



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: May 11, 2012 REPORT NO: 12-060

ATTENTION: Budget and Finance Committee
Agenda Meeting of May 23, 2012

SUBJECT: Corporate Partnership Program: Agreement with Utility Service
Partners Private Label, Inc. re Service Line Warranty Program

REFERENCE: N/A

REQUESTED ACTIONS:

Authorize the Mayor to enter into a three-year Corporate Partnership Program Agreement with Utility Service Partners Private Label, Inc. (USPPL) for its Service Line Warranty Program. USPPL shall pay the City a guaranteed payment of \$242,000 during the first three years plus license fees of 12% of annual gross revenue. The Agreement includes options to renew for two additional one-year terms.

STAFF RECOMMENDATIONS:

Approve the Resolution.

SUMMARY:

Introduction

On June 8, 1999, the City Council approved a strategic marketing plan for corporate partnerships with the City of San Diego called the Municipal Marketing Partnership Program (MMPP). On January 18, 2000, the City Council approved a Marketing Partnership Policy (Council Policy No. 000-40) to provide guidelines for the Program.

The MMPP, now known as the Corporate Partnership Program (CPP), seeks opportunities for the City to generate cash and in-kind resources from partnerships with the corporate community in order to enhance municipal services and facilities in the City.

Process Followed to Develop This Partnership

In February 2011, the CPP program issued a Request for Sponsorship (RFS) for a Service Line Warranty Protection Partner. Service line warranties cover the underground service line from the point of connection to the city main line to the point of connection to the home. It also covers the underground service line between the water meter and the home's exterior foundation. Water line warranties through United Service Partners, Inc. (USP, the parent company of USPPPL), would typically cost residents \$5.50 per month for a household and an option for a sewer line policy at \$9.95 per month. As a result of the partnership, San Diego residents will be offered a discounted rate of \$5.00 for water line and \$9.00 for sewer line via mailings twice a year. On average, residents with warranties save \$1,200 to \$3,500 on the cost of a repair.

The overall objective of the RFS was to provide companies the opportunity to develop a marketing partnership wherein the City would receive cash and/or in-kind services from the vendor in return for marketing opportunities available through the City. Extensive research was done to ensure that each company solicited was a qualified homeowner warranty service provider known for quality and reliable service. Companies that did not meet the RFS criteria were not solicited. In addition, the opportunity was posted on the City's Corporate Partnership web page along with links from the City's purchasing web page.

Two qualified companies indicated interest in the RFS and the CPP received a qualified proposal from Utility Service Partners Private Label, Inc. CPP then met and negotiated with USPPPL who was selected to be the City's Preferred Service Line Warranty Partner based on its ability to provide the best overall benefit to the City and its overall reputation in the industry and among municipalities. Notably, USPPPL was endorsed by the National League of Cities in November, 2010 and offers the optional Service Line Warranty Program through the National League of Cities to assist cities in providing their residents with protection against the high cost of damaged utility lines. Since partnering with the National League of Cities, USPPPL has implemented its program in 26 states through 125 cities representing approximately 2.5 million households.

In addition, USPPPL was awarded a Master Contract with the North Central Texas Council of Governments (NCTCOG) to provide the NLC program to its member cities. The award followed an intensive evaluation in which USPPPL was unanimously selected by an independent panel of five member cities.

The City of San Diego would be the *first* city in California to participate in the program contingent upon USPPPL obtaining approval from the California Department of Insurance to do business in California. Under the Agreement, USPPPL or another approved subsidiary of the parent company USP; shall be the City's preferred Service Line Warranty Partner. In the event that USPPPL does not obtain the necessary approvals from the California Department of Insurance for its subsidiary to do business in California as a licensed Home Protection Company by June 15, 2013, then USPPPL shall have the right to terminate this Agreement, and neither party shall have any further obligation to the other. In that event, USPPPL shall forfeit any fees already paid to the City under this Agreement.

The Proposed Agreement

Attachment A is the proposed Corporate Partnership Program Agreement negotiated between the City and USPPL. The Agreement is based upon a three-year term with options to renew for two additional one-year terms.

The benefits to the City under this proposed Agreement are as follows:

- 1) USPPL will pay the City **\$242,000** for marketing rights over three years (\$121,000 Year One, \$60,500 Years Two and Three). USPPL will also pay the City a licensing fee of 12% of the total gross revenue collected from sales of sewer and water line warranties. Licensing Fee payments are expected to generate an additional **\$570,000** over the first three years of the Agreement, bringing the combined total to approximately **\$812,000** over the first three years. If the City exercises the two one-year options, then the combined projected total payment to the City over five years could be approximately **\$1,660,000**.

Guaranteed Marketing Rights payments

- o Year One: \$121,000
- o Year Two: \$60,500
- o Year Three: \$60,500
- Total: \$ 242,000**

Estimated Licensing Fees (12%)

- o Year One: \$95,000
- o Year Two: \$190,000
- o Year Three: \$285,000
- o Year Four: \$375,000
- o Year Five: \$475,000
- Total: \$1.42 Million**

Combined Guaranteed Marketing Rights Fee + Estimated Licensing Fees

- o Five Year Estimate: **\$1.66 Million**

- 2) Based on implementation in 125 other cities, the program has proven to be an important educational outreach to provide information to city residents that they are responsible for the service lines on their property and to offer the opportunity to participate in a voluntary program offered through a reputable company.
- 3) USPPL will offer City of San Diego residents discounted rates during outreach.

