

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: 03/21/24

Item description/summary:

Consider Accepting three (3) year agreement with NLC Service line program, offered by Utility Service Partners, a HomeServe Company.

Olivehurst Public Utility District (OPUD) has been coordinating with Home Serve in order to support Home Owners with insuring/providing coverage to water and sewer infrastructure not maintained by OPUD.

OPUD staff is always approached when a home owner has a leak, broken pipe, or plumbing issue where the home owner believes it's OPUDs responsibility to fix. This is not the case. OPUD has a defined area of where it works and operates under. This program allows homeowner to be fully covered for their water and sewer infrastructure at a low monthly rate. This give OPUD consumers an alternative to prepare for any future disasters and all mail and deliveries will be coordinated by HomeServe with no cost to OPUD in any form.

Fiscal Analysis:

n/a

Employee Feedback

n/a

Sample Motion:

Accept three year agreement with HomeServe via any updates required by Legal Counsel

Prepared by: Swarnjit Boyal, Public Work Engineer

RECOMMENDATION: It is recommended that Olivehurst Public Utility District authorizes Administration, or their designee, to enter into a Marketing agreement with Utility Service Partners, Inc. (USP) for an initial term of three (3) years, subject to Attorney review.

BACKGROUND: The NLC Service Line Program, offered by Utility Service Partners, a HomeServe Company, was conceived to educate property owners about their service line responsibilities and to help customers avoid the out-of-pocket expense for unanticipated and potentially costly service line repairs and replacements. This program, the only one of its kind, will help the District achieve its goals by:

- Providing homeowners affordable protection against significant and unexpected costs to remedy leaking/broken/ clogged water lines, sewer lines, and in-home plumbing lines
- Ensuring the delivery of timely, high-quality repair services in adherence to all applicable codes
- Providing exemplary service that reflects positively on the District
- Stimulating the local economy by using fully vetted local contractors to complete the repairs.

COVERAGE: The NLC Service Line Program offers three complete and separate voluntary programs. There is never a service fee/deductible and no annual or lifetime limits on the water line and sewer line coverage. Customers can cancel the insurance at any time.

Exterior Water Service Line: Coverage includes service to locate, excavate and repair/replace a leaking exterior water service line. Covered repairs include, but are not limited to leaks, breaks, corrosion, blockages, root intrusion, and other types of damage that impair or limit the intended function of the system. Includes restoration of ground surface features after excavation for service line repair, including filling, raking, reseeding, reinstallation of existing soft landscaping and shrubbery, and patching of paved surfaces.

Exterior Sewer Service Line: Coverage includes service to locate, excavate and repair/replace a leaking exterior sewer service line. Covered repairs include, but are not limited to leaks, breaks, corrosion, blockages (due to fats, oils and grease), root intrusion, and other types of damage (such as from freezing) that impair or limit the intended function of the system. Includes restoration of ground surface features after excavation for service line repair, including filling, raking, reseeding, reinstallation of existing soft landscaping and shrubbery, and patching of paved surfaces.

Internal Plumbing and Drainage: Coverage includes the emergency breakdown costs of repairing or replacing interior water, sewer, and drainage pipe materials, valves and other plumbing-related material, including unblocking, repair and replacement. Repair of clogged toilets.

Product	Monthly	Annual Coverage Limit	Annual Service Calls/Per Call Coverage
External Water Line	\$6.00	Unlimited	Unlimited Calls/\$8,500 Per Call
External Sewer Line	\$9.99	Unlimited	Unlimited Calls/\$8,500 Per Call
In-Home Plumbing	\$16.49	Unlimited	Unlimited Calls/\$3,000 Per Call

IMPLEMENTATION: The NLC Service Line Program will utilize the District logo to brand the materials used to educate customers about our repair service plans. Program marketing literature clearly discloses that the Program and District are separate entities and that the program is

voluntary for customers. HomeServe will create all marketing materials with input from the District and will submit all marketing/communications materials for final approval.

