

**Marketing Agreement by and between
Service Line Warranties of America
and City of Fort Lauderdale**

WHEREAS, Utility Service Partners Private Label, Inc., a Delaware corporation authorized to transact business in the State of Florida, d/b/a Service Line Warranties of America, ("SLWA"), provides affordable utility service line warranties to consumers covering the repair or replacement of enrolled lines as a result of wear and tear or inherent defect; and

WHEREAS, in consideration of the License Fee (as defined below) to be paid by SLWA to City of Fort Lauderdale ("City"), City has agreed to cooperate with SLWA in marketing SLWA's services to City's residents and homeowners (the "Residents") as described below;

NOW THEREFORE, in consideration of the promises contained herein and with the intent to be legally bound hereby, the Parties do hereby agree as follows:

1. City hereby grants to SLWA a non-exclusive revocable license to use City's name and logos on letterhead and marketing materials 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 Manager's prior review and approval, which will not be unreasonably conditioned, delayed, or withheld.
2. As consideration for such license, SLWA shall pay to City, within 30 days of the end of each final calendar quarter, 10% of the revenue from SLWA warranty subscriptions collected from the Residents during such calendar year (the "License Fee"), together with a statement certifying collections of such SLWA revenue, so long as this marketing agreement ("Agreement") remains in effect. In addition, SLWA shall pay City a brand license fee and bonus license payments all as set forth on the term sheet attached hereto as Exhibit A. City will have the right, at its expense, to conduct an annual audit, upon reasonable notice and during normal business hours, of SLWA's books and records pertaining to sales of warranty products to the Residents while this marketing agreement is in effect and for one year after any termination or expiration of this marketing agreement. SLWA shall maintain SLWA's books of account, ledgers, invoices, receipts, and other records relating to this Agreement for at least three years following expiration or termination of this Agreement or for any period required by Florida law and corresponding records retention schedules, whichever is longer.
3. The term of this Agreement will be from March 1, 2014, until February 28, 2017, except that SLWA's obligation to compensate City pursuant to Paragraph 2 of this Agreement and Exhibit A shall survive expiration or termination of this Agreement. This Agreement may be renewed annually upon mutual agreement of both parties. If SLWA elects to renew this Agreement, written notice shall be provided to the City, as provided herein, at least 90 days in advance. Following City's receipt of notice from SLWA of SLWA's intent to renew, City shall inform SLWA of City's decision whether to renew this Agreement for an additional year. City may terminate this Agreement 30 days after giving notice to SLWA that SLWA is in material breach of this agreement if such breach is not cured during such 30-day period. City may terminate this Agreement for convenience on 60 days' notice. SLWA will be permitted to complete any marketing initiative initiated or planned prior to the effective date of any termination of this Agreement and shall pay the License Fee to the City for the calendar year in

which this Agreement is terminated after which time, except for SLWA'S obligation to permit City to conduct an audit as described above, and to keep public records as provided below, neither party will have any further obligations to the other and the license described in this letter will terminate.

4. SLWA shall indemnify, hold harmless, and defend City, and the City's elected officials, appointed officials, and employees from and against any loss, claim, liability, damage, judgment, settlement, fine, penalty, or expense, including any award of attorney fees and any award of costs, that any of them may suffer, sustain or become subject to in connection with any third party claim (each a "Claim"), arising out of or related to this Agreement. SLWA shall have the obligation, at its sole cost and expense, to retain counsel to defend any such claim and such counsel shall be subject to the City's reasonable approval. This indemnification provision shall survive termination of this Agreement.

5. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party.

6. Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. Both parties agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

7. SLWA shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

8. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless either party elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the findings by the court become final.

9. Preparation of this Agreement has been a joint effort by both parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

10. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

11. This Agreement shall be executed in three (3), signed Agreements, with each one treated as an original.

12. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified as the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the

following as the respective places for giving of notice, to-wit:

CITY: Finance Director
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to: City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

SLWA : Utility Service Partners Private Label, Inc.
11 Grandview Circle, Suite 100
Canonsburg, PA 15317
Attn: Brad Carmichael, VP of Business Development

13. SLWA shall to the extent required by applicable law:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2013), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of SLWA upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

(e) Nothing contained in this agreement shall be deemed a waiver of the right of SLWA to dispute whether a requested document is required to be disclosed by applicable law.

14. SLWA shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an “additional insured.” This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as “additional insured” shall be at SLWA’s expense.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation, non-renewal, or modification of any required insurance. The insurance provided shall be endorsed or amended to

comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of SLWA to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.