Only local qualified contractors are used so repair dollars stay within the community. All repairs are performed to code with appropriate permitting. USPPL will also work with the City of San Diego's Small Local Business Enterprise program to reach local contractors.

- 4) Timely water repairs help customers reduce water waste, comply with permanent water-use restrictions and save money. Timely sewer line repairs minimize potential storm water pollution and help customers comply with health and safety related regulations.

Preferred Service Line Warranty Partner

In exchange for these benefits, USPPL will be the Preferred Service Line Warranty Partner of the City and will be afforded specific marketing benefits by the City, including limited use of the City's name and logo when offering the service line warranties to City residents and homeowners. The proposed Agreement ensures that the City has the right to review and approve all logos and promotional activities that represent USPPL's efforts to publicize and/or promote their rights and benefits. The marketing rights and benefits agreed to are as follows:

1. The right to be designated and referred to as the "Preferred Service Line Warranty Partner of the City of San Diego" and the right to promote this designation.
2. The opportunity to have logo presence on the City's website.
3. The right to limited use of the City's name, seal, logo, in a pre-approved letter to City residents and homeowners offering the Service Line Warranty Program. USPPL will mail the letter to San Diego households using addresses gathered through a direct mail service. USPPL will not have access to the City's address lists and will not use telemarketing. See Exhibit A of Agreement for City approved letter.
4. The opportunity to create a press packet and hold a press conference with appropriate City officials announcing the launch of the program.
5. The right to have a representative of the CPP work with USPPL to fulfill the rights and benefits listed in the Agreement.

Conclusion

By utilizing the City's Corporate Partnership Program, the City has negotiated a partnership with the selected partner, USPPL. The proposed Corporate Partnership Program Agreement between the City and USPPL will generate a guaranteed total payment to the City of **\$242,000** for the first three years. Projected 12% licensing fee payments are expected to generate an additional **\$570,000** during this same timeframe bringing the combined projected total to just over **\$800,000** over the first three years. If the City exercises the two one-year options, the combined projected total over five years could be approximately **\$1,660,000**.

The proposed partnership with USPPL is consistent with the City's Corporate Partnership Program and the City's Marketing Partnership Policy. The proposed Corporate Partnership Program Agreement includes benefits awarded to USPPL including the right to be designated and referred to as the "Preferred Service Line Warranty Partner of the City of San Diego" along with the right to utilize the City's logo for direct mail campaigns. The benefits do not include naming rights or any requirement for participation by City residents.

FISCAL CONSIDERATIONS:

This Agreement does not include any payment obligations by the City. A total of **\$242,000** in marketing rights fees and an estimated **\$570,000** in licensing fees are to be paid by USPPL to the City over the first three years. The term of the proposed Corporate Partnership Program Agreement is three years with two one year renewal options.

The overall fiscal impact could range from **\$800,000 to \$1,660,000** depending on the actual license fees paid and the exercise of renewal options. All payments received are to be deposited in the General Fund.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None

KEY STAKEHOLDERS AND PROJECTED IMPACTS: General Fund and services for residents paid for by General Fund.



Natasha L. Collura
Director, Strategic Partnerships



Jay M. Goldstone
Chief Operating Officer

- Attachments:
1. Corporate Partnership Program Agreement with USPPL
 2. National League of Cities Program Information

Attachment A

CORPORATE PARTNERSHIP PROGRAM AGREEMENT FOR UTILITY SERVICE LINE WARRANTIES BETWEEN THE CITY OF SAN DIEGO AND UTILITY SERVICE PARTNERS PRIVATE LABEL, INC.

This **Corporate Partnership Program Agreement** ("Agreement"), effective upon execution by authorized representatives of both parties ("Effective Date"), is made and entered into by and between the City of San Diego ("City"), with its principal place of business located at the City Administration Building, 202 C Street, San Diego, California 92101, and Utility Service Partners Private Label, Inc, a Delaware Corporation, ("USPPL"), with its principal office located at 11 Grandview Circle, Suite 100, Canonsburg, PA 15317 (collectively "Parties").

WHEREAS, the City has developed a Corporate Partnership Program to generate revenue to fund existing and additional facilities, projects, programs and activities through the development of mutually beneficial marketing partnerships between the City and a corporation or other business entity, wherein the corporation provides cash and/or in-kind goods and/or services to the City (a "Marketing Rights Fee") in exchange for access to the commercial marketing potential associated with the City ("Marketing Partnership"); and

WHEREAS, USPPL is in the business of providing residential service line warranties in states other than California; and

WHEREAS, USPPL has demonstrated an interest in the Corporate Partnership Program by submitting a proposal to work with the City in marketing USPPL's water and sewer service line warranty program to City's residents and homeowners ("Residents") to the City by entering into a Marketing Partnership with the City; and

