

OCT 28 2019

REQUEST FOR AGENDA PLACEMENT FORM

Approved

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Ralph McBroom
TODAY'S DATE: October 22, 2019

DEPARTMENT: Purchasing

SIGNATURE OF DEPARTMENT HEAD:

REQUESTED AGENDA DATE: October 28, 2019

SPECIFIC AGENDA WORDING: Consideration of Nestle Waters North America Inc. Sales and Service Agreement for the lease of Water Filtration Equipment through Ready Refresh for various Johnson County Departments.

PERSON(S) TO PRESENT ITEM: Ralph McBroom C.P.M.

SUPPORT MATERIAL: (See attached)

TIME: 5 min (Anticipated number of minutes needed to discuss item)	ACTION ITEM: X WORKSHOP CONSENT: EXECUTIVE:
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STAFF NOTICE:

COUNTY ATTORNEY: X	IT DEPARTMENT:
AUDITOR:	PURCHASING DEPARTMENT:
PERSONNEL:	PUBLIC WORKS:
BUDGET COORDINATOR:	OTHER:

*****This Section to be completed by County Judge's Office*****

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____ Date _____



Please return contract to your
NWN Sales Manager or mail to:

Nestlé Waters North America

Attn: Kim Carter

Address: 4718 Mountain Creek Pkwy

City: Dallas

ST: TX Zip: 75236

Nestlé Waters North America Inc. Sales and Service Agreement

This Agreement (Effective 10/31/2019 Date) made on _____ by and between Johnson County (herein referred to as "Customer") and Nestlé Waters North America Inc. (herein referred to as Lessor or Company), with its principal office at 900 Long Ridge Road, Bldg. 2, Stamford, CT 06902-1138 and an office at #217 6661 Dixie Hwy, Suite 4, Louisville, KY 40258-3950.

Customer: Johnson County
Location: Various Locations within Johnson County

Point of Contact: Libby Chandler- Purchasing Location: 1102 E Kilpatrick #B Cleburne, TX 76031

Company will lease to Customer the filtration systems and/or equipment as agreed between Company and Customer ("Equipment"). Lessor will lease to Customer such equipment as described on Exhibit A (the "Equipment"). See Exhibit A for pricing, Equipment and lease rate per unit.

TERM OF AGREEMENT: This agreement shall cover a term of 12 months. Prior to the end of the term, or any extended term, the Customer shall give Lessor a minimum of 30 days written notice to terminate. Contract may be renewed upon an annual basis. Upon termination Lessor will retrieve all equipment from Customer. Customer shall leave all equipment in the condition in which they were received, reasonable wear and tear excepted.

DISPUTES AND SERVICE: All "out of product requests" and other service requests shall be made by calling the Lessor's customer service number, which shall be provided by the undersigned Account Manager. In such cases, all service requests will be handled within three business days. Lessor may, at its option or Customer's request, replace defective Equipment with a comparable reconditioned unit if it deems that repair is not feasible on location.

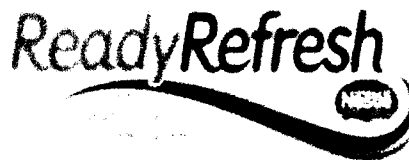
In the event that the Customer is dissatisfied with the servicing of the Equipment listed herein, the Customer agrees to attempt a resolution with the Customer Service Department of Lessor. If the dispute is not resolved, the Customer agrees to notify the undersigned Account Manager, Zone Sales Development Manager, and Zone Service Manager accordingly. The Account Manager shall provide the numbers of the Zone Sales Development Manager and Service Manager as the need arises.

If Customer thinks that any invoiced amount is incorrect, it shall submit its dispute to Lessor's Customer Service Department by phone or in a written letter. All disputes must be submitted no later than thirty (30) days after the date of the first bill on which the error or problem first appeared. Customer is obligated to pay the parts of the invoice that are not in question.

INSTALLATION: Lessor will assume all responsibility for the Point Of Use systems. This includes, but is not limited to; the installation of the equipment (free standard installation includes up to one hour of labor and up to 25 feet of related installation materials, beyond that distance the cost will be as per Lessor's established price list) and all damage caused by faulty installation or equipment failure of the Point Of Use system while it is in a Lessee's location. Lessee shall be responsible for providing approval for installation, including but not limited to drilling holes, connections to plumbing, access to equipment for servicing and removal and agreement that the equipment and related installation components remain the property of the Lessor.

