option to purchase water and wastewater service line warranties, with the finding that it is in the best interest of the City.

Attachments:

1. Resolution
 - a. Non-Royalty Marketing Agreement

Prepared by:

Submitted by:

/s/ Scarlett O. Harris

Scarlett O. Harris
Administrative Analyst I

/s/ Diana Langley

Diana Langley
Interim City Manager

Reviewed by:

Department Head

Finance

City Attorney

DL

SM

SLC by email

ATTACHMENT 1

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
AUTHORIZING THE CITY MANAGER TO EXECUTE A NON-ROYALTY
MARKETING AGREEMENT WITH UTILITY SERVICE PARTNERS PRIVATE
LABEL, INC. OF DELAWARE**

WHEREAS, Title 6 (Public Works) of the City's Municipal Code codifies that property owners are held responsible for the maintenance and repair of water service lines and wastewater collection laterals; and,

WHEREAS, the City desires to provide its customers with consumer protection against the unexpected and potentially prohibitive costs of utility service line maintenance; and,

WHEREAS, the National League of Cities (NLC) endorsed the Service Line Warranty Program in 2010, as provided by Utility Service Partners Private Label, Inc. of Delaware (USP); and,

WHEREAS, the NLC Service Line Warranty Program provides residential property owners in the City with the option to enter into an agreement with USP for three types of low-cost utility service warranties; and,

WHEREAS, City staff has reviewed the terms of the Marketing Agreement attached to and thereby incorporated in this resolution and found them to be reasonable and advantageous to City customers; and,

WHEREAS, the City desires to enter into a Marketing Agreement with USP to provide optional service line warranties to City residential utility customers for a term of three years plus automatic annual extensions.

NOW, THEREFORE, be it resolved by the City Council of Yuba City that the City Manager is authorized to execute a Non-Royalty Marketing Agreement with Utility Service Partners Private Label, Inc. of Delaware to provide residential property owners with the option to purchase water and wastewater service line warranties, with the finding that it is in the best interest of the City.

The foregoing resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 21st day of April 2020.

AYES:

NOES:

ABSENT:

Shon Harris, Mayor

ATTEST:

Terrel Locke, Deputy City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY:

Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP

Attachment(s):

Non-Royalty Marketing Agreement

ATTACHMENT 1a

MARKETING AGREEMENT

This MARKETING AGREEMENT ("Agreement") is entered into as of _____, 20__ ("Effective Date"), by and between the City of Yuba City, California ("**City**"), and Utility Service Partners Private Label Inc., a Delaware corporation, d/b/a SLWA Insurance Services ("**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. 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 terminate this Agreement within thirty (30) days of receiving such notice.

B. **Property Owner Data.** Company is solely responsible for obtaining with Property Owner Data for use by Company in furtherance of the advertisement, marketing, and sale of the Products, and Company acknowledges that no Property Owner Data will be provided by the City to Company under this Agreement. Any name, service address, postal address, and any other appropriate or necessary data for Property Owners in City limits is defined as "**Property Owner Data**". The City shall have no interest in Property Owners Data obtained by Company..

3. **Term.** The term of this Agreement ("**Initial Term**") shall be for three (3) years from the Effective Date. The Agreement may be renewed for additional one (1) year terms (each a "**Renewal Term**", and collectively with the Initial Term, the "**Term**") upon mutual agreement of the Parties. 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. Likewise, 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 terminate this Agreement within thirty (30) days of receiving such notice. In either event, Company will be permitted to complete any marketing initiative initiated or planned prior to termination of this Agreement, which will be concluded not later than ninety (90) days from the date of termination, after which time, neither Party will have any further obligations to the other and this Agreement will terminate.

4. **Confidentiality.** The Company shall be responsible for maintaining the confidentiality and security of Property Owner Data in its possession.

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 in this Agreement.

6. **Indemnification.** Company hereby agrees to protect, indemnify, and hold the City, its elected officials, officers, employees 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 this Agreement, or any negligent or fraudulent act or omission of the Company or its officers, employees, contractors, subcontractors, or agents in the performance of services under the Products; provided that the applicable Indemnitee notifies Company of any such Claim within a time that does not prejudice the ability of Company 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: City Manager
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993
Phone: (530) 822-4602

To: Company:
ATTN: Chief Sales Officer
SLWA Insurance Services
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 (including by email), 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 e-mail 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 California, 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 purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Sutter County, California.

If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

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. In the event of a conflict between provisions, the Agreement shall take precedent over Exhibit A.

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

CITY OF YUBA CITY

SLWA INSURANCE SERVICES

Name:
Title:

Name: Michael Backus
Title: Chief Sales Officer

APPROVED AS TO LEGAL FORM

Name: Shannon L. Chaffin
Title: City Attorney

Exhibit A
NLC Service Line Warranty Program
City of Yuba City
Term Sheet
January 13, 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, \$6.00 per month)
- b. External sewer/septic line plan (initially, \$9.00 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 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.