WHEREAS USPPL's parent, Utility Service Partners, Inc., a Delaware corporation, ("USP") intends to form a subsidiary to be named Utility Service Partners Private Label Home Protection Company of California, Inc. (or such other name as the California Insurance Department may approve) (the "Subsidiary"), a corporation which it intends to form under the laws of the state of California for the purpose of becoming a licensed Home Protection Company under the laws of the state of California; and

WHEREAS, USP intends to apply to the California Department of Insurance for authorization for the Subsidiary to do business in California as a licensed Home Protection Company; and

WHEREAS, the City has determined that USPPL's proposal meets the objectives of the Corporate Partnership Program and is otherwise in the best interests of the City; and

WHEREAS, USPPL is also the provider for the National League of Cities' Service Line Warranty Program and provides sewer and water line warranties to participating residents in partner cities; and

WHEREAS, the Parties desire to enter into a Marketing Partnership Agreement;

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions

For the purpose of this Agreement, the following terms shall have the following meanings:

- 1.1 "Corporate Partnership Program" means the program approved by the City Council to seek opportunities for the City to generate revenue from partnerships with the corporate community in order to enhance municipal services and facilities in the City.
- 1.2 "Marketing Partnership" means a mutually beneficial business arrangement between the City and a corporation or other business entity ("corporation") wherein the corporation provides cash and/or in kind goods and/or services to the City in exchange for access to the commercial marketing potential associated with the City.
- 1.3 "Marketing Rights Fee" means cash and/or in-kind goods and/or services paid to the City by a corporation in exchange for entering into a Marketing Partnership with the City.
- 1.4 "License Fee" means cash and/or in-kind goods and/or services paid to the City by a corporation in exchange for use of City logo and trademarks.
- 1.5 "Marketing Rights and Benefits" means those opportunities created by the Marketing Partnership that a corporation can utilize to promote their Marketing Partnership with the City.
- 1.6 "Subsidiary" means the subsidiary corporation to be formed and wholly owned by USP for the purpose of marketing, selling, and servicing utility service line warranties in California, and authorized to do so by the California Department of Insurance.
- 1.7 "Year" means each twelve month period beginning with the date of execution of this Agreement by the City.

Section 2. Term

- 2.1 Term. This Agreement shall commence on the date of execution by the City and shall continue for three (3) years (the "Term"), with two options to extend the Term for one year each, unless otherwise terminated as provided herein.
- 2.2 Exercise of Options. The options to extend the Term may be exercised by the City in its sole discretion for up to two (2) additional one (1) year terms. In no event shall the Agreement exceed five years in duration.

- 2.3 Assignment of Agreement. City agrees and consents to the assignment of this Agreement by USPPL to the Subsidiary upon receipt of authorization from the California Department of Insurance to provide utility service line warranties in California. Such assignment shall be in a written form acceptable to City and signed by both Parties and the Subsidiary. Upon assignment, Subsidiary shall assume all of USPPL's rights and obligations and be subject to all of the terms and conditions of this Agreement.
- 2.4 Regulatory Authorization. City understands and agrees that because USPPL is not licensed to provide service line warranties in California, USPPL will not market, sell or issue such warranties to City residents. Rather, the marketing, sale and issuance of service line warranties to City residents will be conducted by Subsidiary following receipt of authorization from the California Department of Insurance and assignment of this Agreement to Subsidiary. In the event that Subsidiary does not obtain, in satisfactory form, the necessary approvals from the California Department of Insurance, to do business in California as a licensed Home Protection Company by June 15, 2013, USPPL shall have the right to terminate this Agreement, and neither party shall have any further obligation to the other. In that event, USPPL shall forfeit any fees already paid to City under this Agreement.

Section 3. Payment

In consideration of the rights, benefits, and privileges granted USPPL in this Agreement, USPPL agrees to pay the City as follows:

- 3.1 Marketing Rights Fee. USPPL agrees to pay the City a Marketing Rights Fee in the total amount of \$242,000. The Marketing Rights Fee shall be paid over the first three years of the Agreement, as follows:

Year One:	\$121,000 on or before June 15, 2012
Year Two:	\$60,500 on or before June 15, 2013
Year Three:	\$60,500 on or before June 15, 2014

Payments in year two and three are subject to the City's prior approval of any changes to the applicable campaign letter, including pricing adjustments as a result of incident experience or costs increasing over current projections.

- 3.2 License Fee. In consideration of the use of the City's name and logos and designation as the "Preferred Service Line Warranty Partner of the City of San Diego, USPPL agrees to pay the City 12% of the total gross revenue collected for sewer and water line warranties for properties within the City of San Diego for each calendar quarter (the "License Fee"). Except as set forth below, USPPL shall pay the City each fiscal quarter (on or before July 15, October 15, January 15, April 15) for the preceding quarter's sales. Payment shall be accompanied by a statement certifying the total sales for each month, revenue collected, and the calculation of the License Fee.
- 3.3 Inspection and Audit of Records. Upon City's request, USPPL shall promptly provide to the City the data and records to support its quarterly sales reports. USPPL shall make

such information available to the City electronically or at reasonable times and locations in the City of San Diego upon City's request. USPPL shall maintain such data and records for a period of not less than four years following receipt of final payment under this Agreement.

