



AGENDA REPORT

Meeting Date: April 1, 2008
Item Number: F-13
To: Honorable Mayor & City Council
From: Terry Wagner, Facilities Maintenance Manager
Subject: APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND NESTLE WATERS OF NORTH AMERICA, INC. DBA ARROWHEAD MOUNTAIN SPRING WATER FOR COFFEE SUPPLIES AND RELATED SERVICES; AND
APPROVAL OF A PURCHASE ORDER IN THE AMOUNT OF \$35,000 PER YEAR TO NESTLE WATERS OF NORTH AMERICA, INC. DBA ARROWHEAD MOUNTAIN SPRING WATER FOR THE SERVICES

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council approve the agreement with Nestle Waters of North America, Inc. DBA Arrowhead Mountain Spring Water for coffee supplies and related services in the amount of \$35,000 per year, renewable for three years.

INTRODUCTION

The Facilities Services Division of the Public Works & Transportation Department is responsible for the administration of the coffee services and supplies contract, which provides coffee brewers, coffee, and related supplies to all City departments.

DISCUSSION

In March 2008, the current contract with Sparkletts for these services was at the end of its three year agreement. The Facilities Services Division prepared bid specifications to obtain bids from vendors who provide these services. Four vendors were provided bid specifications and four bids were received as follows:

Nestle Waters of North America	\$16.99 per case
Aramark	\$17.50 per case
Sparkletts	\$21.99 per case

Meeting Date: April 1, 2008

First Choice

\$22.75 per case

Nestle Waters of North America, Inc. DBA Arrowhead Mountain Spring Water was the lowest, most qualified bidder.

FISCAL IMPACT

Funds are available in the Facilities Services Meeting Support Fund # 0805903-72280



Scott Miller
Finance Approval



David Gustavson
Approved By

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
NESTLE WATERS OF NORTH AMERICA, INC., DBA
ARROWHEAD MOUNTAIN SPRING WATER FOR COFFEE,
SUPPLIES AND RELATED SERVICES

THIS AGREEMENT is between the City of Beverly Hills, a municipal corporation, hereinafter referred to as "City" and Nestle Waters of North America, d.b.a. Arrowhead Mountain Spring Water hereinafter referred to as "Vendor".

RECITALS

A. The City desires to enter into an Agreement with Vendor to provide for the maintenance and repair of coffee brewers at the locations listed on Exhibit A, attached hereto and incorporated by this reference, and the purchase of coffee and related supplies.

B. Vendor has the experience and qualifications to provide such equipment and services, and the City desires to retain Vendor to provide such equipment and services.

NOW, THEREFORE, City and Vendor agree as follows:

1.00 PURPOSE. The purpose of the Agreement is to retain Vendor to maintain and repair coffee brewers at the locations listed on Exhibit A and to provide coffee and related supplies.

2.00 OBLIGATIONS OF VENDOR

A. Vendor shall, at City's request, make service calls to repair and/or replace coffee brewers within forty-eight (48) hours of such a request. Vendor shall install new coffee brewers immediately upon removal of coffee brewers that must be replaced.

B. Vendor shall inspect and clean each coffee brewer every six (6) months. Vendor shall perform any maintenance needed at that time.

C. Vendor shall update, as needed, for the Facilities Maintenance Manager, or his designee (the "Building Meeting Attendant"), an inventory listing all locations, number of coffee brewers at each location, type of coffee brewers at each location, number of burners on each coffee brewer, all other features including, without limitation, hot water spigots, and an identifying number for each coffee brewer so that the Building Meeting Attendant can use it to place service calls. Vendor shall also provide a toll free number on the inventory for service requests.

D. Vendor shall provide to City the products listed in Exhibit B, attached hereto and incorporated by this reference. Vendor shall maintain standard inventory levels of these products as determined by City and place orders as required by City to keep all products stocked at the standard inventory level.

E. Vendor shall deliver such products to City within forty-eight (48) hours of the date ordered.

- (1) Coffee and related supplies shall be delivered to:

City of Beverly Hills
9355 Civic Center Drive (Print Shop)
Beverly Hills, CA 90210

- (2) Products shall be stocked in cabinets as directed by City.

F. Prior to commencing work on any coffee brewer, Vendor's employee shall contact a City employee at the site where the coffee brewer(s) are located and Vendor's employee shall identify him or herself as an employee of Vendor.

G. Vendor shall, upon City's request, increase and/or decrease the locations being serviced and/or the quantity of brewers at a given location. Any such request shall be responded to by Vendor within five (5) business days.

3.00 COMPENSATION AND PAYMENT

A. City shall compensate Vendor for the satisfactory performance of the services required by this Agreement, an amount not to exceed Thirty-Five Thousand Dollars (\$35,000) per year, based on the Unit Costs set forth in Exhibit C, attached hereto and incorporated by this reference. Vendor shall not be compensated by City for the use of the coffee brewers, maintenance and repair of the coffee brewers, and coffee brewer filters.

