

## Nestlé Waters North America / Spring Township Water Authority Water Supply Agreement Term Sheet

### 1. Parties to Cooperation Agreement

- 1.1 Spring Township Water Authority ("**STWA**")  
1.2 Nestlé Waters North America Inc. ("**NWNA**")

STWA and NWNA are each referred to as a "Party" and collectively as the "Parties."

### 2. Agreement Objectives

- 2.1 Provide for sale and delivery of water to NWNA from STWA Well No. PW-2 ("**Well PW-2**") in a manner that qualifies as "spring water" under FDA standard of identity regulations.
- 2.2 Provide for protection of the wellhead protection area of the Well PW-2, in order to protect the ongoing quality and quantity of water produced by the Well PW-2.
- 2.3 Provide for the permitting, construction and operation of certain modifications to Well PW-2 (the "**PW-2 Modifications**") and a pipeline and related pumping facilities (the "**Pipeline Facilities**") from the Well PW-2 to the contemplated NWNA Bottling Plant to be located in Benner or Spring Townships (the "**NWNA Plant**"). The PW-2 Modifications and Pipeline Facilities are collectively referred to as the "**Projects**."
- 2.4 Provide for the financing and development of a new well ("**PW-3**") to replace the Well PW-2 as a second reliable source for the STWA system.
- 2.5 Provide procedures for the temporary use of the Well PW-2 as a backup source of water to the STWA system in the event of an emergency condition in which the available supply from STWA's Wells PW-1 and PW-3 are unable to supply the demands of the STWA system.

### 3. Well PW-2 Modifications and Pipeline Facilities

- 3.1 **Ownership.** STWA would at all times own and be the permittee for the Well PW-2 Facility and Pipeline Facilities.
- 3.2 **Design to Allow Segregated Use.** PW-2 Modifications would be designed and constructed to provide a split of flows from after the output from the Well PW-2 pump. The split of lines would be equipped with two "spool pieces," one on the line leading to the STWA potable water treatment units and the second on the line leading to the spring water Pipeline Facilities, such that the spool piece may be removed from each respective side while water is being conveyed to the other side (e.g., the spring water Pipeline Facilities would be physically disconnected from the Well PW-2 by removing the spool piece while water is flowing to the STWA potable treatment unit, and vice versa).
- 3.3 **Construction**

- (a) STWA would commit to site, design, permit and construct the PW-2 Modifications and Pipeline Facilities (collectively, the "**Projects**"), subject to reimbursement from NWNA (see below).
- (b) STWA's obligations to design and construct the Projects, and NWNA's reimbursement obligations, would not commence until NWNA provides STWA with a Notice to Proceed. NWNA would provide such a Notice to Proceed after completion of due diligence and assurance that the water bottling plant will proceed.
- (c) Design of the Projects would be prepared by a qualified water supply engineer engaged by STWA, selected in consultation with NWNA.<sup>1</sup>
- (d) NWNA would provide STWA and the design engineer with NWNA's specifications to meet applicable FDA and other regulatory standards and NWNA's requirements. The design would, at a minimum, meet the all applicable federal and state regulations and standards and NWNA specifications.
- (e) Design of each Project would be subject to review and approval by NWNA in accordance with specified procedures, which approval shall not be unreasonably withheld, conditioned or delayed.
- (f) STWA would engage qualified, experienced, and responsible contractor(s) to construct the PW-2 Modifications and Pipeline Facilities. STWA will confer with NWNA with respect to the qualifications, experience and performance history of prospective contractors to assure that the contractors selected through the competitive process are qualified and responsible.
- (g) NWNA would have a right to observe and monitor all construction, including the right to observe all acceptance testing of the PW-2 Modifications and Pipeline Facilities.
- (h) STWA would confer and coordinate with NWNA in the planning and implementation of the Projects. Within 60 days after the Notice to Proceed, STWA will prepare and provide to NWNA for NWNA's approval a reasonably detailed budget and schedule of anticipated activities and expenditures to implement the Projects, together with progress payment milestones for disbursements (the "**Projects Budget and Schedule**"). The Projects Budget and Schedule will be subject to NWNA's review and approval, which approval shall not be unreasonably withheld, delayed or conditioned. The Parties will regularly confer concerning the progress of Projects implementation in relation to the Projects Budget and Approval.
- (i) NWNA would agree to reimburse STWA for all actual and

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<sup>1</sup> Note to Draft: During the course of agreement negotiations, STWA may solicit proposals from qualified engineering firms and the Parties may agree upon the selected design firm prior to execution of the agreement.

reasonable costs incurred by STWA in the siting, design, permitting and construction of the Projects consistent with the approved Projects Budget and Schedule. (Reimbursement invoicing and approval process similar to that referred to in 6.5 below.)