THIRD-PARTY VENDORS: Lessor may enter a third party relationship with a vendor who services products from Lessor's ancillary product list. Lessor will manage the relationship with these alternate vendors and will offer Lessee one (1) bill and one (1) contact person for all service needs.

DEFAULT: In the event of default by Customer, Lessor shall have the right to (i) terminate this agreement immediately and the remaining fees, including but not limited to the equipment rental for the balance of the lease, due under this agreement or renewal shall become due immediately as liquidated damages and not as a penalty; and (ii) repossess the Lessor's Equipment, or, if Lessor cannot repossess its Equipment, as applicable, Lessor may, at its option, declare it a total loss, and Customer will pay Lessor its replacement value. Customer agrees to pay all such sums immediately upon request. Default shall be defined as one or more of the following: Customer's failure to make payment for Equipment use or Products purchased herein for a period of 60 days after the due date; Customer's breach of any term or condition hereof



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and failure to cure such breach within ten days after Customer's written notice to Customer describing such breach serious abuse of the Equipment by the Customer, its employees or guests; the institution by or against the Customer of a proceeding in bankruptcy; notice by Customer to terminate service during the lease term; abandonment of the equipment by the Customer or the removal of the equipment by the Customer without the written consent of Lessor.

Customer will pay all of Lessor's costs, including reasonable collection and/or attorneys' fees, as a result of Customer's default or the exercise of Lessor's remedies. ~~Customer and Lessor waive trial by jury.~~

CHARGES, SURCHARGES, FEES AND DEPOSITS: Customer will pay all charges for equipment rented, or purchased. If Customer does not pay any charge within sixty (60) days of the date invoice is received. Customer will pay (i) a late fee not to exceed \$20 per month. Service interruption may occur until balance is paid in full. Customer will make all payments due without set-off, counterclaim or defense.

EQUIPMENT RENTAL: Customer acknowledges that this is a true lease, Customer has no equity or ownership rights in the Equipment, and Customer can purchase the Equipment only if Customer and Lessor agree in writing. Company will install the Equipment or Plan Equipment, as applicable (collectively, "Equipment"), at Customer's address specified on the reverse side. If Customer's negligence, abuse or misuse causes damage requiring repair or replacement, Customer will pay Company all such costs on demand. The Equipment are, and will at all times be, Company's sole and exclusive property, and Customer will have no right, title or interest except as provided in this Agreement. Customer can purchase the Equipment only if Customer and Company agree in writing. Customer will use the Equipment only for Company's Products. Customer will at all times operate and maintain the Equipment in a safe, sanitary and proper manner in accordance with Company's instructions and clean and maintain the Equipment periodically and at least once every three months, as outlined in the Company-approved guidelines. Customer (i) will not remove the Equipment from Customer's location without Company's prior written consent, (ii) will not alter the Equipment in any manner, (iii) will permit only Company to repair the Equipment, (iv) will notify Company immediately if the Equipment is stolen, lost, damaged or destroyed, and (v) will keep the Equipment free and clear of, and promptly notify the Company of, any levies, liens and encumbrances. Company may enter Customer's premises at reasonable times to inspect and repair the Equipment.

Customer acknowledges that this is a true lease. If Customer purchases equipment from Company, Customer will be responsible for all repair or replacement costs unless otherwise specified in Company's warranty, if any.

CHANGES AND ADDENDUMS: Any changes in specifications, terms or pricing contained in this Agreement must be mutually approved in writing by both Lessor and Customer before the execution of the change.

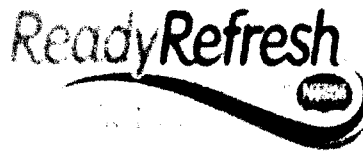
RISK OF LOSS; HOLD HARMLESS: Customer assumes risk of loss or damage to the Equipment in Customer's possession and will be responsible for all liability resulting from their use and operation. Customer will pay Lessor upon demand costs to repair or replace any lost, stolen, damaged or destroyed Equipment, as determined by Lessor. ~~Customer shall indemnify and hold Lessor harmless against any and all liability, loss, damage cost or expense of whatever kind (including attorney's fees in actions brought by third parties) arising from any and all negligent or intentional acts or omissions by the Customer or its employees, officers, directors, or agents in the performance of this agreement. Such indemnification requirements shall survive the termination of this agreement.~~

Lessor shall indemnify and hold Customer harmless against any and all liability, loss, damage cost or expense of whatever kind (including attorney's fees in actions brought by third parties) arising from any and all negligent or intentional acts or omissions by Lessor or its employees, officers, directors, or agents in the performance of this Agreement.