B. Vendor shall submit a monthly statement to City for its services performed for the prior month, in such form as City may request. City shall pay Vendor the amount of such billing within thirty (30) days of receipt of same.

4.00 OBLIGATIONS OF THE CITY

A. City shall provide Vendor access during normal business hours to the City facility where products will be delivered and stored, and to all City facilities where coffee brewers require maintenance or repairs.

B. City shall notify Vendor of any changes in the type or quantity of coffee brewers.

5.00 RESPONSIBLE PRINCIPALS.

A. Vendor's Responsible Principal, Pat O'Sullivan, Vice President of Sales, or his designee, shall be principally responsible for Vendor's obligations under this Agreement and shall serve as principal liaison between City and Vendor. Designation of another Responsible Principal by Vendor shall not be made without the prior written consent of City.

B. City's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of City.

6.00 INDEMNIFICATION. Vendor agrees to indemnify, defend and hold harmless the City, City Council and each member thereof, and every officer, employee and agent of City, from any claims, liability or financial loss (including, without limitation, attorneys fees and costs) arising from

any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Vendor or any person employed by Vendor in the performance of this Agreement, including, without limitation, claims, demands, losses, damages, or injuries which arise directly or indirectly from the condition of any food product supplied by Vendor.

7.00 INSURANCE. Vendor shall obtain and maintain at all times during the term of this Agreement the following policies of insurance issued by an admitted insurance company with a rating of at least a B+; VII in the most recent edition admitted to do business in the State of California and of Best's Insurance Guide:

A. Commercial General Liability insurance including coverage for operations and products and completed operations exposures. Such insurance shall provide minimum limits of Two Million Dollars (\$2,000,000), combined single limit, and shall be written on an occurrence basis.

B. Commercial Automobile Liability Insurance covering personal injury or property damage with minimum limits of One Million Dollars (\$1,000,000) for each occurrence, combined single limit.

C. Workers' Compensation Insurance as required by California law.

All insurance required by this Agreement shall provide for a minimum 30 days notice to City in the event of cancellation or material change in coverage, shall name City, its officials, employees and agents as additional insureds, and shall provide that the insurance obtained by Vendor is primary to any coverage available to City. Vendor shall file with City proof of insurance on the form provided by City, attached hereto and incorporated by this reference as Exhibit D. City may, at its discretion, accept policies written with aggregate limits. If a policy is submitted with aggregate limits, it shall be twice the minimum limits required under Subsections A and B of this Agreement, or such aggregate limit shall apply separately to the City. Vendor shall maintain a current certificate on file at all times during the term of this Agreement.

8.00 CHANGES. The City may, from time to time, request changes in the obligations of Vendor under this Agreement. Changes which do not result in an increase in compensation of more than Two Thousand Dollars (\$2,000) may be agreed to in writing by the Facilities Maintenance Manager for the City.

9.00 TIME OF PERFORMANCE. Time is of the essence, and Vendor shall perform the services and obligations required by this Agreement in an expeditious and timely manner so as not to delay the performance of this Agreement.

10.00 INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, Vendor shall be an independent contractor and shall not be an employee of the City. City shall have the right to control Vendor only insofar as the results of Vendor's obligations; however, City shall not have the right to control the means by which Vendor accomplishes the obligations rendered pursuant to this Agreement.

11.00 FAIR EMPLOYMENT PRACTICE/EQUAL OPPORTUNITY ACTS. In the performance of this Agreement, Vendor shall comply with all applicable provisions of the California

Fair Employment Practices Act (California Labor Code Sections 1410 et seq.) and the equal employment provisions of the Civil rights Act of 1964 (42 U.S.C. 200).

12.00 AGENCY. Except as City may specify in writing, Vendor shall have no authority, express or implied, to act on behalf of City as an agent. Vendor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

13.00 TERM. This Agreement shall be in effect for one (1) year, commencing on the date of the execution of this Agreement. The City Manager or his designee may extend the term of the Agreement for an additional three (3) year term, pursuant to the same terms and conditions of this Agreement.

14.00 TERMINATION.

A. This Agreement may be terminated by City with or without cause on thirty (30) days prior written notice provided to Vendor. Vendor agrees to cease all work under this Agreement on or before the effective date of such notice.

B. In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Vendor, Vendor shall be paid full compensation for all services performed by Vendor, in an amount to be determined as follows: for work done in accordance with all of the terms and provisions of this Agreement, Vendor shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation based on the unit costs set forth in Exhibit C. In no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid Vendor for the full performance of the services required by this Agreement.

C. This Agreement may be terminated by Vendor with cause on sixty (60) days prior written notice to City.

15.00 NOTICE. Notice to the City shall be given to the Facilities Maintenance Manager, Terry Wagner, 345 Foothill Road, Beverly Hills, California 90210. Notice to the Vendor shall be given to Nestle Waters of North America, Inc. d.b.a. Arrowhead Mountain Spring Water, Pat O'Sullivan, 1566 E. Washington, Boulevard, Los Angeles, California 90021

16.00 ATTORNEY'S FEES. In the event of litigation between the parties arising out of or connected with this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to any other amounts, reasonable attorney's fees and costs of such litigation.

