



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		1/23/2012			
Department:		Customer and Utility Services			
Department Head		Mark Israelson			
Agenda Coordinator (include phone #): <b>Andrea Showkeir 972-941-5113</b>					
<b>CAPTION</b>					
To approve a Professional Services Agreement by and between the City of Plano and Utility Service Partners Private Label, Inc., d/b/a Service Line Warranties of America, for a non exclusive license to use the city's name and logo to advertise a utility service line warranty program, and authorizing the City Manager to execute all necessary documents.					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
<b>FISCAL YEAR:    2011-12</b>		<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	31,865		<b>31,865</b>
<b>BALANCE</b>		0	31,865	0	<b>31,865</b>
<b>FUND(S):    GENERAL</b>					
<b>COMMENTS:</b> Approval of this item will result in unbudgeted revenue to be received by the City of Plano. The estimated annual amount of revenue to be received is \$31,865. <b>STRATEGIC PLAN GOAL:</b> Entering into a Professional Services Agreement with Utility Service Partners Private Label, Inc. for a non exclusive license to use the city's name and logo to advertise a utility service line warranty program relates to the City's Goal of a Financially Strong City with Service Excellence and Great Neighborhoods - 1 <sup>st</sup> Choice to Live.					
<b>SUMMARY OF ITEM</b>					
Professional Services Agreement with Utility Service Partners Private Label, Inc. for a non exclusive license to use the city's name and logo to advertise a utility service line warranty program. The estimated annual amount of revenue to be received is \$31,865 for the first year of the program with increased amounts in each subsequent year.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Memo, Contract					



**Date:** January 9, 2012  
**To:** Bruce Glasscock, City Manager  
**From:** Mark Israelson, Director of Policy & Government Relations  
**Subject:** Utility Services Partners Program

The City of Plano City Council was presented with a proposal for a utility service line warranty partnership at the November 28<sup>th</sup> 2011 preliminary meeting of the City Council. As part of that presentation, staff presented a program that would allow Utility Services Partners, Inc. (USP) to use the City of Plano logo as part of their marketing program. USP has been selected as the partner for National League of Cities (NLC) and North Central Texas Council of Governments (NCTCOG) through a competitive proposal process. In return for use of the City logo, USP will provide the City with 12% of the revenue collected from City of Plano residents. Below is a list of specific details regarding the program/contract:

- Agreement is for 1 year with 4 optional renewals
- City has a 30 day termination clause with or without cause
- USP will offer service line warranties for water & sewer services ***directly*** to residents
  - Water is \$4.50 per month per household
  - Sewer is \$5.95 per month per household
  - No increases in rates are projected
- Citizens will have no deductibles, service fees, or restrictions on number of repairs
- All contractors will be vetted and based in the City of Plano
- City of Plano maintains governmental immunity with an indemnification clause in the contract
- Project 15% of households enroll in program taking 1.5 services
- Total projected revenue for the City of Plano based on 7 years in the program is \$236,000
- City will receive a brand license fee of \$63,730 spread over 3 years (50%, 25%, 25%)

In addition, on January 11<sup>th</sup> City Staff met with HomeServe who also provides utility service line warranty products. HomeServe is aware of the pending agreement between the City of Plano and USP, and interested in providing services to Plano residents for utilities other than water and sewer service lines. Staff responded to HomeServe that we would be happy to monitor their program, services and offerings to see if there is a future fit with the City of Plano.