### 3.4 Operation

- (a) STWA would operate and maintain the Well PW-2 Facilities and Pipeline Facilities in accordance with Prudent Industry Practice and coordinated operating procedures agreed to between the Parties (see 3.5 below).
- (b) NWNA would agree to reimburse STWA for all actual and reasonable costs of operating, maintaining and repairing the Pipeline Facilities.<sup>2</sup>
- (c) NWNA would have a right of access (subject to notice to and coordination with STWA) to the Well PW-2 Facilities to inspect the Well PW-2 Facilities and their operation and to conduct all sampling and monitoring required under applicable federal and state regulations (e.g., FDA regulations).
- (d) Under procedures to be developed and agreed upon between STWA and NWNA, NWNA would be provided with secure access to the SCADA system for the Well PW-2 Facilities and Pipeline Facilities to allow for monitoring of their functions and operations, and to manage deliveries of water up to the permitted amounts from the Well PW-2 Facilities to and through the Pipeline to the NWNA Plant.
- (e) In the event that STWA does not maintain and repair the Well PW-2 Facilities and Pipeline Facilities in accordance with its obligations under the Agreement, and fails to implement any required corrective action within a specified period after receiving written notice from NWNA, NWNA shall have the right, but not the obligation, to take any such corrective actions as necessary to assure proper maintenance and repair of the Facilities and delivery of water to the NWNA Plant. STWA would grant an easement to NWNA and NWNA's contractors for purposes of access across any property, easements or rights-of-way owned by STWA, to undertake and perform any such corrective actions.

### 3.5 *Coordinated Operating Procedures*

- (a) NWNA and STWA would agree to coordinated operating procedures to allow for primary use of the Facilities to provide spring water to the NWNA Plant and use of the Well PW-2 Facilities as a backup source of supply to the STWA potable

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<sup>2</sup> Note to Draft: The costs of operating and maintaining the Well PW-2 Facilities is built into the STWA standard water rates.

water system.

- (b) The coordinated operating procedures would provide for notification by STWA to NWNA of emergency conditions requiring use of the Well PW-2 to supply the STWA potable water system, and procedures for disconnection of the spring water Pipeline Facilities and connection to the STWA system, and procedures for termination of use of the Well PW-2 as a backup supply to the STWA potable water system. STWA would agree to use all commercially reasonable efforts to minimize the frequency and duration of any usage of the Well PW-2 as a backup supply.
- (c) Until completion of Well PW-3 (see Item 6 below), NWNA understands that the Well PW-2 may need to be utilized as a backup source of supply to the STWA potable water system more frequently (e.g., whenever the quantity or quality of water from PW-1 is inadequate to meet the demand of the STWA potable water system). After completion of Well PW-3, STWA will utilize PW-1 and PW-3 as its primary sources, and would only utilize the Well PW-2 under unusual emergency circumstances.
- (d) During any period when STWA is using the Well PW-2 as a backup source of supply to its potable water system, NWNA may, at NWNA's option:
  - (i) utilize water from the Well PW-2 to produce bottled water at the NWNA Plant to the extent that the Well PW-2 has an available supply in excess of the needs of STWA's potable water system; or
  - (ii) obtain water from another source or water system to produce bottled water at the NWNA Plant.

#### 4. Sale and Purchase of Raw Water

4.1 **Sale of Raw Water.** STWA would agree to sell to NWNA raw water derived from the Well PW-2 and deliver such water to the NWNA Plant in the amounts that the NWNA Plant may require up to the permitted withdrawal rates of the Well PW-2 as established by the SRBC Project Approval, DEP Public Water Supply Permit and other applicable Governmental Approvals.

4.2 **Raw Water Charge Rate.** In addition to reimbursement to STWA for the construction costs for the PW-2 Improvements and Pipeline Facilities and for the O&M costs of the Pipeline Facilities as described in 3 above, NWNA would pay to STWA a Raw Water Charge equal to STWA's then prevailing standard rate for the applicable customer class. The Parties understand that currently STWA has a single water rate applicable to customers of all types. In the event that STWA modifies its rate structure to establish different customer classes or proposes to adopt any other change in rates or charges that do not apply equally to customers in all classes, any such rates and charges shall be fairly and reasonably allocated to each customer class in accordance to the cost of STWA providing

service to such customer class (which costs of service shall not include those costs that are subject to reimbursement by NWNA as described in 3.3(i) and 3.4(b)).

**5. Protection of Well PW-2 Wellhead Protection and Primary Recharge Areas**

- 5.1 STWA will cooperate with NWNA and Spring Township to develop and implement a wellhead protection program and primary recharge area protection program for the Well PW-2, utilizing appropriate zoning, easement and other measures to protect the quantity and quality of water produced by the Well PW-2.<sup>3</sup>
- 5.2 As part of such program, STWA will establish and record restrictive covenants in a form to be agreed to restrict development and activities on the Well PW-2 property consistent with the wellhead protection and primary recharge area program.

