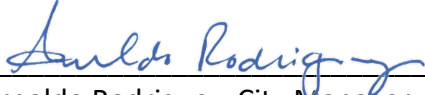


## REPORT TO CITY COUNCIL

Approved by:   
\_\_\_\_\_  
Daniel Foss, Interim Public Works Director

**Council Meeting of:** December 15, 2021

**Agenda Number:** B-8

  
\_\_\_\_\_  
Arnaldo Rodriguez, City Manager

### **SUBJECT:**

Underground Service Alert of Northern California and Nevada (USA) Membership Agreement

### **RECOMMENDATION:**

Adopt a Minute Order Approving the First Amended Membership Agreement with USA

### **SUMMARY:**

The City and all USA members have received an amended member agreement from USA that was approved by USA's Board of Directors. The only change in the following amendment is that it spells out the responsibilities of the parties in more detail to clarify expectations.

### **DISCUSSION:**

The City is a member of the USA, Northern California region, underground service alert system, commonly known as 811. USA North 811 is a 501(c)(6) non-profit organization funded by over 1,500 utility owners and governed by 34 board members elected from the membership. USA North is not owned or operated by any utility company and is not an agency of the State. Rather, the 811 system is a toll-free telephone system that notifies utility companies that someone is planning on excavating. The document that is submitted through USA North 811, which requests the utility members to mark or locate their underground lines at a worksite are referred to as an 811 "ticket" which is the industry-wide term.

It is noted that requests are free of charge. Rather, the utility companies bear the cost of locating the utilities in an effort to minimize damage to underground utilities.

Furthermore, USA provides advertising and educational materials and will perform outreach activities to promote the use of the notification center system.

**FINANCIAL IMPACT:**

The USA annual flat rate fee is \$150 which includes the first 200 tickets. After the initial 200 tickets, it's a calculation based on how many billable tickets the City receives compared to all members divided by the USA approved budget. For example, if the City received 1% of the tickets, they would pay 1% of the remaining budget amount in addition to their \$150 flat fee. For reference, in 2020, the City received 3,751 tickets and was billed for \$5,255.

The funds for these expenses have been set aside in Public Works budget for the fiscal year.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

Approval of this minute order is not addressed in the Vision or Action Plans and is not in conflict with the actions or goals contained in that plan.

**ALTERNATIVES:**

If Council chooses not to adopt this Minute Order, the agreement will not be executed. Staff can also search for different organizations who may also provide this service.

**ATTACHMENTS:**

1. Exhibit A: First Amended Membership Agreement with USA

USA NORTH 811  
FIRST AMENDED MEMBERSHIP AGREEMENT

THIS FIRST AMENDED MEMBERSHIP AGREEMENT (the "Agreement"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, by and between the UNDERGROUND SERVICE ALERT OF NORTHERN CALIFORNIA AND NEVADA (hereinafter referred to as "USA") and \_\_\_\_\_ (hereinafter referred to as "Participating Member" or "Member"). USA and the Participating Member are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, USA is a nonprofit mutual benefit corporation organized under the laws of the State of California which operates a regional notification center to facilitate notice to members with underground facilities of proposed excavation; and

WHEREAS, Participating Member desires to become a member of USA and USA desires to accept Participating Member as a member.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term. This Agreement shall be effective from and after the date hereof and shall continue in effect until such time as either Party terminates this Agreement, in accordance with the provisions regarding termination of membership contained in the Article II, Section 5 of the USA Bylaws.
2. Documents. Participating Member acknowledges receipt of copies of the Articles of Incorporation and Bylaws of USA, attached hereto, and hereby accepts and agrees to be bound by the terms and conditions thereof. USA retains the authority to amend the Articles of Incorporation and Bylaws from time to time through lawful action of USA's duly authorized Board of Directors.
3. Fees and Charges. Participating Member agrees to timely pay the membership dues and assessments as established by the USA Board of Directors from time to time.
4. Duties of Participating Members.
  - a. Contact Information. Participating Member agrees to provide and maintain current and up to date Contact Information (as hereinafter defined) to USA. Said contact information includes, but is not limited to, the following: names, telephone numbers and email addresses (the "Contact Information") for the appropriate personnel to respond to inquiries regarding field markings, facilities and conditions thereof, after-hours emergencies, etc. Participating Member agrees and consents to USA's sharing of its Contact Information with excavators, engineers, utilities, governmental agencies and regulatory agencies as needed in USA's reasonable discretion. Participating Member agrees to verify and confirm to USA in writing

