

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MARCH 6, 2018 AGENDA**

Subject:	Type:	Submitted By:
SERVICE LINE WARRANTY PROGRAM - MARKETING AGREEMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE DIRECTOR OF PUBLIC WORKS

SYNOPSIS

A resolution has been prepared to approve a Marketing Agreement between City of La Vista (“City”) and Utility Service Partners Private Label, Inc. d/b/a Service Line Warranties of America (“Company”).

FISCAL IMPACT

The City of La Vista will receive a license fee of \$0.50 per Product for each month that a Product is in force for a Residential Property Owner, aggregated and paid annually

RECOMMENDATION

Approval

BACKGROUND

The proposed marketing agreement is a follow up to discussions held during the October 3, 2017 and November 21, 2017 City Council meetings.

The National League of Cities partnered with Utility Service Partners to create a sewer and water line warranty program for residents. This program was created to help residents save money and ease frustration over utility line failures. The City of Papillion has been involved with this program for several years and reports no issues with the program. The attached Marketing Agreement grants a license to the Company allowing them to use the City’s name and logo on letterhead, bills and marketing materials to be sent to Residential Property Owners. The Company shall have the right to conduct up to three campaigns per year as agreed by Company and the City Administrator or her designee.

The term of this Agreement shall be for three (3) years; the Agreement will automatically renew for additional one (1) year terms. The City does not have any responsibility for maintenance, replacement or repair of lateral sewer or water lines.

The City Attorney has reviewed the agreement.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A SERVICE LINE WARRANTY PROGRAM MARKETING AGREEMENT WITH UTILITY SERVICE PARTNERS PRIVATE LABEL, INC DBA SERVICE LINE WARRANTIES OF AMERICA.

WHEREAS, The Mayor and City Council have determined that a service line warranty program is necessary; and

WHEREAS, Utility Service Partners Private Label dba Service Line Warranties of America provides such program; and

WHEREAS, The City of La Vista will receive a license fee of \$0.50 per Product for each month that a Product is in force for a Residential Property Owner, aggregated and paid annually; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, do hereby authorize the execution of a service line warranty program marketing agreement with Utility Service Partners Private Label dba Service Line Warranties of America, in form and content approved by the City Attorney and City Administrator.

PASSED AND APPROVED THIS 6TH DAY OF MARCH, 2018.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Bueth, CMC
City Clerk

MARKETING AGREEMENT

This MARKETING AGREEMENT ("Agreement") is entered into as of [_____]
20 1 ("**Effective Date**"), by and between the City of La Vista, Nebraska ("**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 with respect to which the City does not have any responsibility for maintenance, replacement or repair; and

WHEREAS, Company 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 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 Administrator's, or her designee's, prior review and approval, including without limitation, approval of content. City agrees to review the marketing materials within 30 days of receipt.. 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 approved 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. Notwithstanding anything in this Agreement to the contrary, City shall have the right to terminate this Agreement at any time, with or without cause, upon ninety (90) days prior written notice to Company.

4. Consideration.

A. As consideration for such license, Company will pay to City a License Fee 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 first year of the Term. Succeeding License Fee payments shall be made on an annual basis throughout the Term and any Renewal Term, due and payable on January 30th of the succeeding year. 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. Indemnification. Company hereby agrees to defend, protect, indemnify, and hold the City, its elected officials, officers, employees and agents (collectively or individually, "**Indemnatee**") harmless from and against any and all third party liabilities, claims, costs, damages, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees and court costs (individually or collectively, "**Claim**"), which an Indemnatee may suffer or which may be sought against or are recovered or obtainable from an Indemnatee, 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, directors, employees, contractors, subcontractors, agents, or assigns in the performance of this Agreement or services under the Products; provided that the applicable Indemnatee notifies Company of any such Claim within 10 days after determining that the Claim is subject to indemnification pursuant to this paragraph, or within a reasonable time thereafter that does not prejudice the ability of Company to defend against such Claim. Any Indemnatee hereunder may retain separate legal counsel to participate in its, his, or her own defense, but will be responsible for all additional costs incurred, including reasonable attorneys' fees, in connection with such participation in such defense.

6. 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: Joe Soucie
City of La Vista
8116 Park View Blvd
La Vista, NE 68128
Phone: (402) 331-8927

To: Company:

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

7.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.

8.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.

9.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.

10.Choice of Law. The governing law shall be the laws of the State of Nebraska. In the event that at any time during the Term or any Renewal Term, or at any other time, either Party institutes any action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, such action or proceeding shall be filed in the District Court of Sarpy County, Nebraska. The parties agree that the District Court of Sarpy County, Nebraska shall have subject matter and personal jurisdiction, and that venue in such court shall be proper. The parties shall not challenge or contest the applicability of such laws, jurisdiction, or venue described in this section 10.

11.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 LA VISTA

Name: Douglas Kindig

Title: Mayor

UTILITY SERVICE PARTNERS PRIVATE LABEL, INC.

Name: Tom Rusin

Title: Chief Executive Officer

Exhibit A
NLC Service Line Warranty Program
City of La Vista
Term Sheet
August 9, 2017

I. Initial Term. Three years

II. License Fee. \$0.50 per Product for each month that a Product is in force for a Residential Property Owner (and for which payment is received by Company), aggregated and paid annually, for:

a. City logo on letterhead, advertising, billing, and marketing materials

III. Products.

- a. External sewer/septic line warranty (initially, \$7.75 per month; \$88.00 annually)
- b. External water service line warranty (initially, \$6.75 per month; \$76.00 annually)
- c. In-home plumbing warranty (initially, \$9.99 per month; \$114.99 annually)

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 sewer/septic line warranty: Scope is from the main tap until line daylights inside home, which includes the service line under the concrete floor. (Covers septic lines if applicable)
- b. External water service line warranty: Scope is from the main until line daylights inside home, which includes the service line under the concrete floor. Coverage also includes thawing of frozen external water lines. (Covers well service lines if applicable)
- c. In-home plumbing warranty: Scope covers residential in-home water supply lines and in-home sewer lines and all drain lines connected to the main sewer stack that are broken or leaking inside the home after the point of entry. Coverage includes broken or leaking water, sewer, or drain lines that may be embedded under the slab or basement floor. Coverage also includes repair of clogged toilets.

V. Marketing Campaigns. Company shall have the right to conduct up to three campaigns per year as agreed by Company and the City Administrator or her designee, comprised of up to six mailings and such other channels as may be mutually agreed. Initially, Company anticipates offering the In-home plumbing warranty Product via in-bound channels only.