Section 4. Marketing Rights and Partnership Benefits

The City agrees to provide USPPL the following Marketing Rights and Benefits for the Term of this Agreement:

- 4.1 Official Partner. USPPL shall have the exclusive right to be designated and referred to as the "Preferred Service Line Warranty Partner of the City of San Diego" and to use said designation in promotional and marketing efforts including press releases, stories, features and other publicity initiated by USPPL or the City following the receipt by the Subsidiary of all necessary authorizations by the California Department of Insurance..
- 4.2 Non-Exclusive License. USPPL shall have a non-exclusive license to use the City's name and logos on letterhead and approved marketing materials to be sent to City residents and homeowners and as set forth in Exhibit A, all at USPPL's sole cost and expense. Use of the license granted by the City under this Agreement other than as set forth in Exhibit A is subject to USPPL's receipt of the City's prior written approval of such use, which approval shall not be unreasonably conditioned, delayed, or withheld.
- 4.3 Limited Use. USPPL shall have the right to conduct two advertising/marketing campaigns annually for the sale of its warranties, and each campaign shall consist only of two separate mailings and no other advertising or marketing, unless USPPL receives prior written approval from the City.
- 4.4 Promotional Materials and Prior Approval. The City will work with USPPL to develop press releases, stories, features and other publicity about the partnership for distribution to media outlets upon the licensure of the Subsidiary by the California Department of Insurance. USPPL agrees to submit to the City for its prior written approval, which approval may not be unreasonably withheld, all logos, advertisements, promotional materials, promotional campaigns, product placement and appearance and any and all other materials that represent USPPL's efforts to publicize and/or promote the rights and benefits granted to it under this Agreement. Such material shall be submitted no less than five (5) business days prior to its proposed release to the public.

Section 5. Subcontractors

- 5.1 All subcontractors used by USPPL to provide service to City residents pursuant to the warranty program shall be licensed through the California Registrar of Contractors and in good standing with the Better Business Bureau, if rated by them. Contractors must meet insurance requirements of USPPL.

- 5.2 The City shall provide USPPL its Small Local Business Enterprise (SLBE) list of certified plumbing contractors for its use and consideration. Selection of plumbing contractors shall be solely within the responsibility and discretion of USPPL.

Section 6. Intellectual Property

- 6.1 Licensing. The City and USPPL shall each retain ownership of, and all right, title and interest in and to, their respective intellectual property and no license therein, whether expressed or implied, is granted by this Agreement. To the extent the parties wish to grant to the other rights or interests in intellectual property, separate licensing agreements on mutually acceptable terms shall be executed.
- 6.2 Use of City Name and Logo. USPPL shall use the City's name, seal, logo, and trademarks (collectively, "City's Identifiers") only as set forth in this Agreement, for the purpose of carrying out the terms of this Agreement, and not for any other purpose. Any use other than that specifically provided for by this Agreement shall require the prior written consent and approval of City. USPPL shall not make use of the City's name, seal, logo, trademarks, or any other identifiers in any manner that would bring City, or any of its respective agents, representatives, employees or contractors into public disrepute, contempt, scorn or ridicule or tend to shock, insult or offend the community, public morals or decency. USPPL shall not use City's Identifiers to incur any obligation or indebtedness on behalf of City. The obligations of USPPL under this paragraph will survive expiration or termination of this Agreement.
- 6.3 Use of USPPL Name and Logo. City shall use USPPL's name, seal, logo, and trademarks (collectively, "USPPL Identifiers") only as set forth in this Agreement, for the purpose of carrying out this Agreement, and not for any other purpose. Any use other than that specifically provided for by this Agreement shall require the prior written consent and approval of USPPL. City shall not make use of USPPL's name, seal, logo, trademarks, or any other identifiers in any manner that would bring USPPL, or any of its respective agents, representatives, employees or contractors into public disrepute, contempt, scorn or ridicule or tend to shock, insult or offend the community, public morals or decency. City shall not use USPPL Identifiers to incur any obligation or indebtedness on behalf of USPPL, or to hold itself out as being or representing USPPL. The obligations of City under this paragraph will survive expiration or termination of this Agreement.

Section 7. Compliance with City Contracting Laws

- 7.1 Americans with Disabilities Act. USPPL agrees to comply with Council Policy 100-04, which establishes that all City contractors, including but not limited to construction contractors, consultants, grantees, and providers of goods and services agree to comply with all applicable titles of the Americans with Disabilities Act. Council Policy 100-04 is by this reference incorporated into this Agreement.
- 7.2 Drug Free Workplace. USPPL agrees to comply with Council Policy 100-17 that requires all City construction contractors, consultants, grantees and providers of services to provide a drug-free workplace for the performance of work done in connection with a

contract held by the City. Council Policy 100-17 is by this reference incorporated into this Agreement.