its Contact Information every twelve (12) months, and upon any change in the Contact Information.

- b. Service Area Mapping. Participating Member shall define the geographic area, in a manner specified by USA, for which it wishes to receive tickets (collectively, the “Service Areas”). These Service Areas shall encompass the areas in which the Participating Member has underground facilities. Participating Member understands that its Service Areas must be large enough to include the location of all of its facilities so that all relevant tickets can be received from USA, but not overly large so as to not receive irrelevant tickets. Participating Member understands that its Service Areas may change periodically, such as when new underground facilities are installed and existing facilities are relocated, bought, sold or traded. Participating Member shall verify its Service Areas mapping every twelve (12) months, or more often if needed, and will promptly update its Service Areas when changes occur.
- c. Ticket Delivery Destination. Participating Member shall provide destination information to USA as to where and whom each type of ticket should be sent, including regular tickets, emergency tickets, short-notice tickets, after-hours emergencies, planning and design requests, etc. Participating Member shall actively monitor all receiving destinations on a daily basis and shall immediately notify USA if changes are needed or delivery errors occur.
- d. Membership Fees. Participating Member agrees to pay its membership fees within thirty (30) days of receipt of invoice from USA. Participating Member understands and agrees that its fees will be based upon the number of tickets the Participating Member receives, during the time period covered by the subject USA invoice as set forth by the Board of Directors from time to time.

##### 5. Duties of USA.

- a. Means to Receive Notification. USA will publish the 811 telephone number, a toll-free telephone number and an internet website to receive notification from excavators about planned excavation activity within USA’s Service Territory (as hereinafter defined). Other means of notification may be developed in the future by USA at its discretion as technology, demand and funding allow; including, but not limited to, smartphone apps, chat message, SMS text message and integration with construction project management software.
- b. Delivery of Tickets. The relevant information included in the excavator’s notification will be compiled by USA into a “ticket” document. USA will promptly deliver the ticket to all Participating Members whose geographic service area, as provided by each member to USA, is overlapped by the geographic area of excavation, as described by the excavator in its notification to USA.

- c. Electronic Positive Response System. USA will host an electronic positive response system for the purpose of documenting how Participating Members have responded to tickets. Excavators will be able to view responses provided by each member for the excavators' tickets.
  - d. Records Retention. USA will maintain a database of tickets created and delivered for the period of time specified in state law (currently three (3) years in California and six (6) years in Nevada). Participating Members will have access to tickets they have received and excavators will have access to tickets they have created during the retention period. Records that are older than the retention period will be destroyed by USA. Participating Members are advised to keep their own records for a longer time period if they deem it appropriate to do so.
  - e. Education and Outreach. USA will provide advertising and educational materials and will perform outreach activities to promote the use of the notification center system, safe excavation and the protection of underground facilities in California and Nevada.
  - f. Service Territory. USA will provide the services listed in this Section 5 for the geographic area encompassing the entire state of Nevada and the 49 northern counties within California; this includes all California counties except Imperial, Inyo, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura (the "Service Territory"). Participating Members with underground facilities outside of USA's Service Territory are advised to participate with other 811 notification centers as appropriate and/or required under applicable law.
6. Indemnification. Participating Member shall defend, indemnify, save and hold harmless USA, its officers, agents and employees, from and against any and all liabilities, claims, losses, damages, expenses (including reasonable attorneys' fees), or costs for personal injuries and/or property damage arising out of (a) any ticket sent to Participating Member or Participating Member's designee; (b) any marking, or failure to mark, the location of any facility of Participating Member; (c) any excavation by any person which injures or damages any facility of Participating Member, unless such losses, damages or injuries are caused by the intentional misconduct or gross negligence of USA; and/or (d) any injury or damage to person or property of any third person resulting from any of the foregoing.
7. Confidentiality.
- a. Access for Regulators. USA will allow state regulators to have full access to the ticket database and electronic positive response system. Access to other records, including Participating Member contact information, membership changes, billing invoices, etc., may be granted when appropriate or otherwise required under applicable law.
  - b. Excavator Contact Information. Participating Member shall use excavator contact information only for the purposes associated with responding to the excavator's