**6. Development of PW-3**

- 6.1 STWA would commit to site, design, permit and construct a new Well PW-3 at a site to be selected by STWA, to provide a source capacity of at least 350 gpm (e.g., equivalent to the currently permitted capacity of Well PW-2) and any pipeline facilities to connect Well PW-3 to the existing STWA system (the "**PW-3 Project**"). STWA would be solely responsible for (1) the selection and acquisition of the PW-3 Project site; (2) the design of all related well, pumping and treatment facilities; (3) applying for and obtaining all required permits to implement the PW-3 Project; and (4) operation of the PW-3 Project.
- 6.2 STWA's obligations to design and construct the PW-3, and NWNA's reimbursement obligations, would not commence until NWNA provides STWA with the Notice to Proceed referenced in 3.3(b).
- 6.3 STWA would commit to use all commercially reasonable efforts to complete construction of, and place in operation, the PW-3 Project within 30 months of the Notice to Proceed (the "**PW-3 Target Date**").
- 6.4 STWA would confer and coordinate with NWNA in the planning and implementation of the PW-3 Project. Within 60 days after the Notice to Proceed, STWA will prepare and provide to NWNA for NWNA's approval a reasonably detailed budget and schedule of anticipated activities and expenditures to implement the PW-3 Project, together with progress payment milestones for disbursements (the "**PW-3 Project Budget and Schedule**"). The PW-3 Project Budget and Schedule will be subject to NWNA's review and approval, which approval shall not be unreasonably withheld, delayed or conditioned. The Parties will regularly confer concerning the progress of the PW-3 Project implementation in relation to the PW-3 Project Budget and Approval.
- 6.5 NWNA would agree to reimburse STWA for all actual and reasonable

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<sup>3</sup> Note to Draft: NWNA understands that STWA has obligations under 25 Pa. Code Ch. 109 with respect to protection of the Zone 1 Wellhead Protection Area through its existing property ownership. Additional protections may be obtained through appropriate ordinances adopted by Spring Township or the acquisition of conservation easements with respect to the recharge area of Well PW-2. If additional conservation easements or similar agreements with adjoining landowners are appropriate, NWNA will seek to obtain those arrangements.

costs incurred by STWA in the siting, design, permitting and construction of the PW-3 Project consistent with the approved PW-3 Project Budget and Schedule.

- (a) Each reimbursement request shall be submitted to NWNA with appropriate supporting documentation.
- (b) Within 10 business days after receipt of a reimbursement request, NWNA shall provide STWA with notice of NWNA's approval or disapproval, in whole or in part, of any reimbursement request amount. If NWNA objects to any reimbursement request amount, NWNA shall provide a reasonably detailed description as to the dollar amount subject to such disapproval and the reason for such disapproval, which objections may include, among others, that: (1) the claimed work was not performed in accordance with the requirements of the Agreement, (2) a required progress payment milestone set forth in the P-3 Project Budget and Schedule to qualify for reimbursement was not achieved; or (3) the required supporting documentation was not provided or was not accurate.
- (c) NWNA shall pay any undisputed amount of a reimbursement request within 30 days of receipt of the invoice and supporting documentation.
- (d) The agreement would provide a dispute resolution mechanism with respect to any disputed reimbursement amounts. Any disputed amounts that are determined payable to STWA shall be paid with interest at a rate of Prime + 2%.

**7. Representations and Warranties**

7.1 The Agreement will provide typical reps and warranties from each Party.

**8. Insurance**

8.1 Both parties would be required to maintain commercial general liability insurance with a minimum per occurrence and aggregate limit of \$ 2 million.<sup>4</sup>

**9. Default, Remedies and Dispute Resolution**

9.1 The Agreement would provide notice and reasonable cure periods before either party would be deemed to be in default.

9.2 NWNA would have a right to seek specific performance.

9.3 Neither party would be liable for incidental, consequential, special or punitive damages; but claims by third-parties that are subject to an indemnification obligation by a party would be considered direct damages.

9.4 In light of NWNA's very substantial investment in the Facilities, the rights to terminate the Agreement upon a breach by NWNA would be

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<sup>4</sup> Note to Draft: Parties need to discuss what property insurance the STWA maintains, and what additional insurance may be appropriate.

limited.

9.5 The Agreement would provide for a phased alternative dispute resolution process, starting with negotiation between management representatives, followed by mediation, for prescribed periods of time. If the dispute cannot be resolved within the specified periods by negotiation or mediation, either party may submit the dispute to a court of competent jurisdiction.

**Disclaimer**

Neither this Term Sheet nor any provision hereof is binding on STWA or NRNA or obligates either party to enter into any agreement or consummate any transaction. This Term Sheet constitutes only an outline of significant terms and a statement of mutual intentions. The Term Sheet does not contain all matters upon which agreement must be reached in order for the proposed transactions to be consummated. The only documents binding upon STWA and NRNA shall be a fully executed definitive agreement between the parties.