City of Benson
City Council Communication

Regular Meeting **June 13, 2016**

To: Mayor and Council Agenda Item # 7

From: Dustin DeSpain, Finance Director

Subject:

Discussion and possible action regarding a 3-year Marketing License Agreement for Homeowner Private Line Insurance for Sewer, Water and Gas between the City of Benson and Utility Service Partners Private Label, Inc.

Discussion:

This agreement would give Utility Service Partners Private Label, Inc. dba Service Line Warranties of America (SWLA) the license to solicit and offer homeowners and businesses within the City's utility service area, an insurance-type warranty on the private line that goes from City meters to their homes and/or businesses.

In consideration for this license, Utility Service Partners Private Label, Inc. will pay the City an annual license fee of $0.50 per month for each warranty in effect and paid for by the utility customer. There is no cost to the City.

The agreement is similar to many other municipalities here in Arizona.

Staff Recommendation:

Approval of a 3-year Marketing License Agreement for Homeowner Private Line Insurance for Sewer, Water and Gas between the City of Benson and Utility Service Partners Private Label, Inc.

MARKETING LICENSE AGREEMENT BETWEEN THE CITY OF BENSON, ARIZONA, AND UTILITY SERVICE PARTNERS PRIVATE LABEL, INC., TRADING AND DOING BUSINESS AS SERVICE LINE WARRANTIES OF AMERICA

This MARKETING LICENSE AGREEMENT ("Agreement") entered into as of [_____, 20] ("Effective Date"), by and between the City of Benson, Arizona ("City"), and Utility Service Partners Private Label, Inc., a Delaware corporation trading and doing business as Service Line Warranties of America ("SLWA"), herein collectively referred to singularly as "Party" and collectively as the "Parties".

RECITALS:

WHEREAS, sewer, gas and water line laterals between the mainlines and the connection on residential private property are owned by individual residential property owners ("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 ("Warranty"); and

WHEREAS, SLWA is the administrator of the National League of Cities Service Line Warranty Program and has agreed to provide the Warranty 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:

AGREEMENT

1. **Purpose.** City hereby grants to SLWA the right to offer the Warranty to Residential Property Owners subject to the terms and conditions herein.

2. **Grant of License.** City hereby grants to SLWA a non-exclusive license ("License") to use City's name and logo on letterhead, bills and marketing materials to be sent to Residential Property Owners from time to time, and to be used in advertising, all at SLWA's sole cost and expense and subject to City's prior review and approval, which will not be unreasonably conditioned, delayed, or withheld. SLWA's use of the City logo is limited to the uses expressly authorized in this Agreement. If City grants a similar license to a competitor of SLWA during the term of this agreement SLWA may terminate this Agreement.

3. **Term.** The term of this Agreement ("Term") shall be for three (3) years from the Effective Date. The Agreement will automatically renew for additional one (1) year terms ("Renewal Term") unless one of the Parties gives the other written notice at least ninety (90) days prior to end of the Term or of a Renewal Term that the Party does not intend to renew this Agreement. In the event that SLWA is in material breach of this Agreement, the City may terminate this Agreement thirty (30) days after giving written notice to SLWA of such breach, if said breach is not cured during said thirty (30) day period. SLWA 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. During the Term, SLWA shall conduct seasonal campaigns each year in accordance with the schedules set forth in Exhibit A. The pricing for each such campaign shall be in accordance with Exhibit A attached hereto.

4. **Consideration.** As consideration for such license, SLWA will pay to City a License Fee of Fifty-Cents ($.50) for each month a Warranty shall be in force (and for which payment is received by SLWA) for a Residential Property Owner ("License Fee") during the term of this Agreement. The first payment shall be due by January 30th of the year following the conclusion of first year of the Term. Succeeding License Fee payments shall be made on an annual basis throughout the Term and any Renewal Term, due and payable on January 30th of the succeeding year. Each License Fee payment herein shall be paid within thirty (30) days after it becomes due. SLWA shall include with each License Fee payment to City a statement signed by an SLWA corporate officer certifying the calculation of the License Fee. City will have the right to conduct an audit, upon reasonable notice and during normal business hours, of SLWA'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. SLWA shall bear the expense of producing any and all information that is necessary for the City to conduct a fair and reasonable audit, discussed directly above, of fees due under this Agreement. The City shall bear the remainder of the expenses for such an audit.

5. **Indemnification.** SLWA hereby agrees to protect, indemnify, and hold the City, its elected officials, officers, employees and agents (collectively or individually, "Indemnitee") harmless from and against any and all claims, damages, losses, expenses, suits, actions, decrees, judgments, awards, attorney fees and court costs (individually or collectively, "Claim"), which an Indemnitee may suffer or which may be sought against or are recovered or obtainable from an Indemnitee, as a result of, or by reason of, or arising out of or in consequence of any act or omission, negligent or otherwise, of the SLWA or its officers, employees, contractors, subcontractors, agents or anyone who is directly or indirectly employed by, or is acting in concert with, the SLWA or its officers, its employees, contractors, subcontractors, or agents in the performance of this Agreement; provided that the applicable Indemnitee notifies SLWA of any Claim presented to it within a time that does not prejudice the ability of SLWA to defend against such Claim. Any Indemnitee hereunder may participate in its, his, or her own defense, but will be responsible for all costs incurred, including reasonable attorney fees, in connection with such participation in such defense.