ENROLLMENT AND BILLING: The NLC Service Line Program offers homeowners simple options if they choose to enroll either via mail, phone, or web. We handle all customer billing and customers can choose annual, quarterly, or monthly billing and may pay by check, direct debit/ACH, or credit card. Once we receive the enrollment application, customers receive a welcome letter which includes their service agreement terms and conditions, their payment details, a reiteration of their policy coverage, and our toll-free customer service number. Customers also receive a welcome call from customer service as an additional, personalized confirmation of the program. We handle all customer billing, and a homeowner can enroll or cancel at any time.

FINANCIAL IMPACT: No cost to Olivehurst Public Utility District to participate and no financial impact.

MARKETING AGREEMENT

This MARKETING AGREEMENT (“**Agreement**”) is entered into and made effective as of _____, (“**Effective Date**”), by and between Olivehurst Public Utility District (“**District**”), and SLWA Insurance Services (“**SLWA**,” and together with District, the “**Parties**,” and each, a “**Party**”).

WHEREAS, individual residential property owners (“**Customer(s)**”) residing in the District own and are responsible for sewer and water lines between the mainlines and the connection on their property;

WHEREAS, District desires to announce to Customers the opportunity, but not the obligation, to purchase plans as set forth in Exhibit A or as otherwise mutually agreed by the Parties in writing (including by email) (“**Plan(s)**”) to repair such lines; and

WHEREAS, SLWA, a subsidiary of HomeServe USA Corp. (“**HomeServe**”), is the administrator of the National League of Cities (“**NLC**”) Service Line Warranty Program.

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.** District grants to SLWA the right to offer and market service Plans subject to the terms and conditions of this Agreement.

2. **District Obligations.**

A. **Grant of License.** District grants to SLWA a license (“**License**”) to use District’s designated names, symbols, trademarks, service marks, logotypes, trade names and insignias owned by District or its affiliates (“**Marks**”), which may include the use of District’s logo and name in advertising (including on SLWA’s websites or social media sites), in signature lines, and in marketing materials to be sent to Customers, all at SLWA’s sole cost and subject to District’s prior review and approval, which will not be unreasonably conditioned, delayed, denied, or withheld. SLWA’s use of the Marks in accordance with this Agreement will not infringe any other party’s rights. In consideration of SLWA’s marketing activities, District shall not advertise, promote, administer, offer, or sell, directly or indirectly, any plans that are the same as, or substantially similar to, the Plans during the Term. In the event that District extends a similar license to a competitor of SLWA during the Term, District shall provide thirty (30) days’ written notice prior to such grant of license and SLWA may immediately terminate this Agreement.

B. **Data.**

i. If District elects to do so, District may provide SLWA with “zip code” data for Customers in an agreed-upon format. If District further elects to do so, District may also provide a list of the name, service address, postal address (if different), residential telephone number, and, if available, email address of Customers and any other appropriate or necessary data (“**Customer Data**”) to SLWA, or to a third party if and as directed by SLWA in writing, for use by SLWA in furtherance of the marketing and sale of the Plans. If provided by District, Customer Data will be provided to SLWA quarterly or more frequently during the Term and in a mutually agreed electronic format. If provided by District to SLWA, Customer Data shall remain District’s property and Confidential Information (defined below), and SLWA will only use Customer Data as permitted by this Agreement. SLWA may obtain Customer Data from a third-party in furtherance of the marketing and sale of the Plans. In the event SLWA obtains Customer Data from a third-party, it shall become and remain SLWA’s property and Confidential Information. “**Member**” means those Customers that purchase and are successfully enrolled in a Plan by SLWA. Each Member’s name, address, phone number, email address and any other information that SLWA collects from a Member, is SLWA’s property and Confidential Information.

ii. **Data Processing Addendum.** In the event that District provides Customer Data to SLWA, the Parties shall abide by all of the requirements and obligations set forth in that certain Data Processing Addendum, which can be accessed and viewed at: <https://www.homeserve.com/sc/legal/HomeServeDataPrivacyAddendum> (the “**DPA**”), which is

incorporated herein by reference, for purposes of compliance with all Data Protection Laws (as defined in the DPA). In the event of any inconsistency between the provisions in this Agreement and those contained in the DPA, the DPA shall control.

