

**TO: MAYOR AND CITY COUNCIL**

**FROM: LANELL ENDRES, INTERIM CITY ADMIN/FINANCE DIRECTOR**

**SUBJECT: SERVICE LINE WARRANTIES OF AMERICA**

**MEETING DATE: SEPTEMBER 18, 2018**

### **BACKGROUND**

**Update:** The City Council tabled this item from the last meeting asking for more information on the action taken by the Council. I have attached a copy of the portion of the minutes from the November 7, 2017 City Council meeting that describes the discussion and action taken by the Council. The motion that was made and seconded is shown on page six and is highlighted for your convenience.

#### **From the September 4, 2018 memo:**

The City Council recently decided to not proceed with the Service Line Warranties of America (SLWA) program. I contacted the company to notify them of the decision and found out that a Marketing Agreement was signed. A copy of that agreement is attached to this memo. I had a conference call with two of their representatives and they stated they would like the opportunity to have someone come to a meeting and go over any and all concerns the Council has with the program. They stated they wanted to work with the City to get everyone comfortable with moving forward on the project. They also indicated they would be able to provide a list of local area contractors.

I am wondering if you would like to have a representative from SLWA come to a meeting to discuss your concerns and answer any questions.

### **REQUESTED COUNCIL ACTION**

Please provide a consensus on whether or not you would like to have a representative come to a Council meeting.

Attachment(s):

Portion of the November 7, 2017 Council Meeting Minutes  
Marketing Agreement

Council Member McCusker stated his hope that the sound quality of the programming will be improved as a result of the system upgrades. He also expressed concerns about the recent purchase of HBC by Schurz.

A motion was made by Council Member Dalton, seconded by Council Member Carpenter and unanimously carried, to approve the HD upgrade project, at a cost not to exceed \$55,200.

NLC Service Line  
Warranty Program

Director Bergeson provided background information with regard to an optional insurance policy for homeowners that would cover service line issues for their water service, sewer service, and interior plumbing. Council Member Dalton asked how many times this could have been used in the past. Director Bergeson reported that four years ago this program would have been extensively utilized, when there were significant issues as a result of frozen water lines. He added that there have been multiple back-ups that have occurred.

Deryck Freudeman, representing Utility Service Partners, provided additional details about the NLC Service Line Warranty Program and discussed how cities enroll in this program. He noted that Utility Service Partners administers the entire program, including marketing, mailing costs, homeowner enrollments and renewals, and recruitment of local contractors, with no direct cost to the partner cities that enroll in the program.

Mr. Freudeman reviewed three main reasons that cities are choosing to enroll in this program:

- 1) Aging infrastructure.
- 2) Opportunities to educate homeowners about their responsibilities.
- 3) Cost savings for homeowners.

Mr. Freudeman discussed how the program is marketed through periodic public awareness campaigns. He noted that the City would approve all of the documentation and communication prior to launch of the program.

Mayor Robinson asked whether there would be any cost to the City. Mr. Freudeman reiterated that there was no cost for the City to enroll in the program, other than some staff time to help put the documentation together.

Council Member Althoff asked about the use of local contractors, and Mr. Freudeman provided additional information in this regard.

Council Member McCusker asked whether there are other companies that provide this type of service. Mr. Freudeman indicated that there are other companies that offer this service. He stated that one of the goals of this program is to educate homeowners about the types of issues that could potentially arise. He noted that Utility Service Partners is one of only two companies that partners with cities, with American Water Resources being the other company. He stated that one of the advantages of this is that knowledge of the infrastructure allows Utility Service Partners to offer a product that will fully cover the homeowner.

Council Member McCusker asked about a bidding process for this service. He stated his opinion that Cannon Falls is not a high-risk town in terms of water main issues. He expressed concerns about the Council endorsing private companies. It was clarified that the City did not seek out this service. Council Member Dalton asked whether this partnership would be an exclusive agreement. Mr. Freudeman discussed an exclusivity provision pertaining to use of the City's logo in marketing materials. He added that American Water Resources does not tend to partner with smaller cities.

