

RESOLUTION NO. 08-547

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE A
REIMBURSEMENT AGREEMENT WITH NESTLÉ WATERS
NORTH AMERICA FOR CONSULTANT COSTS
ASSOCIATED WITH FEASIBILITY EXPLORATION

WHEREAS, in July 2008 the City Council directed City staff to begin exploring the feasibility of siting a Nestlé Waters North America Bottling Plant in Black Diamond ; and

WHEREAS, Nestlé Waters North America is investigating the possibility of entering into an agreement with the City to become a customer of the City for spring water to supply a bottling facility located within the City's limits; and

WHEREAS, Nestlé Waters North America desires to enter into discussions with the City, its staff and its consultants to aid both parties in determining the feasibility of a Facility; and

WHEREAS, the City desires to enter discussions and assess with Nestlé Waters North America the feasibility of a Facility, but requires the assistance of its own legal, engineering and other consultants to meaningfully participate in such discussions; and

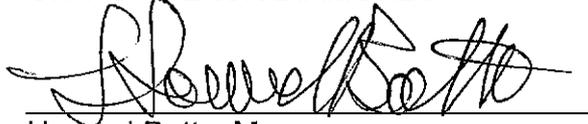
WHEREAS, both parties acknowledge and agree that the reasonable costs incurred by the City to participate in discussions and assessment with Nwana regarding the feasibility of a Facility should be borne by Nestlé Waters North America as provided in the attached agreement; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

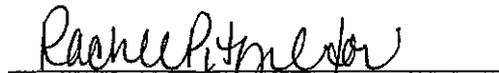
Section 1. The Mayor is hereby authorized to execute a Reimbursement Agreement with Nestlé Waters North America for consultant costs associated with feasibility exploration.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 16TH DAY OF OCTOBER, 2008.

CITY OF BLACK DIAMOND:


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (“Agreement”) is made and entered into between the City of Black Diamond, a municipal corporation of the State of Washington (hereinafter “City”) and Nestlé Waters North America, Inc. (hereinafter “NWNA”).

RECITALS

A. NWNA is investigating the possibility of entering into an agreement with the City to become a customer of the City for spring water to supply a bottling facility located within the City’s limits (“Facility”); and

B. In order to further their investigation, NWNA desires to enter into discussions with the City, its staff and its consultants to aid both parties in determining the feasibility of a Facility; and

C. The City desires to enter discussions and assess with NWNA the feasibility of a Facility, but requires the assistance of its own legal, engineering and other consultants to meaningfully participate in such discussions; and

D. Both parties acknowledge and agree that the reasonable costs incurred by the City to participate in discussions and assessment with NWNA regarding the feasibility of a Facility should be borne by NWNA as provided below.

Now, therefore, for the mutual considerations set forth herein, the parties agree as follows:

1. The City agrees to engage in good faith discussions with NWNA for the purpose of determining the feasibility of a Facility. Determining the feasibility of a Facility shall mean assessing and identifying the availability of and impact upon water rights and resources available to the City, particularly spring water, the impact upon future water availability, the economic benefits to the community and the water utility, consistency with the comprehensive plan and land use regulations, and other matters that relate to the capability and suitability of accommodating the needs of the Facility and the City. Entering into this agreement is not intended to be a commitment by the City that it will enter into an agreement to sell any of its water to NWNA, or to allow NWNA facilities to be located on City property; nor is it intended to be a commitment by NWNA that it will locate a facility in the City, or agree to purchase water from the City, regardless of the outcome of the feasibility analysis.

2. NWNA agrees to reimburse the City for certain outside consultant and legal expenses and City staff costs (“Reimbursable Costs”) incurred by the City in supporting discussions regarding the feasibility of a Facility, up to a maximum amount of \$25,000.00. For the purpose of this agreement, “City staff costs” includes only those costs incurred by outside consultants serving as members of the City staff, such as the City Attorney and City Engineer, and not those costs incurred by salaried City employees. Reimbursable Costs are the reasonable

costs incurred by the City, its staff and its consultants in supporting discussions regarding the feasibility of a Facility and reviewing this agreement, the right of entry agreement, and any subsequent agreements between the parties. In the event the Reimbursable Costs exceed \$25,000.00, the City may request Nwana to reimburse those costs. Approval of those additional Reimbursable Costs will be made following a reasonableness review of the costs; provided that, the City will have no obligation under this agreement to continue incurring costs that Nwana does not agree to reimburse.

3. The City will provide monthly invoices to Nwana for the Reimbursable Costs incurred by the City in the prior month. Nwana will remit payment of the Reimbursable Costs within 45 days of receipt of the City's invoice. In the event Nwana disagrees with any item on the City's invoice, Nwana's representative or his designee shall contact the City Administrator to attempt informal resolution of the disagreement.

4. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. The venue for any lawsuit to enforce any provision of this agreement shall be King County, Washington.

5. This Agreement may be terminated by either party with 30 days advance notice to the other party. Nwana shall remain responsible for all Reimbursable Costs incurred by the City prior to the termination date. This Agreement may only be amended by the written mutual assent of the Parties. Unless extended by written mutual consent of both parties, this Agreement shall expire no later than January 1, 2009. Upon expiration or receipt of notice of termination by Nwana or issuance of Notice of Termination by the City, Nwana will be responsible for only those Reimbursable Costs incurred by the City up to the date of expiration or receipt of Notice of Intent to Terminate.

Notice given hereunder shall be in writing and shall be deemed effective either, (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (iii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, properly sealed and addressed as follows:

Nwana's address: **Nestlé Waters North America, Inc.**
c/o Christopher Kemp
777 West Putnam Avenue
Greenwich, CT 06830

with a copy to:

Mr. William H. Chapman
K&L Gates, LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104

The City's Address: **City of Black Diamond**
c/o Gwendolyn Voelpel
City Administrator
PO Box 599
Black Diamond, WA 98010

with a copy to:

Mr. Loren D. Combs
VSI Law Group
3600 Port of Tacoma Road, Suite 311
Tacoma, WA 98424

6. NWNA acknowledges that its rights under this Agreement are limited and that the City has not made any representation or warranty with respect to NWNA's ability to obtain any permit or regulatory approval, to obtain a water service agreement, or to meet any other legal requirements for development of the Facility. Nothing in this Agreement is intended or shall be construed to require that the City exercise its discretionary authority under its regulatory ordinances or its legislative authority to further the Facility nor binds the City to do so. NWNA understands that the City will process applications for permits and approvals in accordance with its normal processes and that the sole purpose of this Agreement is to provide for reimbursement to the City for its reasonable costs associated with participating with NWNA in determining the feasibility of the Project.

7. No Joint Venture. It is not intended by this Agreement to create any partnership, joint venture, or principal-agent relationship or other arrangement between NWNA and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

APPROVED BY:

City of Black Diamond

Nestlé Waters North America, Inc.

By: 
Howard Botts, Mayor

By: 
Christopher Kemp, Project Manager

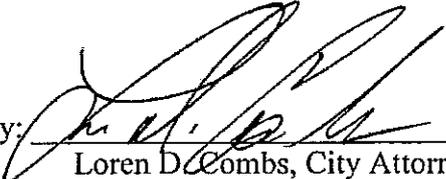
Date: 10-16-08

Date: 10/7/08

ATTEST:

By: Rachelle Pitre, for
Brenda Streepy, City Clerk

APPROVED AS TO FORM:

By: 
Loren D. Combs, City Attorney