3. **Term; Termination.** The term of this Agreement shall be for the number of years in Exhibit A commencing with the Effective Date (“**Initial Term**”). The Agreement will automatically renew for additional one (1) year terms, unless one of the Parties gives the other written notice at least ninety (90) days prior to the end of the then current term (each a “**Renewal Term**” and collectively with the Initial Term, the “**Term**”) that the Party does not intend to renew this Agreement. In the event that SLWA is in material breach of this Agreement, District may terminate this Agreement thirty (30) days after giving written notice to SLWA of such breach, (i) if said breach is not cured during said thirty (30) day period, or, (ii) if such breach is incapable of being cured in such period, SLWA has failed to take during such period substantive steps to cure such breach. Either Party may terminate this Agreement without cause upon thirty (30) days’ prior written notice to the other Party. SLWA 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. **Applicable Laws.** Each Party shall comply at all times with all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, official guidelines, judgements, orders and interpretations, as well as licensing or registration requirements (“**Applicable Laws**”) with respect to its obligations under this Agreement. For any Customer Data provided by District to SLWA, District warrants, represents and covenants that Customer Data has been and will be collected in compliance with all Applicable Laws. District is permitted by Applicable Laws and privacy policies to provide Customer Data to SLWA and to permit SLWA to use such data as contemplated by this Agreement.

5. **Confidentiality.** “**Confidential Information**” of a Party means any non-public, proprietary, or confidential information, whether or not it constitutes a trade secret under Applicable Laws, and any other information that a reasonable person would expect to be confidential. Each Party will treat Confidential 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, a Party shall not be liable to the other Party for any disclosure of Confidential Information that is required under any Applicable Laws, applicable public records act or under court order. To the extent legally permissible, a Party shall provide written notice to the other Party prior to any such disclosure.

6. **Ruling and/or Code Change.** In the event that: (i) a change or proposed change in Applicable Laws, or municipal or similar codes; or (ii) an interpretation, policy, ruling, or order by any court, tribunal, arbitrator, regulatory agency, commission, including a public service commission or similar body of a District, or other instrumentality of the United States, or any state, county, District, or other political subdivision; negatively or potentially negatively impacts the terms of this Agreement or the obligations of the Parties set forth in this Agreement, the Parties shall negotiate in good faith to modify the terms of this Agreement accordingly. Should the Parties be unable to reach a mutual agreement to revise this Agreement, then either Party may terminate this Agreement on thirty (30) days’ written notice to the other Party.

7. **Indemnification.** Each Party (the “**Indemnifying Party**”) hereby agrees to indemnify, defend and hold the other Party and its directors, managers, members, officers, employees, contractors, subcontractors, and agents, and in the case of District, also its elected officials (“**Representatives**”) (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 (“**Claim(s)**”), 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, intentional misconduct, or omission of the Indemnifying Party or its Representatives 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 under this Agreement may participate in its own defense, but will be responsible for all costs incurred, including reasonable attorneys’ fees, in connection with such participation.

8. **Independent Contractor Status.** The obligations performed by each Party in this Agreement shall be executed as an independent contractor. SLWA shall have responsibility for and control over the details and means for providing the Plans under this Agreement. Neither Party nor any of its Representatives shall be considered an employee, representative, agent or subcontractor of the other Party or its Representatives.

