



## Town of West Seneca

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# MEMO

To: The Honorable Town Board

From: Tina M. Hawthorne, Town Attorney

Date: March 18, 2021

Subject: Marketing Agreement  
National League of Cities Service Line Warranty Program

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Please see the attached resolution to be adopted authorizing the Supervisor to sign the agreement.

**TOWN OF WEST SENECA  
RESOLUTION**

**RESOLUTION AUTHORIZING THE TOWN OF WEST SENECA, NY TO ENTER INTO, A MARKETING AGREEMENT WITH UTILITY SERVICE PARTNERS PRIVATE LABEL, INC., ("USP") D/B/A/ SERVICE LINE WARRANTIES OF AMERICA ("SLWA") FOR ADVERTISEMENT TO THE TOWN'S RESIDENTS OF WARRANTY PLANS FOR REPAIRS OF EXTERNAL WATER LINES, EXTERNAL SEWER LINES, IN-HOME PLUMBING ON RESIDENTIAL PROPERTY.**

**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 Town; and

**WHEREAS**, the Town desires to offer Property Owners the opportunity, but not the obligation, to purchase a service plan for their external water lines, external sewer lines, and in-home plumbing and believes engagement in the marketing agreement will benefit the Property Owners of the Town; 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 within the marketing agreement; and

**NOW, THEREFORE BE IT RESOLVED** that the Town Board of the Town of West Seneca hereby authorizes the Supervisor to enter into a three (3) year marketing agreement with Utility Service Partners Private Label, Inc., ("USP") D/B/A/ Service Line Warranties of America ("SLWA") to provide the National League of Cities Service Line Warranty Program.

Adopted by the Town Council this 22<sup>nd</sup> day of March, 2021, by a vote of \_\_\_ayes and \_\_\_nays.

## MARKETING AGREEMENT

This MARKETING AGREEMENT (“**Agreement**”) is entered into by and between the Town of West Seneca, New York (“**Town**”), 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 Town (“**Property Owner**”); and

**WHEREAS**, Town 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.** Town hereby grants to Company the right to offer and market the Products to Property Owners subject to the terms and conditions herein.

2. **Town Obligations.**

A. **Grant of License.** Town hereby grants to Company a non-exclusive license (“**License**”) to use Town'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 Town'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 Town extends a similar license to a competitor of Company during the Term and any Renewal Term of this Agreement, the Town shall provide thirty (30) days' notice prior to such grant of license and Company may immediately terminate this Agreement.

B. **Property Owner Data.** If Town elects to do so, Town 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 Town is defined as “**Property Owner Data**”. Property Owners Data shall be and remain Town’s property. For any Property Owner Data provided by Town to Company, Town 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 Town 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 Town 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 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. **Consideration.** As consideration for such license, Company will pay to Town a License Fee of as set forth in Exhibit A (“**License Fee**”) during the Term of this Agreement. The first payment shall be due by January 30th of the year following the conclusion of the first year of the Term. Succeeding License Fee payments shall be made on an annual basis throughout the Term, due and payable on January 30th of the succeeding year. Town agrees to provide a completed Form W-9 to Company in order to facilitate proper payment of the License Fee. Town will have the right, at its sole expense, to conduct an audit, upon reasonable notice and during normal business hours, of Company's books and records pertaining to any fees due under this Agreement while this Agreement is in effect and for one (1) year after any termination of this Agreement.

5. **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 Town 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. Town shall provide notice to Company prior to any such disclosure.

6. **Code Change.** The Parties understand that the pricing of the Products and compensation provided for in this Agreement are based upon the currently applicable Town, municipal or

similar codes. In the event Company discovers a code change, Company shall have the ability to reassess the pricing of this Agreement.

7. **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. The Company will maintain, or cause to be maintained, in full force and effect, at the Company's expense, one or more policies of general comprehensive liability insurance (the “Company's Liability Insurance”) with combined single limit coverage of at least one million dollars (\$1,000,000.00) per occurrence, and at least three million dollars (\$3,000,000.00) in the aggregate, naming the Town as an additional insured. The Company shall ensure the Town has a copy of a valid Certificate of Insurance, demonstrating insurance coverage required by this Section, on file at all times.

8. **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:** Town:  
ATTN: Gary Dickson  
Town of West Seneca  
1250 Union Road  
West Seneca, NY 14224  
Email: gdickson@twsny.org  
Phone: (716) 558-3203

**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

9. **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.

10. **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.

11. **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.

12. **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 New York, 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.

13. **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.

**TOWN OF WEST SENECA**

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Name:

Title:

Date:

**UTILITY SERVICE PARTNERS PRIVATE LABEL, INC.**

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Name: Michael Backus

Title: Chief Sales Officer

Date:

**Exhibit A**  
NLC Service Line Warranty Program  
Town of West Seneca  
Term Sheet  
March 9, 2021

- I. Initial Term. Three Years.
- II. License Fee. \$0.50 per Product for each month that a Product is in force for a Property Owner (and for which payment is received by Company), aggregated and paid annually, for:
  - A. Use of Town logo and name on letterhead, advertising, signature line, billing, and marketing materials.
- III. Products.
  - A. External water service line plan (initially, \$5.75 per month)
  - B. External sewer/septic line plan (initially, \$7.75 per month)
  - C. Interior plumbing and drainage plan (initially, \$9.99 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 and/or curb box 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 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.