**CONTRACT BY AND BETWEEN  
CITY OF PLANO  
AND  
UTILITY SERVICE PARTNERS PRIVATE LABEL, INC.  
d/b/a SERVICE LINE WARRANTIES OF AMERICA (“SLWA”)**

**THIS CONTRACT** is made and entered into by and between **UTILITY SERVICE PARTNERS PRIVATE LABEL, INC. d/b/a SERVICE LINE WARRANTIES OF AMERICA**, a Delaware corporation, whose address is 11 Grandview Circle, Suite 100, Canonsburg, Pennsylvania 15317, hereinafter referred to as “SLWA,” and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation, hereinafter referred to as “City,” to be effective upon approval of the Plano City Council and subsequent execution of this Contract by the Plano City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**I.  
SCOPE OF SERVICES**

SLWA shall offer a utility service line warranty program (“Program”) to the residents and homeowners (“Residents”) of the City of Plano. These services shall be provided in accordance with this Contract and with the Utility Service Partners Label, Inc. and North Central Texas Council of Governments contract (“NCTCOG”), a copy of which is attached hereto and incorporated herein as **Exhibit “A”**. SLWA agrees that all contractors providing services under the Program shall have their principal places of business located within the City of Plano.

City agrees to grant to SLWA a non-exclusive license to use City’s name and logo on letterhead and marketing material to be sent to the Residents from time to time, and to be used in advertising, all at SLWA’s sole cost and expense and subject to City’s prior review and approval.

The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) This Contract;
- (b) Contract by and between Utility Service Partners Label, Inc. and North Central Texas Council of Governments (“NCTCOG”), (**Exhibit “A”**);
- (c) Insurance Requirements and Certificate of Insurance (**Exhibit B**); and
- (d) Affidavit of No Prohibited Interest (**Exhibit “C”**).

In the event there is a conflict in interpretation or terms, the documents shall control in the order listed above. These documents shall be referred to collectively as “Contract Documents.”

## II. TERM OF CONTRACT

The initial term of this Contract shall be for a one (1) year period commencing upon the effective date hereof; provided however, that the City shall have the right and option to extend the term hereof by four (4) additional one (1) year periods by giving written notice to SLWA of City's election to extend the term hereof, such notice to be given not more than ninety (90) days prior to the expiration of the initial term.

## III. PAYMENT

SLWA will be liable to pay City, within thirty (30) days of the end of the final calendar quarter of each year, twelve percent (12%) of the revenue from USP warranty subscriptions collected from Residents during such calendar year (the "License Fee"), together with a statement certifying collections of such USP revenue, so long as this Contract remains in effect.

In addition, to the annual 12% License Fee, SLWA will pay City an upfront Brand License Fee in the amount of **SIXTY-THREE THOUSAND SEVEN HUNDRED THIRTY NO/100 DOLLARS (\$63,730.00)**, paid over the course of a three (3) year period within the parameters of the structure set forth below:

Amount of \$63,730 derived from 127,460 Total Occupied Households x \$0.50/per Household

- Year 1 - 50% of total
- Year 2 - 25% of total (contingent upon contract renewal)
- Year 3 - 25% of total (contingent upon contract renewal)

### City of Plano, TX

- Year 1 - \$31,865 — Payable upon approval of materials for 2012 Spring and Fall campaigns
- Year 2 - \$15,933 — Payable upon approval of materials for 2013 Spring and Fall campaigns
- Year 3 - \$15,933 — Payable upon approval of materials for 2014 Spring and Fall campaigns

## IV. COMPLIANCE WITH APPLICABLE LAWS

SLWA shall at all times observe and comply with all directly applicable Federal, State and local laws, ordinances and regulations including all amendments and revisions thereto, which affect the work. **If SLWA observes that the work is at variance therewith, SLWA shall promptly notify City in writing.**

**V.  
INDEMNIFICATION AND HOLD HARMLESS**

**SLWA AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF CITY'S PARTICIPATION AND ENDORSEMENT OF SLWA'S UTILITY SERVICE LINE WARRANTY PROGRAM OR BE OCCASIONED BY SLWA'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF SLWA, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH SLWA IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT SUCH LIABILITY RESULTS FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

**SLWA AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF SLWA'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF SLWA'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. SLWA SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF SLWA FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND SLWA SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.**