6. **Insurance**. SLWA agrees to:

A. Obtain insurance coverage of the types and amounts required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least thirty (30) days prior to termination or cancellation in coverage in any policy, ten (10) days if cancellation due to non-payments. The Commercial Liability Insurance policy will include the City as an additional insured with respect to liability arising out of the performance of this contract. SLWA agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing. SLWA maintains the statutory required levels of Worker's Compensation Insurance and Employer's Liability/Occupational Disease insurance in all jurisdictions in which it has employees. SLWA will cause all of its contractors in Arizona to maintain such insurance coverage at the Arizona statutory level.

B. Provide and maintain minimum insurance limits as applicable.

Coverage Afforded	Limits of Liability
Worker's Compensation	Statutory Benefits
Employer's Liability/Occupational Disease	Statutory Benefits
Commercial General	$1,000,000.00
Bodily Injury & Property Damage Liability Insurance	Combined Single Limit
Including:	
(1) Products & Completed Operations Property Damage	$100,000.00
(2) Blanket Contractual	
(3) Premises-Operations-Personal Injury	

7. **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) telephonically faxed to the telephone number below provided confirmation of transmission is received thereof, or (iii) deposited as registered or certified mail, return receipt requested, with

the United States Postal Service, addressed as follows:

To: City:
ATTN: Finance Director
City of Benson
120 W. 6th Street
P.O. Box 2223
Benson, AZ 85602
Phone: (520) 720-6329

To: SLWA:
ATTN: Vice President, Business Development
Utility Service Partners Private Label, Inc.
11 Grandview Circle, Suite 100
Canonsburg, PA 15317
Phone: (724) 749-1003

8. **No Third Party Beneficiary**: 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,

9. **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.

10. **Authority**. Each Party, or responsible representative thereof, has read this Agreement and understands the contents thereof. The person(s) executing this Agreement on behalf of each Party is empowered to do so and thereby bind the respective Party.

11. **Assignment.** This Agreement and the License granted herein may not be assigned by SLWA without the prior written consent of the City.

12. **Counterparts/Electronic Delivery.** 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.

13. **Choice of Law/Attorney Fees.** The governing law shall be the laws of the State of Arizona. 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, then the unsuccessful Party shall be responsible for the reasonable expenses of such action including reasonable attorney fees, incurred therein by the successful Party.

14. **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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

MARKETING LICENSE AGREEMENT BETWEEN THE CITY OF BENSON AND UTILITY SERVICE PARTNERS PRIVATE LABEL, INC. D/B/A SERVICE LINE WARRANTIES OF AMERICA

CITY OF BENSON

By:_____

UTILITY SERVICE PARTNERS PRIVATE LABEL, INC.

By:_____

Brad H. Carmichael, Vice President

By:_____

_____

Exhibit A
NLC Service Line Warranty Program
City of Benson, AZ
Term Sheet
May 5, 2016
(Term Sheet valid for 90 days)

I. Term of agreement
    a. Initial term
        i. Three years guaranteed (total of 9 campaigns)
II. Annual royalty – $0.50 per month per paid warranty contract
    a. City logo on letterhead, advertising, billing, and marketing materials
    b. Signature by City official
III. Products offered
    a. External sewer line warranty
    b. External water line warranty
    c. In-home plumbing warranty
    d. External gas line warranty
IV. Scope of Coverage
    a. External sewer line warranty
        i. Scope is from the city main tap until line daylights inside home...of which includes the service line under the concrete floor. [Note: **If homeowner responsibility is different than this language, please advise.]**
    b. External water line warranty
        i. Scope is from the meter and/or curb box until it daylights inside home...of which includes the service line under the concrete floor. [Note: **If homeowner responsibility is different than this language, please advise.]**
    c. In-home plumbing warranty
        i. 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.
    d. External gas line warranty
        i. Scope covers the homeowner's portion of the line from the utility's main gas line to the gas meter and/or a single service line between the gas meter and the internal point of entry to the home, including a single gas supply line which may be buried or embedded in a concrete slab under the home.

V. Marketing Campaigns – three seasonal campaigns per year (Spring, Fall and Winter)
    a. 2016 Spring - Sewer
    b. 2016 Fall - Water
    c. 2016 Winter - In-home plumbing

d. 2017 Spring - Gas
e. 2017 Fall - Sewer
f. 2017 Winter - In-home plumbing
g. 2018 Spring - Water
h. 2018 Fall - Gas
i. 2018 Winter - In-home plumbing

VI. . Campaign Pricing

a. Sewer
   i. Year 1 - $7.75 per month; $88.00 annually
   ii. Year 2 - $7.75 per month; $88.00 annually (subject to annual review)
   iii. Year 3 - $7.75 per month; $88.00 annually (subject to annual review)
b. Water
   i. Year 1 - $5.75 per month; $64.00 annually
   ii. Year 2 - $5.75 per month; $64.00 annually (subject to annual review)
   iii. Year 3 - $5.75 per month; $64.00 annually (subject to annual review)
c. In-home plumbing
   i. Year 1 - $6.99 per month; $78.99 annually
   ii. Year 2 - $6.99 per month; $78.99 annually (subject to annual review)
   iii. Year 3 - $6.99 per month; $78.99 annually (subject to annual review)
d. Gas
   i. Year 1 - $3.50 per month; $37.00 annually (subject to investigation of specific repair costs)
   ii. Year 2 - $3.50 per month; $37.00 annually (subject to annual review)
   iii. Year 3 - $3.50 per month; $37.00 annually (subject to annual review)