Council Member McCusker commented regarding potential legal issues in terms of using the City's logo. He recommended further discussion of a potential partnership. Mayor Robinson expressed agreement with this recommendation.

Council Member Dalton commented that the City would not be doing any of the contracting and thus would not require a bidding process. Council Member Abadie commented that this would be a licensing and marketing agreement and not a contract that requires a financial obligation by the City. Mr. Freudeman discussed marketing activities. He noted that the water plan, the sewer plan, and the plumbing plan would be offered as separate components and reviewed the costs to homeowners. He commented that homeowners would not be obligated to purchase this type of product through Utility Service Partners. Council Member Abadie commented there would be additional discussion that would occur before the program is launched. Mr. Freudeman reiterated that no letters would be sent to homeowners without City approval of the content.

Council Member Dalton commented that this program could provide peace of mind to homeowners, adding that this would be a voluntary

program.

A motion was made by Council Member Dalton to move the process forward in a nonbinding manner. Additional discussion followed.

Mr. Freudeman discussed a royalty option. He noted that, if the City does not desire to receive a royalty, the cost of the service would be reduced. He clarified that the Utility Service Partners administers the program for the National League of Cities.

Council Member Abadie asked about coverage for houses with wells. Mr. Freudeman indicated that the insurance would cover well lines but not well pumps. He noted that homeowners within the City limits as well as those just outside the City limits could be included in the coverage area.

Council Member McCusker commented with regard to Public Works involvement. He suggested researching whether this service is offered by a local insurance provider and recommended against the proposed partnership with Utility Service Partners.

Mayor Robinson asked whether Cannon Falls is a member of the National League of Cities. City Administrator Johnson indicated that Cannon Falls is not an NLC member. Mr. Freudeman clarified that NLC membership is not required to participate in the program.

Council Member Althoff commented that this type of coverage may appeal to homeowners. Mr. Freudeman described how the subscription-type program would operate from the perspective of a homeowner. Council Member McCusker expressed agreement with the service but opposition to the program being connected to the City. He reiterated potential legal concerns. Mr. Freudeman noted that there are approximately 20 partner cities in Minnesota and that the marketing documents have been vetted by hundreds of City Attorneys across the country.

The motion to move the process forward was seconded by Council Member Abadie. Council Member Abadie clarified that the motion was to continue exploring whether this opportunity can be offered to residents, stating that she saw no good reason to stand in the way of offering this opportunity. Council Member McCusker asked why she felt that the City would be standing in the way of this opportunity, stating that other companies may now request an endorsement from the City. Council Member Abadie indicated that she does not consider the proposed agreement to be an endorsement. Council

Member Althoff commented that homeowner's insurance does not cover these types of repairs. Council Member McCusker commented that there are other companies offering this service.

A vote was taken, and the motion carried by a vote of 4:2, with Council Members McCusker and Carpenter voting nay. Next steps were reviewed.

Approve  
Memorandum of  
Understanding –  
IUOE / 49ers

Council Member McCusker asked why a Memorandum of Understanding (MOU) was necessary. Administrator Johnson provided background information, noting that in September the Council approved a new classification and compensation plan for non-union employees. He clarified that the bargaining units were not included in that motion. The proposed MOU would add union Public Works employees to the new structure, effective from October 1, 2017, through December 31, 2017. He commented that an MOU for LELS employees will be discussed during the next Council meeting.

A motion was made by Council Member McCusker, seconded by Council Member Dalton and unanimously carried, to approve the Memorandum of Understanding with the International Union of Operating Engineers Local 49 regarding wages from October 1, 2017, through December 31, 2017.

Add Full-Time  
Paramedic Position

Council Member McCusker expressed agreement with the position request to add a full-time paramedic to the Ambulance Department. He suggested scheduling a workshop for discussion of the future of the ambulance service. He referenced challenges associated with growth of the ambulance service and considerations pertaining to Mayo Clinic.

