

MARKETING AGREEMENT

This MARKETING AGREEMENT ("Agreement") is entered into as of _____, 20__ ("Effective Date"), by and between the City of Yuma, Arizona, an Arizona municipal corporation, ("City"), and Utility Service Partners Private Label, Inc. d/b/a Service Line Warranties of America ("Company"), herein collectively referred to singularly as "Party" and collectively as the "Parties".

RECITALS:

WHEREAS, sewer and water line laterals between the mainlines and the connection on residential private property are owned by individual residential property owners residing in the City ("**Residential Property Owner**"); and

WHEREAS, City desires to offer Residential Property Owners the opportunity, but not the obligation, to purchase a service line warranty and other similar products set forth in Exhibit A or as otherwise agreed in writing from time-to-time by the Parties (each, a "**Product**" and collectively, the "**Products**"); and

WHEREAS, Company 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. Company is retained by the City only for the purposes and to the extent set forth in Section 4 below and Company's relationship to the City will, during the term of the Agreement, be that of an independent contractor. This Agreement does not authorize Company to act for or on behalf of the City as its agent or make commitments for the City, nor does it provide the City with the authority to act for or on behalf of the Company. Neither Company nor any of its employees will be considered as having any employee status with the City or as being entitled to participate in any plans, arrangements or distributions by the City pertaining to any benefits extended to the City's employees.

2. **Grant of License.** During the term of this Agreement, City has agreed to cooperate with Company in marketing Company's services to City residents and homeowners ("Residents") as stated in this Section below.

- a. City hereby grants to Company a non-exclusive license ("**License**") to use City's name and

logo for the sole purpose of use on letterhead and marketing materials (collectively “Marketing Materials”). Company may send the Marketing Materials to Residential Property Owners as set forth in this Agreement, and use the Marketing Materials in advertising (including on the Company’s website) the sale of Company’s Products, all at Company’s sole cost and expense and subject to City’s prior review and written approval, which will not be unreasonably conditioned, delayed, or withheld. If the Company makes any changes to any Marketing Materials approved by the City, Company must resubmit the Marketing Materials for approval by the City; the City does not have to review any changes made to Marketing Materials that deal solely with the date or identifying information of a Recipient. Company acknowledges and agrees that:

- i. The City is providing the Company with the License solely for the purpose of marketing Company’s Products to Residents;
 - ii. Company may not use the City’s name or logo for any purpose or in any manner not specifically set forth in this Agreement;
 - iii. The City is not a party to nor liable for any duties or obligations of the Company for any Product sold to Residents; and
 - iv. Company is solely responsible for marketing the Products to Residents and fielding any inquiries regarding the Products and the claims process.
- b. Company will include in all Campaign Marketing Materials a statement to be agreed upon by the Parties notifying the Resident that:
 - i. Company’s relationship to the City is that of an independent provider;
 - ii. City is partnering with Company to market Company’s Products;
 - iii. No public funds were used for the marketing of the Products; and
 - iv. City has no responsibility or liability under any Product provided by Company.
- c. City will provide Company with a copy of the City of Yuma logo to be used on Marketing Materials.
- d. The City, in its sole discretion, reserves the right to provide licenses for use of the City’s name and logo to any other party, including, but not limited to, vendors who provide warranty services similar to Company (“Competitor”). No exclusive rights are encompassed through this Agreement. If the City contracts with a Competitor to use the City’s logo in marketing warranty services in a manner similar to Company, Company shall have the right to terminate this Agreement immediately and receive repayment from the City of the License Fee on a proration, as set forth in this subsection, based upon the date the City executes the contract with Competitor. Company will be entitled only to repayment of the License Fee, not the Brand Fee. The proration will be based on the following schedule:
 - i. If the City executes a contract with Competitor within one (1) year after the Effective Date of the Agreement, City will repay to the Company one-hundred percent (100%) of the License Fee;
 - ii. If the City executes a contract with Competitor more than one (1) year after the Effective Date of the Agreement, but within two (2) years after the Effective Date of

the Agreement, the City will repay to the Company seventy-five percent (75%) of the License Fee; or

- iii. If the City executes a contract with Competitor more than two (2) years after the Effective Date of the Agreement, but before the end of the Initial Term, the City will repay to the Company fifty percent (50%) of the License Fee

3. **Term.** The initial term of this Agreement ("**Term**") shall be for three (3) years from the Effective Date ("Initial Term"), unless otherwise cancelled or terminated as provided herein. The Agreement will automatically renew for three (3), one (1) year terms ("**Renewal Term**") unless one Party gives written notice to the other Party 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. Any reference in this Agreement to the "term" that does not specify the Initial Term or Renewal Term(s) will refer to any period of time in which this Agreement is effective as set forth in this Section. In the event that Company is in material breach of this Agreement, the City may terminate this Agreement thirty (30) days after giving written notice to Company of such breach, if said breach is not cured during said thirty (30) day period. Company will be permitted to complete any marketing initiative initiated or planned prior to termination of this Agreement after which time, neither Party will have any further obligations to the other and this Agreement will terminate.