ticket. Participating Member agrees to make reasonable and appropriate efforts to safeguard the excavator contact information from disclosure to anyone other than as permitted under this Agreement, and the Participating Member shall not distribute the excavator contact information to anyone other than as permitted under this Agreement without the prior written authorization from USA.

8. Entire Agreement. This Agreement, USA's Bylaws, USA's Articles of Incorporation and the exhibits attached hereto (collectively, the "USA Documents"), represent the entire agreement between the Parties in connection with the transactions contemplated hereby and the subject matter hereof and this Agreement supersedes and replaces any and all prior and/or contemporaneous agreements, understandings and communications between the Parties, whether oral or written, with regard to the subject matter hereof. There are no oral or written agreements, representations or inducements of any kind existing between the Parties relating to the subject matter hereof which are not expressly set forth in the USA Documents.
9. Amendment of Agreement. This Agreement may be amended or modified at any time with respect to any provision by a written instrument signed the Parties.
10. Notices. Any notice required or permitted to be given under this Agreement shall be written, and may be given by personal delivery, by facsimile transmission, email or by registered or certified mail, first-class postage prepaid, return receipt requested. Notice shall be deemed given upon actual receipt in the case of personal delivery. Mailed notices shall be addressed as follows, but each Party may change its address by written notice in accordance with this Section 10. Notices may be emailed provided that a copy thereof is concurrently placed in the mail. Emailed notices shall be deemed delivered two (2) days after email transmission.

USA North 811: THE USA NORTH 811 CENTER  
4005 PORT CHICAGO HWY, SUITE 100  
CONCORD, CA 94520-1122  
Phone: (800) 640-5137  
Fax: (888) 234-8344

Participating Member:

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws principles.

12. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been part of the Agreement.
13. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument.
14. Rights and Remedies. Duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
15. Waiver. No waiver by any Party, at any time, of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision herein or a consent to any subsequent breach of the same or another provision. If any action by any Party shall require the consent or approval of another Party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.
16. Captions and Headings. The captions and the paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope or intent of this Agreement.
17. No Third-Party Beneficiary Rights. This Agreement is entered into for the full benefit of the Parties and no other individuals or entities are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.
18. Incorporation of Exhibits. Each and all the exhibits attached to this Agreement are incorporated herein by reference as if set forth in full in this Agreement.
19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, legal representatives, administrators, successors-in-interest and assigns.
20. Assignment. Participating Member shall not assign any right or interest arising under this Agreement without the prior written consent of USA.
21. Read and Understood. Each Party acknowledges that it has read, and that it understands, this Agreement and agrees to be bound by its terms.

**[SIGNATURES APPEAR ON THE NEXT PAGE]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the day and year above first written.


\_\_\_\_\_  
PARTICIPATING MEMBER

By \_\_\_\_\_

Name (printed) \_\_\_\_\_

Title \_\_\_\_\_

UNDERGROUND SERVICE ALERT OF  
NORTHERN CALIFORNIA AND NEVADA

By  \_\_\_\_\_

Name (printed) James L. Wingate

Title Executive Director

***PLEASE SIGN AND RETURN TO  
THE USA NORTH 811 CENTER:  
4005 PORT CHICAGO HWY, SUITE 100  
CONCORD, CA 94520-1122***