17.00 EXTENT OF AGREEMENT. This Agreement represents the entire and integrated Agreement between City and Vendor and supersedes any and all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only by written instrument signed by both City and Vendor.

18.00 GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

19.00. SEVERABILITY. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

Executed the _____ day of _____, 200 __.

CITY OF BEVERLY HILLS, a Municipal Corporation

BARRY BRUCKER
Mayor of the City of Beverly Hills, California

ATTEST:

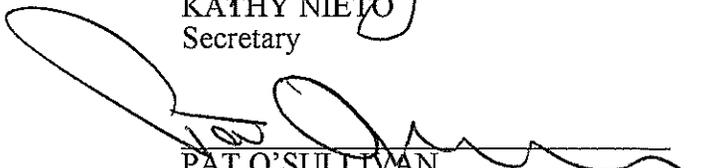
(SEAL)
BYRON POPE
City Clerk

VENDOR:

NESTLE WATERS OF NORTH AMERICA, INC., DBA ARROWHEAD MOUNTAIN SPRING WATER

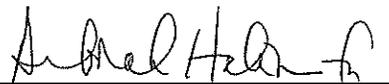


KATHY NIETO
Secretary



PAT O'SULLIVAN
Vice President

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

[Signatures continue]



DAVID D. GUSTAVSON
Director of Public Works & Transportation



KARL KIRKMAN
Risk Manager

EXHIBIT A

Equipment Requirements and Locations

<u>LOCATIONS</u>		<u>EQUIPMENT QTY.</u>
<u>CITY HALL - 455 N. REXFORD DRIVE</u>		
City Attorney	Room 220	1
City Clerk	Room 190	2
Communications & Marketing	Room 160	1
Community Development	Room G40	3
Council Room B - Kitchen	Room 180	1
Engineering	Room G10	1
Finance Administration	Room 250	1
Print Shop	Room G50	1
Human Services	Room 210	1
Policy & Management	Room 300	2
Recreation & Parks Administration	Room 100	1
Transportation	Room 130	1
<u>FIRE SERVICES - 445 N. Rexford Drive</u>		1
<u>PUBLIC WORKS/VEHICLE/ FACILITIES MAINTENANCE - 331 N. Foothill Rd.</u>		1
<u>LIBRARY SERVICES - 444 N. Rexford Drive</u>		
Administration		1
Circulation		1
Children's Area		1
Fine Arts Section		1
Reference Section		1
Technical Services		1

INFORMATION TECHNOLOGY - 9355 Civic Center Drive lower level B 1

POLICE SERVICES - 464 N. Rexford Drive

Administration 1

Communications 1

Crime Prevention 1

Detectives 1

EOC

1

Jail Lounge 1

Lunch Room 1

Records 1

Traffic 1

PUBLIC WORKS - 345 N. Foothill Rd. 1

RECREATION & PARKS

La Cienega Park 8400 Gregory Way 1

Roxbury Park 471 S. Roxbury Drive 1

La Cienega Tennis Center 325 S. La Cienega Blvd. 1

EXHIBIT B

LIST OF EQUIPMENT AND COFFEE PRODUCTS

Arrowhead coffee brewers

Paper cups

plastic stirrers

Private label sugar

Creamer

Executive blend decaffeinated coffee

Apfels Pacific Coast blend coffee

Coffee filters

Coffee Pot Cleaner

EXHIBIT C
UNIT COSTS

<u>Item</u>	<u>Size</u>	<u>Cost</u>
Regular coffee	18 - 2.5 oz. packets/case	16.99/case
Decaffeinated coffee	42 - 1.5 oz packets/case	17.99/case
Sugar	20 oz container	1.05 each
Creamer	12 oz container	1.05/each
Stirrers	1000 per box	1.89/box
Paper cups	50 - 8 oz cups/tube	1.99/tube
Coffee filters	50 per package	N/C/pkg
Coffee pot cleaner	1 bottle	1.99/each

Pricing.

Vendor may adjust the rates set forth in this Exhibit upon giving City no less than thirty (30) days prior written notice. If City does not consent to the rate change, City will notify Vendor in writing of its intent to terminate the Agreement pursuant to Section 13 of the Agreement. Until such time as the price change has been accepted by City in writing, Vendor shall accept orders on the original pricing, terms and conditions. In no event shall any price increase exceed a total of either (i) three percent (3%) of the original Agreement price per item during the Agreement term, or (ii) the Consumer Price Index as published in the Wall Street Journal, whichever is greater unless caused by unforeseen market or industry changes.



EXHIBIT D

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	LIMITS		
				B.I.	P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____

Authorized Insurance Representative

AGENCY: _____

TITLE: _____

ADDRESS: _____