4. **Obligations of Company.**

- a. Company will provide the necessary staff, services, and associated resources to fulfill Company's obligations under this Agreement. Company will be responsible for all costs and expenses incurred by Company that are incident to Company's performance under this Agreement.
- b. Company must have all applicable licenses and authorizations to conduct business in the State of Arizona prior to commencing any work under this Agreement. Company will only contract with qualified plumbers or other contractors to perform services related to Warranties who are: (i) licensed and in good standing with the Arizona Registrar of Contractors; (ii) bonded in accordance with applicable law; and (iii) in good standing with the Better Business Bureau, if rated by them.
- c. Whenever possible, Company will hire businesses based in the City of Yuma to perform work related to a Warranty on the property of a Resident.
- d. Company must supply all equipment and instrumentalities necessary to perform the services under this Agreement. Company is not required to purchase or rent any tools, equipment or service from the City.

5. **Consideration.**

- a. As consideration for such license, Company will pay to City a License Fee of as set forth in Exhibit A, attached and incorporated by reference, ("**License Fee**") during the term of this

Agreement. The first payment shall be due on or before the 30th day of the month following the conclusion of first full year after the Effective Date of this Agreement. Succeeding License Fee payments shall be made on an annual basis throughout the Term and any Renewal Term, due and payable to the City on the successive anniversaries of the initial payment date. In order for the City to certify the collections of the revenue that is the basis of the Brand Fee, along with each Brand Fee payment submitted, Company will submit to the City: (i) a statement certifying collections of the revenue; and (ii) the addresses of the Residents who purchased Warranties from the Company during the quarter upon which the Brand Fee payment is based. The 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. Within thirty (30) days of the termination of the Agreement, Company will remit to the City a one-time payment of any remaining License Fee monies owed to the City.

- b. In addition to the License Fees set forth in this Section, Company shall pay City a brand fee ("**Brand Fee**") as set forth on Exhibit A. Company will pay City Brand Fees within thirty (30) days after the date such Brand Fee becomes payable as set forth in Exhibit A.

6. **Indemnification.** Company hereby agrees to protect, defend, 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 claims, liabilities, damages, losses, expenses, suits, actions, decrees, fines, 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: (i) the services provided by Company personnel under this Agreement; (ii) Company's performance or failure to perform in accordance with a Warranty provided by Company to a Resident; (iii) any and all plumbing or other construction/contracting performed by Company or a subcontractor in the City of Yuma; (iv) any negligent acts, errors, directives, mistakes or omissions by Company or its officers, employees, contractors, subcontractors, or agents (collectively "Company Personnel"); and (v) Company or Company Personnel's failure to comply with or fulfill the obligations established by this Agreement or a Warranty; provided that the applicable Indemnatee notifies Company of any such Claim within a time that does not prejudice the ability of Company to defend against such Claim. Any Indemnatee hereunder may participate in its, his, or her own defense, but will be responsible for all costs incurred, including reasonable attorneys' fees, in connection with such participation in such defense.

7. **Waiver of Claims for Anticipated Profits.** Company waives any claims against the City and its officers, officials, agents, and employees for loss of anticipated profits, whether or not caused by any suit or proceeding, directly or indirectly, involving any part of this Agreement.

8. **Insurance Requirements.** Company agrees to obtain and maintain at its expense throughout the term of this Agreement, the types and amounts of insurance set forth in this Section, from insurance companies authorized to do business in the State of Arizona, covering all operations and services performed by Company under this Agreement.

a. *General:*

- i. Insurer Qualifications. Without limiting any obligations or liabilities of Company, Company shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to Arizona Revised Statutes (“A.R.S.”) § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City’s option.
- ii. Additional Insured. The General Liability policy coverage shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement. Additional Insured coverage may also be satisfied via ‘blanket’ endorsement provided in the General Liability policy.
- iii. Waiver. All policies shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Company. Company shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement. Waiver may also be satisfied by a “blanket” endorsement provided in the General Liability policy.
- iv. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
- v. Primary Insurance. Company’s General Liability Insurance shall be endorsed to indicate its primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.
- vi. Claims Made. In the event any insurance policies required by this Agreement are written on a “claims made” basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
- vii. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Company will provide the City with suitable evidence of insurance in the form of certificates of insurance. The City may reasonably rely upon the certificates of insurance but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, Company shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

1. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 2. Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
 3. Excess Liability – Follow Form to underlying insurance.
- viii. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.
- b. *Required Insurance Coverage.* Company must obtain and retain throughout the term of this Agreement, at a minimum, the following insurance:
- i. Commercial General Liability. Company shall maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$4,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
- c. *Workers Compensation.* Company understands and agrees that Company’s employees, agents, contractors, and directors, are not serving as employee of the City in any manner and therefore are not entitled to any of the City’s industrial benefit coverages, including Workers’ Compensation coverages. Company acknowledges that any injury its employees, agents, contractors, or directors sustain in the performance of this Contract will be not be eligible for industrial benefits and any necessary treatment will be Company’s or Company’s insurer’s, sole responsibility.
- d. *Cancellation and Expiration Notice.* Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days’ prior written notice to the City.
- e. *No Limits on Indemnification.* The procuring of any such policy of insurance by Company shall not be construed to be a limitation upon Company’s liability or as a full performance on its part of the indemnification provisions of this Agreement. The City of Yuma shall be

named as additional insured on the General Liability insurance policy issued pursuant to this clause during the entire term of this Agreement and any extensions thereof.

9. **Representations and Warranties.** To the best of Company's knowledge, Company agrees that:

- a. Company has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with Company's undertaking of the relationship with City;
- b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and
- c. Company has not entered into and will not enter into any agreement (whether oral or written) in conflict with this Agreement.

10. **Termination of Agreement.**

- a. *Notice of Default.* In the event a party fails to perform or fails to otherwise act in accordance with any term, promise, or provision hereof (the "Defaulting Party") then the other party (the "Non-Defaulting Party") may provide written notice to perform to the Defaulting Party (the "Notice of Default"). The Defaulting Party will have thirty (30) calendar days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than thirty (30) days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then the Defaulting Party will notify the Non-Defaulting Party of such and the timeframe needed to cure such default, so long as the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within said thirty-day period and diligently proceeds to complete such performance or fulfill such obligation; provided further, however, that no such cure period will exceed ninety (90) days. Any written notice will specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.
- b. *Intent to Perform.* Whenever the City in good faith has reason to question Company's intent to perform, the City may demand that the Company give a written assurance of its intent to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement
- c. *Termination for Cause.* The Non-Defaulting Party may terminate this Agreement for cause at any time there is a material breach of any term of this Agreement that is not cured in accordance with Section 10(a). Termination under this Section 10(c) will become effective within three (3) calendar days of written notice to the Defaulting Party.
- d. *Remedies.* The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default the non-defaulting party will have all other rights granted under this Agreement and all rights at law

or in equity that may be available to it. Neither party will be liable for incidental, special, or consequential damages.

- e. In the event of termination under this Section 10, Company will compensate the City the payments set forth in Section 5, which will be due within twenty (20) calendar days of termination of the Agreement, in the following manner:
 - i. Company will provide the City with the License Fee calculated through the date of termination; and
 - ii. Any payments set forth in Section 5 due the City through the date of termination.

11. **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: Ricky Rinehart, Deputy City Administrator
City of Yuma
One City Plaza
Yuma, AZ 85364
Phone: (928) 373-5018

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

12. **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.

13. **Assignment.** This Agreement and the License granted herein may not be assigned in whole or in part 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. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Company from any of its obligations and liabilities under the Agreement.

14. **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.

This Agreement is intended for the exclusive benefit of the parties. 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.

15. **Choice of Law/Attorney Fees.** The governing law shall be the laws of the State of Arizona. Any action to enforce any provision of this Agreement or to obtain any remedy with respect this Agreement shall be brought exclusively in the Superior Court, Yuma County, Arizona (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks jurisdiction over such action). In the event that at any time during the Term or any Renewal Term either Party institutes any action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the prevailing Party will be entitled to the recovery of its reasonable attorney's fees, court costs and other litigation related costs and fees from the other Party.

16. **Conflict of Interest.** The provisions of Arizona Revised Statute § 38-511 relating to cancellation of contracts due to conflict of interest shall apply to this Agreement.

17. **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.

18. **Yuma's Standard Terms and Conditions.**

- a. *Provisions Required by Law.* Each and every provision of law and any clause required by Arizona statute or regulation to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.
- b. *Boycott of Israel.* Pursuant to A.R.S. § 35-393.01, Company certifies that Company is not engaged in a boycott of Israel as of the effective date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel.
- c. *Compliance with Law.* Company shall, at its sole expense, comply with and obey all applicable city, county, state and federal laws, ordinances and regulations now in force or which may hereafter be in force. The Parties shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 2009-09, which mandates that all persons, regardless of race, color, religion, sex,

age, national origin or political affiliation, shall have equal access to employment opportunities. The Parties shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.

