

## RESOLUTION NO. 21-34

### ADOPTING THE MARKETING AGREEMENT BETWEEN UTILITY SERVICE PARTNERS PRIVATE LABEL, INC. D/B/A/ SERVICE LINE WARRANTIES OF AMERICA AND THE CITY OF EARLHAM IOWA

Be it resolved by the Earlham City Council, that the following agreement be entered into with Utility Service Partners Private Label, Inc. d/b/a Service Line Warranties of America:

#### MARKETING AGREEMENT

This MARKETING AGREEMENT (“**Agreement**”) is entered into by and between the City of Earlham, Iowa (“**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. **City Obligations.**
  - A. 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. 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.
  - 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 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 City 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. City agrees to provide a completed Form W-9 to Company in order to facilitate proper payment of the License Fee. City 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 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.
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 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.
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.

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: City:  
ATTN: Mary Sue Hibbs  
City of Earlham  
PO Box 518  
Earlham, IA 50072-0518  
Email: [earlhamcityhall@mchsi.com](mailto:earlhamcityhall@mchsi.com)  
Phone: (515) 758-2281

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 Iowa, 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.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the day and year set forth below.

**CITY OF EARLHAM**

\_\_\_\_\_

Name:

Title:

Date:

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

\_\_\_\_\_

Name: Michael Backus

Title: Chief Sales Officer

Date:

PASSED AND APPROVED this 9<sup>th</sup> day of August, 2021.

\_\_\_\_\_  
Jeff Lillie, Mayor

ATTEST:

\_\_\_\_\_  
Mary Sue Hibbs, City Clerk/Treasurer