Such indemnification requirements shall survive the termination of this Agreement.

TRANSFER: Customer may not directly or indirectly transfer any of its rights under this Agreement and will not allow any third party to take possession of the Equipment without Lessor's prior written consent. Customer will keep the Equipment free and clear of levies, liens and encumbrances and will promptly notify Lessor of any third party seizure, levy, lien, or encumbrance regarding the Equipment.

PAYMENT TERMS: Net 30 days. Customer grants Lessor authority to conduct credit investigations and Lessor retains the right to terminate this agreement at any time based on such information.



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PRICE GUARANTEE: All pricing for products contracted herein will be guaranteed through 10/31/2020. After that date, Equipment rent and /or prices for bottled water products may be changed by Lessor on thirty (30) days' notice. Prices of commodities such as coffee, cocoa, sugar, paper and related products will be reviewed on a regular basis and are subject to increase at any time.

THIS AGREEMENT SUPERSEDES ANY PRIOR EQUIPMENT/SERVICE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. THIS AGREEMENT CONSTITUTES THE ENTIRE UNDERSTANDING BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. ANY ADDITIONS OR CHANGES MUST BE IN WRITING AND AUTHORIZED BY BOTH PARTIES.

CUSTOMER AUTHORIZATION

Print Name Roger Harmon Title: County Judge

Signature: [Handwritten Signature] Date: 10-28-2019

Phone: 817 556-6360 Fax: 817 556-6359

Nestlé Waters North America Sales Manager: [Handwritten Signature]

Nestlé Waters North America ZSDM: _____

Siebel Reference # VARIOUS ACCT #'S - Main P-00023895

For Internal Use Only for KCMs	
KCM Name	Kim Carter
E-mail Address	kimberly.carter@waters.nestle.com



Exhibit A
Point Of Use Water Filtration Service

Customer: Johnson County

Location: Various Office Locations

"Point of Use Water Filtration Equipment" Monthly Rental Fees:

Created Price List

OZKBA Carbon Filtration

Product	Extended Price	Item Number
Premium Carbon Filter Hot & Cold Black	\$34.99	132/140
POU Countertop Hot & Cold Black Onyx	\$28.99	600/200
Leak Guard Detector (Optional)	\$49.99	Purchase Price
Water Regulator (Tech will determine)	\$49.99	Purchase Price

Cost of other replacement components or service provided (beyond the free 18-month service interval)

Any termination during the term of the Agreement will also result in a charge of up to \$150 for the installation and removal costs to allow Lessor to recover those costs. Cost of other replacement components or service provided (beyond the free 18-month service interval described below) will be provided on request.

Customer is responsible for any applicable account surcharges and any applicable taxes.

NOTE: Lessor on a periodic basis will maintain the Point of Use Water Filtration Equipment. This does not include external cleaning of unit. Filters and other related components provided by Lessor will be exchanged every twelve (12) months and are included with monthly rental fees. Non-scheduled or emergency service will be billed in accordance with Lessor's established service pricing.

THIRD-PARTY VENDORS: Lessor may enter a third party relationship with a vendor who services products from Lessor's ancillary product list. Lessor will manage the relationship with these alternate vendors and will offer Customer one (1) bill and one (1) contact person for all service needs.



Exhibit B
Bottled Water Dispenser, Bottled Water and Other Products

<u>Water</u>	<u>RMS CODE</u>	<u>PRICE</u>
5 Gallon NPL	253	4.99
5 Gallon Ozarka Spring Water	150	5.49
Bottle Deposit Exempt	980	\$0.00
16.9 oz. NPL Case Water (24 count)- 4.99	126	4.99
16.9 oz. OZARKA Case Water (24 count)- 4.100	198	4.99
Dispensing Equipment (Coolers)		
Hot & Cold Dispenser- 4.99 per month	051	4.99
	511	4.99
	554	4.99
	170	4.99
	559	4.99
Room Temp & Cold Dispenser- 4.99 per month	512	4.99
	503	4.99
	616	4.99
Cups		
4.2 oz. Cone (200 count)- 3.00	402	\$3.00
9 oz. Flat Bottom Plastic	417	\$3.00
Water Filtration Systems		
Standard Carbon Hot/Cold Black	140	\$28.99
Standard Carbon Hot/Cold White	201	\$26.99
Aqua Bar (Upgrade) Carbon Hot/Cold Black	132	\$34.99
Aqua Bar (Upgrade) Reverse Osmosis Hot/Cold Black	133	\$39.99
Carbon Counter Top Hot/Cold	200/600	\$28.99
Reverse Osmosis Hot/Cold Black	214/600	\$35.99
*Current delivery fee		\$6.95

Customer: Johnson County

Location: Various Office Locations

Customer is also responsible for any applicable account surcharges and any applicable taxes.