7.3 Equal Employment and Subcontracting Opportunities. City and USPPL agree that this Marketing Partnership Agreement is not a “contract” for the provision of labor, materials, goods, supplies, services, or consultant services to the City, or for a grant from the City, or for the construction of public works, as the term “contract” is used and defined in San Diego Municipal Code sections 22.2701-22.2708 (EEO Outreach Program), 22.3501-22.3517 (Nondiscrimination in Contracting Ordinance), and 22.4301-22.4308 (Equal Benefits Ordinance). Notwithstanding that understanding, for the purpose of this Agreement, USPPL agrees as follows:

- a. USPPL shall not discriminate against any employee or applicant for employment on any basis prohibited by law. USPPL shall provide equal opportunity in all employment practices.
- b. USPPL shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. USPPL shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. USPPL understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between USPPL and any subcontractors, vendors, and suppliers shall contain this language.

Section 8. Insurance

8.1 Insurance. USPPL shall maintain, at its own expense, the following types of insurance coverage during the Term, including any renewal or extension, of the Agreement:

- 8.1.1 Commercial General Liability Insurance (“CGL”) written on an occurrence basis which shall cover liability arising from any and all personal injury or property damage in the amount of at least two million dollars (\$2,000,000) per occurrence and subject to an annual aggregate of four million dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- 8.1.2 Commercial Automobile Liability Insurance for all of the USPPL’s automobiles, including owned, hired or non-owned automobiles [“any auto”]. USPPL shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, for bodily injury and property damage for a combined single limit of two million dollars (\$2,000,000) per occurrence.
- 8.1.3 Worker's Compensation Coverage for all of USPPL’s employees who are subject to the Agreement and to the extent required by applicable state or federal law,

USPPL shall keep in full force and effect, a Worker's Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000) of employer's liability coverage, and USPPL shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials (if applicable), officers, employees, agents or representatives.

- 8.2 Insurer Requirements. All insurance required by the express provision of the Agreement shall be carried only by insurers rated at least "A-, VI" or better by the current A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California, is shown on the current List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meets the rating requirements.
- 8.3 Coverage. This insurance shall cover all of USPPL's employees engaged in the performance of the Agreement. USPPL shall require that all its subcontractors engaged in the performance of the Agreement maintain levels and limits of insurance coverage that meet USPPL's current standards for subcontractors providing external utility line service.
- 8.4 Additional Insured. USPPL shall name the City as an additional insured on all general and automobile liability policies required herein. The policies shall be primary and non-contributory to any insurance, as it relates to the City's operations that may be carried by the City, as reflected in a certificate, which shall be submitted to the City.
- 8.5 Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by USPPL.
- 8.6 Certificates. USPPL shall, within ten (10) days of execution of the Agreement, furnish the City with certificates of insurance for coverage as required herein. Companies writing the insurance under this article shall be licensed to do business by the State of California. All certificates for each insurance policy required by this Article shall be signed by a person authorized by that insurer.
- 8.7 Notice of Cancellation. The certificates shall provide that thirty (30) days prior written notice of cancellation of the insurance to which the certificates relate shall be given to the City.

Section 9. Indemnification

- 9.1 With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of USPPL or any of its owners, officers, directors, agents, employees, or subcontractors, USPPL agrees to defend, indemnify, protect, and hold

harmless the City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of USPPL, its owners, officers, directors, agents, employees, or subcontractors, or any third party. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of USPPL to conform to any federal, state or local law statute, ordinance, rule, regulation or court decree. USPPL's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers, or employees. It is the specific intention of the parties that the City, its agents, officers, and employees shall, in all instances except for claims arising from the sole negligence or sole willful misconduct of the City, its agents, officers, or employees, be indemnified by USPPL from and against any and all claims relating to this Agreement.

Section 10. Default; Remedies

10.1 Event of Default. The following shall constitute an Event of Default ("Event of Default") under this Agreement regardless of whether any such event shall be voluntary or involuntary or shall result from the operation of applicable laws, rules or regulations or shall be pursuant to or in compliance with any judgment, decree or order of any court of competent jurisdiction:

- (1) USPPL fails to cause to be carried and maintained the insurance required by this Agreement and fails to immediately remedy such failure within ten (10) days of receipt of written notice thereof from the City;
- (2) Either party fails to comply with any material term, condition, or obligation of this Agreement and such failure continues unremedied for a period of thirty (30) days after the receipt of written notice thereof from the nondefaulting party; or
- (3) Either party commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or similar law, or shall make a general assignment for the benefit of creditors, or shall have an involuntary case or other proceeding instituted against it seeking similar relief;
- (4) Either party commits an act, which brings its name into disrepute, or otherwise substantially diminishes the value of the marketing partnership association for the other party.

10.2 Declaration of Default. Upon the occurrence of an Event of Default, and at any time thereafter so long as the same shall be continuing, the nondefaulting party may declare, at its option, this Agreement to be in default and: (1) if the Event of Default is a filing under Section 10.1(3) hereof, may immediately terminate this Agreement without any liability whatsoever; or (2) proceed under the Alternative Dispute Resolution procedures set forth in Section 10.4 hereof.

10.4 Dispute Resolution. If a dispute arises out of, or relates to the Agreement, or the breach thereof, and if said dispute cannot be settled through negotiations, the Parties agree to

first endeavor to settle the dispute in good faith, using mandatory non-binding mediation administered by a neutral professional mediator affiliated with and under the rules of the National Dispute Resolution Center ("NDRC") or JAMS, before having recourse in a court of law.