**VI.  
ASSIGNMENT AND SUBLETTING**

SLWA agrees to retain control and to give full attention to the fulfillment of this Contract and that this Contract shall not be assigned without the prior written consent of City, except for assignments to a SLWA affiliate. An assignment of this Contract with the consent of the City or

to an affiliate of SLWA is conditioned on the assignee agreeing to be bound by the terms of this Contract. SLWA may subcontract any portion of its performance under this Contract. SLWA further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Contract, shall not relieve SLWA from its full obligations to City as provided by this Contract. In the event any additional or different subcontractors are required or requested by City, or in the event City rejects the use of a particular subcontractor, such rejection must be submitted in writing and be based on just and reasonable cause. Any resultant change in contract price and/or schedule shall be mutually agreed upon.

**VII.  
INDEPENDENT CONTRACTOR**

SLWA covenants and agrees that SLWA is an independent contractor and not an officer, agent, servant or employee of City; that SLWA shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and SLWA, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and SLWA.

**VIII.  
INSURANCE AND CERTIFICATES OF INSURANCE**

SLWA shall procure and maintain for the duration of the contract insurance coverage as set forth in the Insurance Requirements marked **Exhibit "B"** attached hereto and incorporated herein by reference. SLWA shall provide a signed insurance certificate verifying that it has obtained the required insurance coverage prior to the effective date of this Contract.

**IX.  
AFFIDAVIT OF NO PROHIBITED INTEREST**

SLWA acknowledges and represents SLWA is aware of all applicable laws, City Charter, and City Code of Conduct regarding prohibited interests and that the existence of a prohibited interest at any time will render the Contract voidable. SLWA has executed the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "C"**.

**X.  
TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Contract, terminate further work under this Contract, in whole or in part by giving at least thirty (30) days prior written notice thereof to SLWA with the understanding that all services being terminated shall cease upon the expiration of the 30-day period. City will be compensated up to the effective date of termination.

**XI.  
SEVERABILITY**

The provisions of this Contract are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Contract is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Contract. However, upon the occurrence of such event, either party may terminate this Contract by giving the other party thirty (30) days written notice.

**XII.  
VENUE**

The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Contract. The parties agree that this Contract is performable in Collin County, Texas, and that exclusive venue shall lie in Collin County, Texas.

**XIII.  
GOVERNMENTAL IMMUNITY**

It is expressly understood and agreed that, in the execution of this Contract, City does not waive, nor shall it be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Contract, the parties do not create any obligations, express or implied, other than those set forth herein, and this Contract shall not create any rights in parties not signatories hereto.

**XIV.  
AUDITS AND RECORDS**

SLWA agrees that City will have the right, at City's expense, to conduct an annual audit, upon reasonable notice and during normal business hours, of SLWA's books and records pertaining to sales and rentals to the Residents while this Contract is in effect and for one (1) year after any termination of this Contract.

**XV.  
MAILING OF NOTICES**

Unless instructed otherwise in writing, SLWA agrees that all notices or communications to City permitted or required under this Contract shall be addressed to City at the following address:

City of Plano  
1520 K Avenue, Suite 120  
Plano, Texas 75074  
Attn: Mark Israelson

City agrees that all notices or communications to SLWA permitted or required under this Contract shall be addressed to SLWA at the following address:

Utility Service Partners Private Label, Inc., d/b/a Service Line Warranties of America

11 Grandview Circle, Suite 100  
Canonsburg, PA 15317  
Attn: Brad Carmichael

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

**XVI.  
ENTIRE AGREEMENT**

This Contract and its attachments embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

**XVII.  
AUTHORITY TO SIGN**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

**XVIII.  
SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns.

**XIX.  
HEADINGS**

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XX.  
EFFECTIVE DATE**

This Contract shall be effective from and after execution by both parties hereto.