- d. *E-verify Requirements.* To the extent applicable under A.R.S. § 41-4401, Company and its subcontractors warrant compliance, and are contractually obligated to comply, with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A) (“Immigration Warranty”). Company’s or its subcontractor’s failure to comply with Immigration Warranty shall be deemed a material breach of this Agreement and may subject Company to penalties up to and including the termination of this Agreement by the City.

The City retains the legal right to inspect the papers of all Company personnel who provide services under this Agreement to ensure that Company or its subcontractors are complying with the Immigration Warranty. Company agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of Company and any subcontractor to ensure compliance with the Immigration Warranty. Company agrees to assist the City in regard to any random verification performed.

Neither Company nor any subcontractors will be deemed to have materially breached the Company Immigration Warranty if Company or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).

- e. *Severability.* In the event a court of competent jurisdiction shall determine that any of the provisions of this Agreement are invalid, illegal or unenforceable, the parties shall negotiate in good faith in an attempt to agree on a mutually acceptable valid, legal and enforceable substitute provision consistent with the original intention of the parties hereto. If the Parties are unable to agree upon a substitute provision, then either party may terminate this Agreement upon ninety (90) days’ written notice to the other party.
- f. *Force Majeure.* Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a

period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

- g. *Successors and Assigns, Binding Effect.* This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
- h. *Time of the Essence.* Time is of the essence to the performance of the parties' obligations under this Agreement.
- i. *Sales/Use Tax, Other Taxes.*
 - i. Company is responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Company's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, unemployment insurance taxes, and any other taxes or business license fees as required.
 - ii. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
- j. *Amounts Due The City.* Company must be current and remain current in all obligations due to the City during the performance of services under the Agreement. Payments to Company may be offset by any delinquent amounts due the City or fees and charges owed to the City.
- k. *Continuation During Disputes.* Company agrees that during any dispute between the parties, Company will continue to perform its obligations under this Agreement until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
- l. *Non-Waiver Of Rights.* There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
- m. *Risk Of Loss.* Company agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Company from any obligation hereunder.
- n. *City's Right To Recover Against Third Parties.* Company will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City

property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.

- o. *Safeguarding City Property.* Company is responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of the Company or its employees.
- p. *Surviving Provisions.* Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.

[Signature Page Follows]

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

CITY OF YUMA

Name: Gregory K. Wilkinson

Title: City Administrator

UTILITY SERVICE PARTNERS PRIVATE LABEL, INC.

Name: Tom Rusin

Title: Chief Executive Officer

Exhibit A
NLC Service Line Warranty Program
City of Yuma
Term Sheet

I. Initial Term. Three years

II. License Fee. During the Initial Term, \$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 as set forth in Section 5 of the Agreement, for:

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

III. Brand Fee. \$10,000.00 spread across the first three years of the Term, as follows:

- a. 2017 - \$5,000.00
- b. 2018 - \$2,500.00
- c. 2019 - \$2,500.00

Each Brand Fee payment, as set forth above, is due within thirty (30) days following Company's receipt of the City's written approval of Company's campaign marketing materials for the (i) 2017 campaigns; (ii) 2018 campaigns; and (iii) 2019 campaigns. If such approval is not granted for a campaign, then Company will have no obligation to make the Brand Fee payment associated with the applicable campaign.

IV. Products.

- a. External sewer line warranty (initially, \$7.75 per month; \$88.00 annually)
- b. External water line warranty (initially, \$5.75 per month; \$64.00 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 year unless otherwise agreed by the parties in writing or appropriate to give effect to adverse claims experience or increased product costs.

V. Scope of Coverage.

- a. External sewer line warranty: Scope is from the city main tap until line daylights inside home, which includes the service line under the concrete floor.
- b. External water line warranty: Scope is from the meter and/or curb box until it daylights inside home, which includes the service line under the concrete floor.
- 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.

VI. Marketing Campaigns. Company shall have the right to conduct up to three (3) marketing campaigns per year for the purpose of advertising the sale of Warranties to Residential Property

Owners (“Campaigns”). Each Campaign will consist of two (2) separate direct mailings to Residential Property Owners; no other advertising or marketing may take place without the prior written approval of the City comprised of up to six mailings per year and such other channels as may be mutually agreed by the Parties in writing prior to using such channels. Initially, Company anticipates offering the In-home plumbing warranty Product via in-bound channels only.