10.4.1 Any such mediation shall be held in San Diego, California. The Parties agree to select a mediator from NDRC's or JAM's panel of approved neutrals.

10.4.2 The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.

10.4.3 Any agreements resulting from mediation shall be documented, in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

10.4.4. In the event that a dispute cannot be resolved in the manner described above, the Parties agree to waive any and all rights to jury trial.

Section 11. Termination for Improper Consideration

11.1 The City may, by written notice to USPPL, immediately terminate the right of USPPL to proceed under this Agreement if it is found that consideration, in any form, was offered or given by USPPL, either directly or through an intermediary, to any City officer, employee or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment for extension of the Agreement or the making of any determinations with respect to USPPL's performance pursuant to the Agreement. In the event of such termination, the City shall be entitled to pursue the same remedies against USPPL as it could pursue in the event of default by USPPL.

11.2 USPPL shall immediately report any attempt by a City officer or employee to solicit such improper consideration. The report shall be made to the Director of City's Personnel Department.

11.3 Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

Section 12. Limitation on Liability

12.1 Neither Party shall be liable to the other Party for any act or omission to the extent not attributable to its personnel. Notwithstanding anything in the Agreement to the contrary, in no event shall the cumulative liability for direct damages of either Party to the other Party, whether in contract or in tort, exceed the amount of one hundred thousand dollars

(\$100,000.00) per Year of the Agreement. Furthermore, in no event shall either Party be liable for any indirect, special, consequential, incidental or punitive damages or lost profits, however caused, which are incurred by the other Party, its employees, subcontractors, and/or agents, or any third party, arising out of or in connection with the Agreement or the performance or breach thereof, even if such Party has been advised of the claim or potential claim or of the possibility of such damages. City shall have no liability whatsoever for interruptions or defects in website links from City Websites to the USPPPL Website, except if caused by City's willful misconduct and resulting in injury to the USPPPL website.

Section 13. Miscellaneous

13.1 Notices. In all cases where written notice is required under the Agreement, such notice shall be given at the respective addresses of the parties as set forth below, unless notification of a change of address is given in writing. Notice shall be sent by registered or certified mail, by a nationally recognized courier service, or by personal service, and shall be effective upon receipt. The addresses for notice and agents for service of process are:

City: Corporate Partnership Program
Attn: Natasha Collura, Director
The City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101
Phone: 619-236-7002

And to: Office of the City Attorney
Attn: Carrie Gleeson
The City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101
Phone: 619-236-6220

And to: Utility Service Partners Private Label, Inc.
Attn. Brad Carmichael
VP of Business Development
11 Grandview Circle, Suite 100
Canonsburg, PA 15317
Phone: 1-888-442-7349

13.2 Non-Assignment. Neither Party may assign its rights or delegate its duties under the Agreement to any other party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned, except that USPPPL may assign the Agreement to: (a) the Subsidiary in accordance with Section 2.3 of this Agreement; (b) any parent, subsidiary or affiliate entity; or (c) a successor in interest of all or substantially all of the assets, stocks or business of a Party to which the Agreement pertains, so long as such assignee possesses the financial and operational capabilities to

perform the Agreement and agrees to assume and fully discharge all of the duties and further obligations of the assignor arising under the Agreement. Subject to the provisions of this section, the Agreement shall inure to the benefit of and be binding upon the respective successors and assigns, if any, of the Parties hereto. However, any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of the Agreement. In no event shall any putative assignment create a contractual relationship with the putative assignee.

- 13.3 Independent Contractors. USPPL and any subcontractors employed by USPPL are and shall be deemed to be independent contractors and not agents of the City. Any provisions of the Agreement that may appear to give the City any right to direct USPPL concerning the details of operating the Marketing Partnership, or to exercise any control over such performance, shall mean only that USPPL shall follow the direction of the City concerning the end results of the performance.
- 13.4 Compliance with Controlling Law. USPPL shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to the Agreement, including all applicable laws, regulations, and requirements relating to the marketing and sale of insurance. In addition, USPPL shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 13.5 Jurisdiction and Venue. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The venue for any suit or proceeding concerning this Agreement shall be in the County of San Diego, State of California.
- 13.6 Integration. The Agreement and the exhibits and references incorporated into the Agreement fully express all understandings of the Parties concerning the matters covered in the Agreement. No change, alteration, or modification of the terms or conditions of the Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties and an amendment to the Agreement agreed to by both Parties. All prior negotiations and agreements concerning the subject matter hereof are merged into the Agreement.
- 13.7 Counterparts. The Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.
- 13.8 No Waiver. No failure of either the City or USPPL to insist upon the strict performance by the other of any covenant, term or condition of the Agreement, nor any failure to exercise any right or remedy upon a breach of any covenant, term, or condition of the Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter the Agreement, and each and

every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

13.9 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of the Agreement, and the decision of whether or not to seek advice of counsel with respect to the Agreement is a decision which is the sole responsibility of each Party. The Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

13.10 Signing Authority. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the City harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, the Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to City Council Resolution _____, and by Utility Service Partners Private Label, Inc..