Client#: 1732307

HOMESUSA

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/09/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: USI Insurance Services LLC, 1787 Sentry Pkwy W., Veva 16 Suite 300, Blue Bell, PA 19422. CONTACT NAME: Michele Lanzalotti, PHONE: 610-897-4407, E-MAIL ADDRESS: michele.lanzalotti@usi.com. INSURER(S) AFFORDING COVERAGE: INSURER A: Allied World Insurance Company (NAIC # 22730), INSURER B: Allied World National Assurance Company (10690), INSURER C: Travelers Property Cas. Co. of America (25674), INSURER D: Arch Indemnity Insurance Company (30830), INSURER E: Arch Insurance Company (11150).

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, Excess Liab, and Workers Compensation and Employers' Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) The General Liability policy includes an automatic Additional Insured endorsement that provides Additional Insured status to Town of West Seneca NY, only when there is a written contract that requires such status, and only with regard to work performed on behalf of the named insured.

CERTIFICATE HOLDER: Town of West Seneca NY, 1250 Union Road, Buffalo, NY 14224. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: [Signature]

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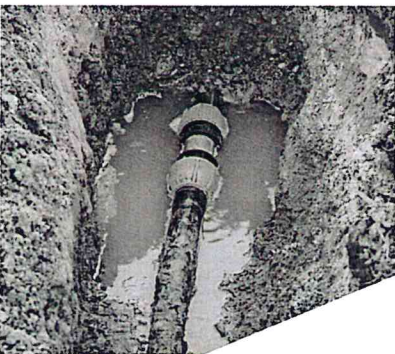
# WHY SHOULD OUR CITY offer this program?



## Because aging infrastructure impacts private lines, too.

Nationwide a water main breaks every two minutes. The same elements that cause those failures also exist on your residents' private lines: age of lines, deteriorating pipe material, freezing and thawing, and ground shifting.

This program provides an optional — proactive — solution to a problem that is bound to strike your residents at some point in time.



## Homeowners believe service line repairs are the municipality's responsibility.

When private service lines break or leak, many homeowners call the municipality first and are often surprised — and frustrated — to learn that the municipality can't help.

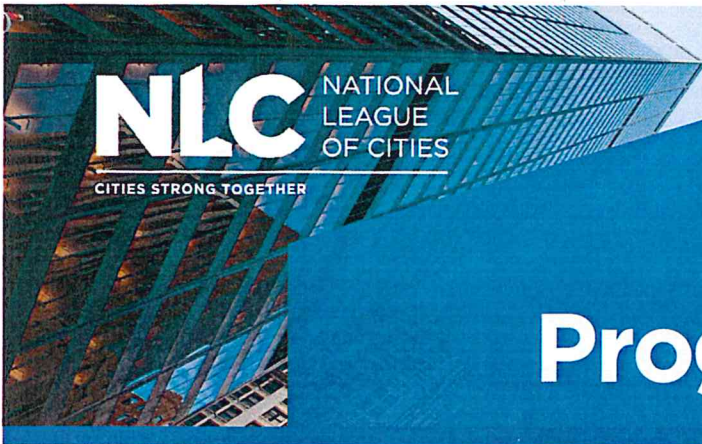
Educational awareness campaigns about homeowners' responsibility for service lines is a key component of the program.



## An unexpected repair expense can be hard on a budget — and peace of mind.

Studies show that most Americans do not have enough savings to cover an emergency repair cost that could be from hundreds to as much as \$3,500 or more. In addition, many can be overwhelmed by having to find a trustworthy contractor.

The program provides affordable repair plans backed by vetted, local-area contractors, keeping dollars in the local economy.



# Program Highlights



- ▲ The only utility line warranty program endorsed by the National League of Cities (NLC) and multiple state leagues
- ▲ Educates homeowners about their lateral line responsibilities
- ▲ Program handles all resident communications, service delivery and administration at no cost to the municipality
- ▲ Provides ongoing revenue stream to the municipality
- ▲ Reduces calls from residents to the municipality for lateral water and sewer line issues
- ▲ 24/7/365 bilingual customer service
- ▲ All repairs performed to city code by local-area, licensed contractors, keeping money in the local economy
- ▲ All materials sent to residents are pre-approved by the municipality



- ▲ **Over 750** municipal, utility and association partners across North America.
- ▲ **4.8 out of 5 stars\*** customer satisfaction rating.
- ▲ Performed over **1.3 million repairs** over the last three years, saving customers over **\$454 million.**

\* Average repair service rating from customers surveyed via text message and email post service from January–June 2019.