EMS Chief Malchow clarified that the Cannon Falls Ambulance Service is not the Mayo ambulance service, although it does provide service to the Mayo Clinic Health System. He expressed appreciation to Dr. Mike Wilcox for his support as Medical Director. He noted that the Cannon Falls Ambulance Service provides medical care that Gold Cross cannot provide. He thanked the Council for allowing the Ambulance Service to reinvest its revenue. He indicated that he would be happy to participate in additional discussion about the future of the Ambulance Service.

Council Member Abadie suggested that department heads be asked to provide an update to the Mayor and Council, as has been done in the past. Mayor Robinson expressed agreement with this suggestion. He complimented the Ambulance Service on its efficient and up-to-

## MARKETING AGREEMENT

This MARKETING AGREEMENT ("Agreement") is entered into as of June 25, 2018 ("Effective Date"), by and between the City of Cannon Falls, Minnesota ("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 ("Residential Property Owner"); and

WHEREAS, City desires to offer Residential Property Owners the opportunity, but not the obligation, to purchase a service line warranty 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 Residential 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 Residential 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 name and logo on letterhead, bills and marketing materials to be sent to Residential 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. City agrees that it will not extend a similar license to any competitor of Company during the Term and any Renewal Term of this Agreement.
3. **Term.** The term of this Agreement ("Term") shall be for three (3) years from the Effective Date. The Agreement will automatically renew for additional one (1) year terms ("Renewal Term") unless one of the Parties gives the other written notice at least ninety (90) days prior to

end of the 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. **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 any breach of this Agreement by the Company, 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.

5. **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: Mayor Robby Robinson  
City of Cannon Falls  
918 River Rd  
Cannon Falls, MN 55009-1447  
Phone: (507) 263-9300

To: Company:  
ATTN: Chief Sales Officer  
Utility Service Partners Private Label, Inc.  
11 Grandview Circle, Suite 100  
Canonsburg, PA 15317  
Phone: (866) 974-4801

6. **Modifications or Amendments/Entire Agreement.** 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.

7. **Assignment.** This Agreement and the License granted herein may not be assigned by Company other than to an affiliate or an acquirer of all or substantially all of its assets, without the prior written consent of the City, such consent not to be unreasonably withheld.

8. **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 facsimile or 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.

9. **Choice of Law/Attorney Fees.** The governing law shall be the laws of the State of Minnesota. In the event that at any time during the Term or any Renewal Term either Party institutes any action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, then the unsuccessful Party shall be responsible for the reasonable expenses of such action including reasonable attorney's fees, incurred therein by the successful Party.

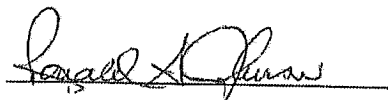
10. **Incorporation of Recitals and Exhibits.** The above Recitals and Exhibit A attached hereto are incorporated by this reference and expressly made part of this Agreement.

[Signature Page Follows]



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

**CITY OF CANNON FALLS**



Name: *Ronald S. Johnson*

Title: *City Administrator*

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



Name: Michael Backus

Title: Chief Sales Officer

**Exhibit A**  
NLC Service Line Warranty Program  
City of Cannon Falls  
Term Sheet  
January 5, 2018

I. Initial Term. Three years

II. License Conditions.

- a. City logo on letterhead, advertising, billing, and marketing materials
- b. Signature by City official

III. Products.

- a. External water service line warranty (initially, \$6.25 per month)
- b. External sewer/septic line warranty (initially, \$7.25 per month)
- c. Interior plumbing and drainage warranty (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 warranty:
  - Homeowner responsibility: From the main 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 warranty:
  - Homeowner responsibility: From the exit point of the home to the main.
  - Covers septic lines if applicable
- c. Interior plumbing and drainage warranty:
  - 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 warranty Product via in-bound channels only.