**IN WITNESS WHEREOF**, the parties have executed this Contract by signing below.

**UTILITY SERVICE PARTNERS PRIVATE  
LABEL, INC. d/b/a SERVICE LINE  
WARRANTIES OF AMERICA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY OF PLANO, TEXAS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bruce D. Glasscock  
CITY MANAGER

APPROVED AS TO FORM

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY



**Master Contract**  
**By and Between Utility Service Partners Private Label, Inc.**  
**& North Central Texas Council of Governments**

This Contract ("Contract") is made and entered into as of January 27, 2011 by and between Utility Service Partners Private Label, Inc. ("USP") a Delaware corporation, with offices at 11 Grandview Circle, Suite 100, Canonsburg, Pennsylvania 15317 and North Central Texas Council of Governments ("NCTCOG"), a Texas political subdivision and non-profit corporation with offices at 616 Six Flags Drive, Center Point Two, Arlington, Texas 76011, for the purpose of providing water service line and/or sewer service line protection programs as more fully defined below.

**Preamble**

USP provides utility service line repair coverage to homeowners for water lines and/or sewer lines as part of a line repair protection program. NCTCOG is duly authorized to provide governmental services within its sixteen (16)-county region and in the State of Texas. Both USP and NCTCOG desire to set forth in writing the terms and conditions of their agreement.

**General Terms and Conditions**

In consideration of the mutual covenants and conditions contained in this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Purpose. NCTCOG agrees to retain USP and USP agrees to provide various services more fully described herein to participating member cities and other governmental entities including special purpose districts ("member entities") as set forth in various separate and independent Letters of Engagement between USP and participating member entities of NCTCOG. USP warrants that the services to be provided shall be performed with a high degree of competence and expertise, skill, experience, and in a professional business-like manner.
2. Term. This Contract is effective beginning January 27, 2011. The initial term of the contract shall be for a three year period and shall be renewable automatically each year thereafter for a maximum of three (3) one (1)-year terms for a possible six (6) years total term unless otherwise terminated as provided herein. The renewal agreements shall be on the same terms and conditions as the primary term unless otherwise agreed by the parties.
3. Agreement. This Contract and the attached and incorporated addenda, or exhibits, if any, contain the entire agreement of the parties and there are no representations, agreements, arrangements, or undertakings, oral or written, between the parties to this Contract other than those set forth in this Contract.

4. Scope of Work.

**A. USP agrees to:**

- Provide water and/or sewer line protection services to subscribing homeowners or property owners residing in the member entities and in accordance with the terms of the Letter of Engagement with each member entity.
- Be solely responsible for marketing the program to citizens of the subscribing member entities and fielding any inquiries regarding the protection program or the claims process.
- Select qualified contractors to perform service calls and ensure repairs are completed. Contractor lists are subject to review by each member entity.
- Provide customer service on a continual basis: 24 hours a day, 7 days a week.
- Provide a means for customers to submit comments or complaints regarding contractors.
- Be a member of the Texas Better Business Bureau by the time the service is started.
- Accept payments directly from the homeowners/property owners.
- Provide member entities with payment for the use of their logos in marketing the program to its citizens in accordance with each individual agreement with the member entities.
- Provide payment to NCTCOG for coordinating the shared services program in accordance with the attached Addendum.
- Provide a response time window for contractors to respond to homeowner/property owner inquiries.

**B. NCTCOG agrees to:**

- Act as a facilitator of the services described herein with the understanding that USP's direct obligations for delivery of services shall be as set forth herein and in the various Letters of Engagement with member entities.
- Cooperate and coordinate as reasonably necessary with USP during the implementation and review process of this program.
- Market the shared services program as mutually agreed between the parties.