THE CITY OF SAN DIEGO

By: _____
Jay M. Goldstone
Chief Operating Officer

Date: _____

(Signatures continue on next page.)

I hereby certify that I can legally bind USPPL, Inc. and that I have read all of this Agreement.

Utility Service Partners Private Label, Inc.

By: _____

Name: Philip E. Riley, Jr. _____

Title: President & CEO _____

Date: _____

By: _____

Name: Brad H. Carmichael _____

Title: VP of Business Development _____

Date: _____

I hereby approve the form and legality of the foregoing Agreement this _____ day of _____, 2012.

JAN I. GOLDSMITH, City Attorney

By: _____

Carrie Gleeson
Deputy City Attorney

Exhibit A



The City of San Diego has selected [name to be approved by California Dept. of Insurance] as its Preferred Service Line Warranty Partner. [Name TBD] new, optional, utility service line warranty program is made available in cooperation with the National League of Cities (NLC). To learn more, please visit [name TBD] at their website listed below. Information about San Diego's Corporate Partnership Program can be found at <http://www.sandiego.gov/corporatepartnership/existing>

This program is optional and your participation is voluntary.



T1 P1*****AUTO**5-DIGIT 2530*

John Smith
987 Main Street
Anytown, ST 12345

March 1, 2012

Contact ID: 1234567

Re: Optional Coverage for Residents

Reminder - Please disregard if you have already enrolled

Dear [Customer Name]:

As you may know, as a homeowner in the City of San Diego, you are responsible for the maintenance and repair of the buried, outside sewer service line that runs from your home to the utility connection.

Currently available in over 100 cities throughout the US, the Sewer Line Warranty Program, offered through a partnership between the National League of Cities (NLC) and [name TBD], will protect you from any repairs needed on your outside, buried sewer line for a small monthly fee. This warranty could ultimately save you money in these difficult economic times.

If you should need a repair, [name TBD] has a 24-hour hotline and will dispatch a local plumber no later than 48 hours, but typically within 24 hours* to perform the repair. There are no service fees or deductibles. Repair costs are covered up to \$4,000 per incident, plus an additional \$4,000 allowance for public street cutting, if needed.

[Name TBD] is offering a discounted price of \$9.00 per month to residents who enroll by [date]. This represents a savings of almost 10% on the standard monthly price. If you elect to pay annually, the price will be discounted further to \$95.00 which is over a 20% savings.

[Name TBD] offers several billing frequencies and payment options, including invoice, credit card and direct debit from your checking account. Please note that no public funds were used in the creation or mailing of this letter.

To enroll, or to learn more about this program, please call [name TBD] at 1-800-000-0000, Monday through Friday, 9:00 am to 5:00 pm, or return the bottom portion of this letter in the enclosed, self-addressed, postage-paid envelope. You can also link to more information from the City of San Diego homepage at www.sandiego.gov/corporatepartnership/existing or visit [name TBD]'s website at [www.\[name TBD\].com](http://www.[name TBD].com).

The City of San Diego has coordinated efforts with [name TBD] solely for the purpose of providing its residents with a discounted rate and no public funds were used in the creation or mailing of this letter. **The City of San Diego has no responsibility or liability for the warranty program being provided by [name TBD].**

Sincerely,

Tru Dee Bamberg
Vice President
[Name TBD]

*Complete warranty terms and conditions will be provided following enrollment or you can view them online at [www.\[name TBD\].com](http://www.[name TBD].com). You may terminate your participation in a warranty program at any time. You have 30 days from the date you enroll to receive a full refund. After 30 days, you will be reimbursed the pro rata share of any amount you paid for any portion of the warranty period subject to cancellation. See enclosed brochure for further details.

✂ Cut here

[LETTERCD]

Replace with logo to be provided following name approval by California Dept. of Insurance.

John Smith
987 Main Street
Anytown, ST 12345
Contact ID: 1234567

To enroll or to view the terms and conditions please visit [www.\[name TBD\].com](http://www.[name TBD].com).

Please mark your selection:

Yes! Please enroll me in the outside sewer line warranty for just \$____ per month

I want to save even more! I will pay just \$____ per year for the sewer line warranty

Signature _____

Date _____



Replace with logo to be provided following name approval by California Dept. of Insurance.

[Name TBD] is proud to have been selected by the NLC as an Enterprise Programs Partner. The National League of Cities, representing over 218 million Americans, is the nation's oldest and largest organization devoted to strengthening and promoting cities as centers of opportunity, leadership and governance. You may receive letters from other companies promoting similar warranty programs; however, the [name TBD] Service Line Warranty Program is the only one that has been endorsed by the NLC and has a perfect Better Business Bureau Rating.



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Nation's Cities

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New NLC Program Reduces Service Line Repair Costs

by Denise Belser and Cathy Spain

Cities can now help their residents cope with the high cost of external water and sewer line repairs by participating in a new NLC Service Line Warranty Program.