- Customer agrees to exclusively purchase Lessor's brand of bottled water for use on each bottled water dispenser that is leased under this agreement.

Regular delivery of bottled water will take place between 17- 21-day business cycle along with applicable delivery fee.

NOTE: Bottled water dispenser must be maintained by Customer on a periodic basis including cleaning by Customer as outlined in the Lessor- approved guidelines (attached) at least once every three months. If Customer elects to have the Equipment cleaned by Lessor, the cleaning fee shall be per unit cleaned per cleaning cycle.

JOHNSON COUNTY CONTRACT TERMS
ADDENDUM – Nestle
Waters North America Inc. Sales and Service Agreement

The Johnson County Commissioners Court Finds, and the Parties Agree, as Follows:

1.1

This **Addendum** is part of an Agreement between **Johnson County, Texas**, a political subdivision of the State of Texas, (hereinafter referred to as “**COUNTY**”), and **Nestle Waters North America Inc.** (herein referred to as **Nestle**, or **Lessor** or **Company** or **Service provider**) (collectively, the “**Parties**” or each individually a “**Party**”).

2.1

This Agreement will be governed by and construed according to the laws of the **State of Texas**. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

2.2

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.3

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

2.4

The Parties agree that under the Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) ...

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

2.5

The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

2.6

The Parties agree and understand that County will not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

2.7

The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

2.8

The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

2.9

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

- a. **the date the governmental entity receives the goods under the contract;**

NESTLE READY REFRESH K 10092019
JOHNSON COUNTY, TEXAS

- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

2.10

No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

2.11

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information County reasonably believes that Nestle might lawfully seek to claim as confidential, then County will forward the request to Nestle. It shall be the obligation of Nestle to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with Nestle in making such submission to the Texas Attorney General's Office. Nestle acknowledges and understands that contracts and agreements with a political subdivision of the State of Texas are public information and are not confidential.

2.12

Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

2.13

Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

2.14

It is understood and agreed that Johnson County will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.

2.15

Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

2.16

If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by Nestle pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary. Notwithstanding the foregoing, in no event shall this Agreement continue for a **period exceeding 60 months** from the date of execution of this Addendum without additional specific consideration and approval by the Commissioners Court of Johnson County, Texas.

2.17

Nestle certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Nestle states that it is not ineligible to receive State or Federal funds due to child support arrearages

2.18

Pursuant to Texas Government Code Section 2270.0001 et seq. Nestle verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. Nestle further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as

foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

2.19

Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of Johnson County and signed by the Johnson County Judge.

2.20

OMITTED BY JOHNSON COUNTY AS NOT APPLICABLE TO THIS CONTRACT

2.21

Notwithstanding any other provision of the Agreement, following the one year anniversary of this Agreement Johnson County may terminate the Agreement upon 30 days written notice to Nestle and may return the equipment in good condition to Nestle without additional cost or penalty.

2.22

Any agreement must be signed by Nestle and by COUNTY to be enforceable against COUNTY. No Agreement may be enforced against COUNTY unless such Agreement has been specifically signed by the JOHNSON COUNTY JUDGE following approval by Commissioners Court of Johnson County, Texas. Documents delivered to COUNTY after the execution of this document shall have no force or effect unless approved by the Commissioners Court of Johnson County and signed by the Johnson County Judge.

2.23

In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. *THE TERMS OF THIS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN ANY LICENSE AGREEMENT OR OTHER DOCUMENTS PUT FORTH BY NESTLE, IS HEREBY DELETED.* KCL (Initials of NESTLE representative); RAH (Initials of Johnson County Judge).

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:

Roger Harmon
Roger Harmon

10/28/19
Date

As Johnson County Judge

Attest: *Becky Mey*
County Clerk, Johnson County



10/28/19
Date

NESTLE:

Kimberly Carter Lewis
Authorized Representative of NESTLE

10/19/2019
Date

Printed Name: *Kimberly Carter Lewis*

Title: _____