5. Remuneration. USP agrees to compensate member entities participating in the protection program through payment of 12% of all collected revenues for subscriptions sold during the year, paid annually at the end of each calendar year during which a subscription remains in effect. Payment arrangements and other compensation details will be set forth in the separate Letters of Engagement between USP and the member entities. An administrative fee shall be paid by USP to NCTCOG for each agreement signed through the NCTCOG ("interlocal agreement") that results in a separate Letter of Engagement between USP and a member entity. Payments to NCTCOG for its administrative services and responsibilities set forth herein shall be in accordance with the attached Addendum. Notwithstanding anything to the contrary in this Contract, payment by USP to member entities and NCTCOG is contingent upon

USP receiving timely payment from subscribing homeowners/property owners residing within member entities that have entered into a Letter of Engagement with USP. If for any reason member entities and/or NCTCOG do not receive payment due from USP for revenue that it has collected from homeowner/property owner subscriptions in accordance with this contract and the separate contracts with member entities, USP or NCTCOG may terminate this Contract or reduce the scope of work provided under this Contract without pecuniary risk or penalty, at its sole discretion. Under no circumstances shall NCTCOG be considered a guarantor for payment or performance obligations under any of the Letters of Engagement between USP and the member entities.

6. Confidentiality. To the extent permitted by law, USP agrees that all knowledge and information that USP may receive from NCTCOG/Member Entities, their employees, their member's employees, or by virtue of the performance of services under and pursuant to this agreement, and all information provided by USP to NCTCOG in reports of work done, together with any other information acquired or gained by USP, shall for all time and for all purposes be regarded by USP as strictly confidential and shall be held by USP in confidence, and solely for the benefit and use of NCTCOG, and shall not be used by USP directly or indirectly for any reason except with the prior written permission of NCTCOG. The foregoing obligation will not apply to information that is already in the public domain through no violation of this confidentiality obligation, was already in the possession of USP or NCTCOG, as applicable, and not subject to a confidentiality obligation, or is independently developed by USP or NCTCOG, as applicable, without reference to any confidential information disclosed by one to the other.
7. Assignment. This Contract and all addenda attached hereto now or in the future shall not be assignable by either party without the prior written consent and approval of both parties.
8. Conflict of Interest. During the term of this Contract, and all extensions hereto and for a period of one year thereafter, neither party, shall, without the prior written consent of the other, directly or indirectly, whether for its own account or with any other person or entity whatsoever, employ, solicit to employ or endeavor to entice away any person who is employed by the other party.
9. Contract Amendment. This Contract may be amended only by the mutual agreement of the parties in writing which amendment shall be attached to and incorporated into this Contract. Unless otherwise agreed, the terms and conditions of this Contract shall be incorporated into any and all amendments.
10. Notice. Any notice provided under the terms of this Contract by either party to the other shall be in writing and shall be sent by **certified mail**,

**return receipt requested.** Notice shall be sufficient if made or addressed as follows:

Utility Service Partners Private Label, Inc.	North Central Texas Council of Governments
Attn: Brad Carmichael	Attn: Monte Mercer
Vice President, Business Development	Deputy Executive Director
11 Grandview Circle, Suite 100	616 Six Flags Drive
Canonsburg, PA 15317	Arlington, TX 76005

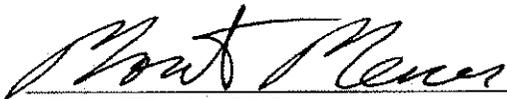
11. Relation of Parties. It is the intention of the parties that NCTCOG be independent of USP and not an employee, agent, joint venturer, or partner of USP, and nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between USP and NCTCOG, or USP and any of NCTCOG's agents or employees.
12. Hold Harmless. Both parties to the extent allowed by law shall protect and hold harmless the other party from any and all, liabilities, judgments, losses, claims, assessments, suits in law or in equity, expenses, attorney's fees, and damages arising from the other party's negligent acts or omissions, failure to perform its obligations under this Contract as well as any actual or alleged infringement of any United States or foreign patent, trademark or copyright in connection with this Contract..
13. Termination. This Contract may be terminated prior to the expiration of the Term hereof by either party for any reason upon thirty (30) days prior written notice to the other party and/or as follows:
  - By NCTCOG upon 30 days written notice to USP if the work/services provided by USP are not reasonably satisfactory and USP fails, after receipt of reasonable notice and opportunity to cure, to remedy such failures;
  - By mutual written agreement of the parties; or
  - By either party immediately if the other party commits a material breach of any of the terms of this Contract and no remedial action can be agreed upon by the parties.
14. Master Contract. This Contract may be utilized as a Master Contract. This means that USP and NCTCOG may enter into one or more agreements in the future by signing Addendums for services with various USP divisions and affiliates. The general terms and conditions contained in this Contract will serve to outline the working relationship between USP and NCTCOG with respect to future Addendums. The specific terms and conditions of the Addendums will govern future individual agreements. In case of a conflict between this Master Contract and any future addendums, the provisions of the addendums will prevail.
15. Severability. In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or

unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

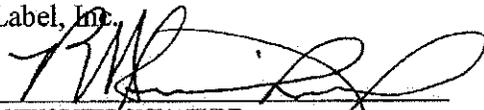
16. Governing Law and Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Contract shall be in Tarrant County, Texas.
17. Authorization. Each party acknowledges that the governing body of each party to the Contract has authorized this Contract.
18. Benefit for Signatory Parties Only. Neither this Contract, nor any term or provisions hereof, nor any inclusion by reference, shall be construed as being for the benefit of any party not in signatory hereto.

In witness whereof, USP and NCTCOG have executed this Contract to be effective on the date specified in Article 2. Term above:

North Central Texas Council of Governments

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE  
Monte Mercer  
\_\_\_\_\_  
PRINTED NAME  
\_\_\_\_\_  
TITLE

Utility Service Partners Private Label, Inc.

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE  
BRAD CARMICHAEL  
\_\_\_\_\_  
PRINTED NAME  
Vice President  
\_\_\_\_\_  
TITLE  
  
\_\_\_\_\_  
AUTHORIZED SIGNATURE  
PHILIP E. RILEY, JR.  
\_\_\_\_\_  
PRINTED NAME  
PRESIDENT & CEO  
\_\_\_\_\_  
TITLE

**Addendum to Master Contract  
Between Utility Service Partners Private Label, Inc.  
& North Central Texas Council of Governments**

**Addendum 1**

Remuneration to the Member Entity shall be as follows:

- USP agrees to compensate member entities participating in the protection program 12% of all collected revenues for subscriptions sold during the year, paid annually at the end of the calendar year.
- Payment arrangements and other compensation details are set out in the separate Engagement Letter between USP and the member entities.

Remuneration to NCTCOG shall be as follows:

- NCTCOG will receive a one-time, administrative fee of \$800 for each Interlocal Agreement (ILA) signed through the NCTCOG that results in a separate Engagement Letter between USP and the member entity. Payments are to be made by USP to NCTCOG on a quarterly basis.

## INSURANCE REQUIREMENTS

### 1.0 General Provisions

- 1.1 The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3 The Contractor agrees that the insurance requirements specified in this section do not reduce the liability Contractor has assumed in any indemnification/hold harmless section of this contract.
- 1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Contractor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5 Insurance coverage required by this section shall:
  - 1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City
  - 1.5.2 Be with an insurer possessing an A-VII. A. M. Best Rating
- 1.6 **Subcontractor Insurance.** If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must comply with the insurance provisions within this Agreement.

2.0 Minimum Insurance Coverage & Limits

**2.1 Commercial General Liability.** Contractor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage).

2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10** or the equivalent.

2.1.3 Limits of Insurance

2.1.3.1 \$1,000,000 Per Occurrence

3.0 Evidence of Insurance

3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, including for subcontractors cited in Section 1.6, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3 City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.

3.5 The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:

3.5.1 List each insurers' NAIC Number or FEIN

- 3.5.2 List **contract number, project name/number**, name of event, location (building name, building address, etc.), date(s) of event or service being performed
- 3.5.3 State insurance is on a primary basis and non-contributory with any insurance/or self-insurance carried by City
- 3.5.4 Specifically list reference to all endorsements required herein
- 3.5.5 List the specific number of days cancellation provided pursuant to policy language for notice of cancellation on certificate
- 3.5.6 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section