Homeowners in participating cities are eligible to purchase these low-cost warranties, which provide repairs for broken or leaking utility lines up to \$4,000 for each occurrence. These repairs may range from \$1,200 to over \$3,500 and can create a significant financial hardship for the unprepared. Warranties provide peace of mind for homeowners by transferring the risk of costly repairs.

Many residents become frustrated when they are told that the city is not responsible for a service line repair. The homeowner must contract with a plumber and pay the repair costs if the damage occurs between the city's main pipe and the water meter or the connection to the home. Cities that participate in the warranty program can enhance the city's image by reducing the homeowner cost and making reputable plumbers readily available.

The service line repair work is performed by local, professional plumbers chosen by Utility Service Partners Inc., (USP), the company that administers the program. Once USP receives a call about a service line problem from a resident who has purchased a warranty, a plumber is assigned to the claim and is required to contact the customer

"This program has been available to Clarksburg's residents for 18 months, and it is a real winner. Resident satisfaction is high and it's a lot easier to tell citizens about this great new service rather than explain why they are on the hook for costly repairs."

— James C. Hunt, councilmember, Clarksburg, W.Va., and NLC immediate past president

within one hour of receiving the job assignment from USP. Typically, repairs are completed within 24 hours.

The national program is modeled after existing programs in Oklahoma and West Virginia and sponsored by the state municipal leagues. Cities in these states may continue to contact their state league or NLC for information about the program.

"This program has been available to Clarksburg's residents for 18 months, and it is a real winner," said James C. Hunt, councilmember, Clarksburg, W.Va., and NLC immediate past president. "Resident satisfaction is high and it's a lot easier to tell citizens about this great new service rather than explain why they are on the hook for costly repairs."

Starting up the program is easy and there is no cost for the city. Once the decision is made to move forward, the city agrees to co-brand the program by signing a one-page marketing service agreement with USP. This permits USP to use the city's name and logo in mailings sent to residents and in advertising. Then the city approves a press release and a solicitation letter and sends the city logo artwork and

other information to USP for the letters that are mailed to residents promoting the program.

Several marketing campaigns are undertaken to promote the service in the city. The city has the right to prior review and approval of any materials prepared by USP. Participation increases with subsequent campaigns and word-of-mouth communications from trusted friends and neighbors.

NLC and USP will roll out the program over an 18-month period at six-month intervals as various state regulatory requirements are met and contractor networks are established and vetted by USP in the 48 contiguous states. (See the map to determine the program's availability in your state.)

The benefits of this program are shared throughout the community. It is extremely affordable — between \$4 and \$6 for each warranty a month. Citizen frustration is reduced, city officials have fewer complaints to handle from residents, there is no cost to the city for this value-added program and the city even receives a share of the revenues collected. All repairs are performed to code and the money stays in the community because

local plumbers are engaged.

Furthermore, USP monitors contractor performance to ensure quality work and a customer repair hotline is available 24/7. The program also contributes to a city's "green" initiatives. Leaking water pipes waste millions of gallons of treated water and leaking sewer lines pollute groundwater and land.

This NLC Service Line Warranty Program is a home protection solution for city residents arranged by NLC Enterprise Programs, an initiative bringing solutions and savings to cities. When cities participate in an NLC-endorsed program, they have the satisfaction of knowing that the NLC staff is working with the program administrator to offer superior service.

Details: For more information about this program, visit www.nlc.org/enterpriseprograms or contact Denise Belser, NLC program director, at belser@nlc.org or (202) 626-3028.

If you are attending the Congress of Cities in Denver, stop by the USP NLC Service Line Warranty booth in the NLC Pavilion to begin the process of bringing this program to your city residents.

NLC's Service Line Warranty Program Tops 100 Cities

March 05, 2012

by Stephanie Long



NLC surpassed a significant milestone last month with more than 100 cities now participating in the NLC Service Line Warranty Program. In just 16 months, more than 1 million households have gained access to an affordable homeowner protection plan to save on the cost of water and sewer line repairs.

"I am very encouraged by the warm reception this program has quickly received since its introduction" said NLC Executive Director Donald J. Borut. "This program was designed to help city residents save thousands of dollars on the high cost of repairing their broken or leaking water or sewer lines. In these difficult economic times cities are actively seeking creative ways to assist their residents."

Cities and towns across the country, from Rolfe, Iowa (population 566) to Atlanta (population 540,922) are helping residents who are faced with these unexpected repairs.

There is no cost for a city to participate in the program, which is administered by Utility Service Partners, Inc. (USP), and it is easy to implement. USP provides participating cities with everything needed to introduce the program — customized marketing materials with the city name and logo to promote the program to citizens, press releases for the local media and a sample web banner for the city website, where residents can find information about the program. Cities only need to review and approve the consumer materials; USP handles all the details, including distributing the consumer marketing and developing the local contractor network.

"This difficult situation for city residents is a concern for NLC and that is why we are actively developing and introducing high-quality, creative programs to ease the burden on cities and their citizens. I would encourage every city to participate," Borut said. "The NLC Service Line Warranty Program has clear benefits to the city and their residents."

Details: For more information about this program visit www.nlc.org/enterpriseprograms or contact Cynthia Cusick, director, Office of Corporate Programs, at (202) 626-3182 or cusick@nlc.org.