9. **Anti-Bribery and Corruption.**

A. Each Party warrants to the other that:

- i. it has not offered, promised, given, accepted, or agreed to give or accept, and shall not during the Term offer, promise, give, accept, or agree to give to or accept from any person any bribe on behalf of the other Party or otherwise with the object of obtaining a business advantage for the other Party or otherwise;
- ii. it will not engage in any activity or practice which would constitute an offense under any applicable anti-bribery and corruption laws, including but not limited to the United States Foreign Corrupt Practices Act of 1977, the United Kingdom's Bribery Act 2010 and Canada's Corruption of Public Officials Act, and it will notify the other Party as soon as practicable of any offense of the foregoing acts in connection with this Agreement, or any breach of the undertakings contained in this section of which it becomes aware;
- iii. it has in place, and during the Term will maintain, its own policies, procedures, and internal controls, including accounting procedures to record expenditures in connection with this Agreement, necessary to ensure compliance with any applicable anti-bribery and corruption laws;
- iv. it will ensure that any person who performs or has performed services for or on its behalf ("**Associated Person**") complies with this section, it will not enter into an agreement with any Associated Person in connection with this Agreement unless such agreement contains terms substantially similar to those contained in this section, and it shall be responsible for any breach of such terms, or these terms, by any Associated Person that is a subcontractor of the Party hereunder;
- v. from time to time during the Term, at the reasonable request of the other Party, it will confirm in writing that it has complied with the terms of this section and will provide any information reasonably requested by the other Party to demonstrate such compliance; and
- vi. in the case of District, it will abide the "Reporting Hotline" section of SLWA's Business Partner Code of Conduct (described in "Business Partner Code of Conduct" section) to report to SLWA any request or demand for any improper payments or other improper advantage of any kind in connection with the performance of this Agreement.

10. **Records; Audit.** Each Party shall, at all times during the Term and for a period of seven (7) years after the termination or expiration of this Agreement, maintain complete and accurate records, together with supporting or underlying documents and materials, kept and maintained by such Party, its Representatives to substantiate such Party's compliance with its obligations and responsibilities under this Agreement. Up to once per year of the Term, each Party shall have the right, upon at least ten (10) days' prior written notice and during normal business hours, at its sole cost and expense, to audit and inspect, on its own or through a Representative, the other Party's records for the purpose of confirming such other Party's compliance with the terms of this Agreement.

11. **Notice.** Any notice required to be given under this Agreement shall be deemed to have been received when delivered (i) by personal service, (ii) by electronic mail with confirmation of delivery and receipt (provided a hard copy is sent promptly by regular mail), or (iii) by registered or certified mail, return receipt requested, with the United States Postal Service, addressed as follows.

To: District:
Olivehurst Public Utility District
ATTN: John Tillotson P.E.
1970 9TH Avenue
Olivehurst, CA 95961
email: jtillotson@opud.org
Phone: (530) 743-4657

To: SLWA:
SLWA Insurance Services
601 Merritt 7, 6th Floor
Norwalk, CT 06851
Attention: Michael Backus, Chief Growth Officer
email: michael.backus@homeserveusa.com
Phone: (203) 840-8276

With a copy to:
Legal Department
email: legal@homeserveusa.com

12. **Entire Agreement; No Third-Party Beneficiaries; Severability.** The Parties acknowledge that no representations, agreements, or promises were made by the other Party or by any of its Representatives other than those specifically contained in this Agreement. This Agreement, including the recitals as well as any attachments or exhibits, constitutes the entire agreement of the Parties with respect to the matters contemplated in this Agreement, and supersedes any prior agreement or understanding with respect to them. The Parties agree that this Agreement was entered into solely for the respective benefit of each of them and their respective successors and assigns, and nothing in this Agreement is intended to create any third-party beneficiaries. This Agreement may be amended or modified only by a written instrument executed by an authorized representative of each of the Parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Subject to Applicable Laws, the invalidity or unenforceability of a specific provision in the Agreement shall not render any other provision(s) invalid, inoperative, or unenforceable.

13. **Assignment.** Neither Party may assign or transfer any of its rights under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably delayed, withheld, conditioned, or denied, except to an affiliate of the assigning Party or an acquirer of all or substantially all of the assets of the assigning Party. Any purported assignment or delegation in violation of this section shall be null and void. No assignment or transfer of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties as well as their respective successors or permitted assigns.