SLWA's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by SLWA that excludes coverage for work contemplated in this Agreement shall be deemed unacceptable, and shall be considered breach of contract.

Workers' Compensation and Employers' Liability Insurance

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes
Employers' Liability - \$500,000

Any firm performing work for or on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed, by the City's Risk Manager, if they are in accordance with Florida Statutes.

Commercial General Liability Insurance

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by SLWA under the indemnity provision of the contract.
- b. Coverage for Premises/Operations
- c. Products/Completed Operations
- d. Broad Form Contractual Liability
- e. Independent Contractors
- f. Personal and Advertising Injury

Certificate holder should be addressed as follows:

City of Fort Lauderdale
Procurement Services Division
100 N. Andrews Avenue, Room 619
Fort Lauderdale, FL 33301

15. Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or services of \$1 million or more:

SLWA certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The City may terminate this Contract at the City's option if SLWA is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2013), as may be amended or revised.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

CITY

CITY OF FORT LAUDERDALE, a Florida municipality:

By _____
JOHN P. "JACK" SEILER, Mayor

By _____
LEE R. FELDMAN, City Manager

(SEAL)

ATTEST:

JONDA K. JOSEPH, City Clerk

Approved as to form:

City Attorney

SLWA

Utility Service Partners Private Label, Inc., a Delaware corporation authorized to transact business in the State of Florida, d/b/a Service Line Warranties of America,

WITNESSES

Print Name:

By _____

Print Name:

Philip E. Riley
President

ATTEST:

Tru Dee J. Bamberg
Secretary

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Philip E. Riley as president for Utility Service Partners Private Label, Inc., a Delaware corporation authorized to transact business in the State of Florida, d/b/a Service Line Warranties of America.

(SEAL)

Notary Public, State of _____
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name
of Notary Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

EXHIBIT A

SLWA Service Line Warranty Program Fort Lauderdale, FL Term Sheet

- I. Term of agreement
 - a. Initial term – March 1, 2014, to February 28, 2017
 - i. Total of 6 campaigns
- II. Annual royalty – 10% of collected revenues
 - a. City logo on marketing materials (resident letter and outer envelope)
 - b. Signature by city official
- III. Products offered
 - a. External sewer line warranty
 - b. External water line warranty
- IV. Marketing Campaigns – two seasonal campaigns per year (Spring and Fall)
 - a. 2014 Spring
 - i. Sewer
 - b. 2014 Fall
 - i. Water
 - c. 2015 Spring
 - i. Sewer
 - d. 2015 Fall
 - i. Water
 - e. 2016 Spring
 - i. Sewer
 - f. 2016 Fall
 - i. Water
- V. Pricing
 - a. Sewer
 - i. Year 1 – \$6.50 per month; \$73.00 annually
 - ii. Year 2 – \$6.50 per month; \$73.00 annually (subject to annual review)
 - iii. Year 3 – \$6.50 per month; \$73.00 annually (subject to annual review)
 - b. Water
 - i. Year 1 - \$5.00 per month; \$55.00 annually
 - ii. Year 2 - \$5.00 per month; \$55.00 annually (subject to annual review)
 - iii. Year 3 - \$5.00 per month; \$55.00 annually (subject to annual review)
- VI. Brand license fee - \$ 37,500 spread across three years, contingent on approval of campaign materials.

- a. Year 1 - \$18,750 payable on or before May 1, 2014 – payment is linked to approval of campaign materials for year 1
 - b. Year 2 - \$9,375 payable on or before May 1, 2015 – payment is linked to approval of campaign materials for year 2
 - c. Year 3 - \$9,375 payable on or before May 1, 2016 – payment is linked to approval of campaign materials for year 3
- VII. Bonus license payments – initial payment would be made 15 months following the mailing of the first campaign letter, and annually thereafter. Penetration rate defined as the number of products enrolled divided by the number of households mailed.
- a. First year
 - i. Penetration rate measured as of October 1, 2014, is greater than 12% but less than 15% - \$10,000
 - ii. Penetration rate measured as of October 1, 2014, is greater than 15% but less than 18% - \$15,000
 - iii. Penetration rate measured as of October 1, 2014, is greater than 18% - \$20,000
 - b. Second year
 - i. Penetration rate measured as of October 1, 2015, is greater than 18% but less than 20% - \$15,000
 - ii. Penetration rate measured as of October 1, 2016, is greater than 20% - \$20,000
 - c. Third Year
 - i. Penetration rate measured as of February 28, 2017, is greater than 20% but less than 22% - \$15,000
 - ii. Penetration rate measured as of February 28, 2017, is greater than 22% - \$20,000