14. **Counterparts; Electronic Delivery.** This Agreement may be executed in counterparts delivered by email, DocuSign, or other electronic transmission; such counterparts will be deemed originals and binding upon the Parties upon receipt, regardless of whether originals are delivered thereafter. All such counterparts will constitute one and the same contract, and the signature of any Party to any counterpart will be deemed a signature to any other counterpart.

15. **Governing Law; Venue; Waiver of Jury Trial.** The Parties shall comply with all Applicable Laws with respect to their respective obligations under this Agreement. This Agreement is governed by and shall be construed in accordance with the laws of California, without regard to the choice of law principles of the forum state. Any action at law, suit in equity, or other proceeding against any Party with respect to this Agreement or in connection with any of the matters contemplated by this Agreement shall be brought and maintained exclusively in the state or federal courts located in California, as applicable. THE PARTIES 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.

16. **Business Partner Code of Conduct.** SLWA and District are committed to conducting their business activities with the highest standards of honesty and integrity. District acknowledges that it has received and reviewed SLWA's Business Partner Code of Conduct (available at <https://www.homeserveusa.com/sc/cobc>) as updated from time to time, and District agrees to abide by SLWA's Business Partner Code of Conduct as a material condition of this Agreement. Should District suspect or become aware of any actual or suspected violation of SLWA's Business Partner Code of Conduct, District shall promptly notify SLWA or its anonymous ethics hotline (*see* SLWA's Business Partner Code of Conduct).

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

OLIVEHURST PUBLIC UTILITY DISTRICT

SLWA INSURANCE SERVICES

By: _____

By: _____

Name: _____

Name: Michael Backus

Title: _____

Title: Chief Growth Officer

Exhibit A

Marketing Agreement

Olivehurst Public Utility District Term Sheet

- I. **Initial Term.** Three (3) Years, with the option for Renewal Term(s).
- II. **License Conditions.** Use of District's Marks in accordance with Section 2.A of the Agreement.
- III. **Plans; Plan Fees; Scope of Coverage.** The summary of coverage is accurate as of the Effective Date but is subject to change at SLWA's sole discretion. SLWA will offer the following rates to Customers:
 - A. Exterior water service line plan (initially, \$ 6.00 per month)
 - i. Covers Customers' responsibility: From the meter and/or curb box to the main shut-off valve inside the home.
 - ii. Covers thawing of frozen external water lines.
 - iii. Covers well service lines if applicable: From the external wall of Customers' well casing to the external foundation wall of the home.
 - iv. Coverage Cap: Unlimited number of calls/\$8,500 per call/Unlimited annual maximum.
 - B. Exterior sewer/septic line plan (initially, \$ 9.99 per month)
 - i. Covers Customers' responsibility: From the external wall of the home to the sewer main.
 - ii. Covers septic lines if applicable: From the external foundation wall of the home to the point of connection to the septic tank of the home.
 - iii. Coverage Cap: Unlimited number of calls/\$8,500 per call/Unlimited annual maximum.
 - C. Interior plumbing and drainage plan (initially, \$ 16.49 per month)
 - i. Covers repair or replacement of the following inside the home, for which the Customers have sole responsibility, that is damaged due to normal wear and tear:
 - a. The blocked or leaking interior water supply and drainage system pipes that carry fresh or drinkable water and wastewater.
 - ii. Coverage Cap: Unlimited number of calls/\$3,000 per call/Unlimited annual maximum.

Pricing does not include taxes. SLWA may adjust the Plan fees; provided, that, any such adjustment shall not exceed one dollar (\$1.00) per month per Plan in any twelve (12) month period. If such adjustment shall exceed one dollar (\$1.00), both Parties must agree in writing.
- IV. **Marketing Campaigns.** SLWA shall have the right to conduct up to six (6) campaigns per year through such channels as may be mutually agreed by the Parties.