

RESOLUTION NO. 2147

A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, INC. D/B/A COCA-COLA BOTTLING COMPANY OF OREGON

WHEREAS, after considering various locations in the State of Washington and throughout the United States, BCI Coca-Cola Bottling Company of Los Angeles, Inc. dba Coca-Cola Bottling Company of Oregon (the "Company"), has agreed to expand its Wilsonville, Oregon production facility to add a new Dasani water production line and to add additional warehouse capacity; and

WHEREAS, this expansion will require a capital investment of approximately \$35 million, the retention within Wilsonville of 107 fulltime positions, retention of 301 fulltime positions in the Portland-Metropolitan area, and create 17 new positions in Wilsonville and 45 in the Portland-Metropolitan area; and

WHEREAS, lack of traffic capacity at the Wilsonville Road/Boones Ferry Intersection and I-5 Interchange at Wilsonville presented an obstacle to the expansion together with the street development charges for the project; and

WHEREAS, the City and the State of Oregon have entered into an Intergovernmental Cooperative Agreement for certain improvements to the I-5 Wilsonville Road interchange which the State of Oregon, by and through its Department of Transportation, has determined are subject to an Immediate Opportunity Fund (IOF) grant in the sum of \$500,000 to support economic development provided by the company's expansion project; and

WHEREAS, the City has improvements planned for the Boones Ferry and Wilsonville Road intersection as part of its near term public improvements plan and the proposed development of the Fred Meyer site adjacent to the intersection; and

WHEREAS, given the receipt of the IOF grant for the benefit of the Company and the public, the City finds it equitable and desirable in the public interest to provide to the Company certain street system development charge credits in the amount of \$500,000 to offset all or a portion of the Company's liability to pay street systems development charges to the City subject to the terms and conditions set forth in the Economic Development Agreement between the City and the Company; and

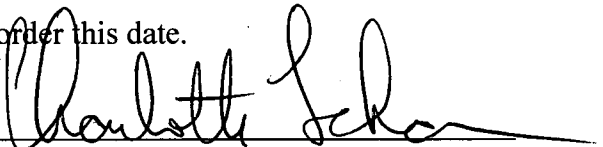
WHEREAS, the City has water and sewer systems capacity to support the Coca Cola Bottling Company of Oregon expansion as described in the Economic Development Agreement.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The Economic Development Agreement by and between the City of Wilsonville and BCI Coca-Cola Bottling Company of Los Angeles, Inc. dba Coca-Cola bottling Company of Oregon, a copy of which is marked Exhibit A, attached hereto and incorporated as if fully set forth herein, is approved and the Mayor is authorized to execute this Agreement on behalf of the city of Wilsonville.

2. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 3rd day of November 2008, and filed with the Wilsonville City Recorder this date.


CHARLOTTE LEHAN, MAYOR

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Knapp	Yes
Councilor Ripple	Yes
Councilor Núñez	Excused

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into by and between the CITY OF WILSONVILLE, OREGON, an Oregon municipal corporation (the "City") and BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, INC. D/B/A COCA-COLA BOTTLING COMPANY OF OREGON, a Delaware corporation (the "Company"), to be effective on the 3rd day of November, 2008 (the "Effective Date"), for the purposes and on the terms set forth herein.

RECITALS

WHEREAS, the Company has agreed to expand its Wilsonville, Oregon production facility (the "Facility") to include a new Dasani bottled water production line and to add additional warehouse capacity (collectively, the "Project"); and

WHEREAS, the Project is anticipated to result in the retention of 107 full-time positions and the creation of 17 full-time positions within the City; and

WHEREAS, the Project is anticipated to result in the retention of 301 full-time positions and the creation of 45 full-time positions within the Company's Wilsonville, Tualatin or any other Portland-Metro facilities; and

WHEREAS, the Project is anticipated to require a capital investment by the Company in the amount of \$35,000,000; and

WHEREAS, the Company has considered various locations in Washington and throughout the United States for the Project; and

WHEREAS, due to the amount of street system development charges anticipated to be charged by the City with respect to the Project, the Company initially was unable to achieve its requisite return on investment for the Project and, therefore, could not obtain approval for the Project from its board of directors; and

WHEREAS, an additional obstacle to the Project is the lack of traffic capacity at the Wilsonville Road / Boones Ferry Road intersection and the I-5 interchange at Wilsonville Road; and

WHEREAS, the Oregon Transportation Commission has authorized the director of the Oregon Department of Transportation ("ODOT") to enter into an Immediate Opportunity Fund Agreement (the "IOF Agreement") on behalf of the State of Oregon and to provide to the City, for the benefit of the Company and subject to the location of the Project in the City, an Immediate Opportunity Fund Grant in the amount of \$500,000 (the "Grant") to make certain improvements to the Interstate-5/Wilsonville Road Interchange; and

WHEREAS, the IOF Agreement requires job growth assessment of the Company's expansion and pro-rated reimbursement of IOF funds if the Company's stated job retention and growth is not realized; and

WHEREAS, the City finds it equitable and desirable, given the receipt of the Grant, to provide to the Company certain street system development charge credits in the amount of \$500,000 to offset all or a portion of the Company's liability to pay street system development charges to the City; and

WHEREAS, the IOF agreement allows the state to cancel the IOF agreement for cause beyond the control of the City; and

WHEREAS, the City is primarily a party to the IOF for the benefit of the Company and desires to limit its liability; and

WHEREAS, the systems development charges are customarily due at the time the building permit is issued and funds from the IOF grant will not be available until much later and the City desires to minimize the impact of providing credits before funds are available; and

WHEREAS, the City and Company entered into a Settlement Agreement dated June 17, 1996, that established wastewater usage at 634 equivalent dwelling units ("EDUs") and allowed Company to purchase additional wastewater capacity; and

WHEREAS, Company purchased an additional 100 EDUs of capacity on September 19, 1996 with Company check No. 472944 for a total Company wastewater capacity of 734 EDUs; and

WHEREAS, Wilsonville Code 11.040(5)(e) provides that the community development director can approve alternative fee calculations whenever the impact of individual developments present special or unique circumstances; and

WHEREAS, the City shall calculate water system development charges ("Water SDC's") for the Company based on projected maximum daily use; and

WHEREAS, City and Company intend to verify actual water and wastewater use and flows to confirm accuracy of projections.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound, agree as follows:

1. **Street System Development Charge Credits.** The City agrees to enter into the IOF Agreement with the State of Oregon, and in consideration for receipt of the Grant awarded pursuant to the IOF Agreement, the City shall provide to the Company credits to offset street system development charges incurred by the Company in an amount up to a maximum of \$500,000.

2. **Company Obligations.**

2.1 In consideration for the receipt of the street system development charge credits, the Company agrees (i) to finance, construct and implement the Project, (ii) to retain 301 full-time positions, and (iii) to create on or after February 5, 2008, 45 full-time positions within the City, Tualatin or any other Portland-Metro facilities (collectively, the "Company Commitments").

2.2 The Company agrees to provide State of Oregon documentation required in the IOF Agreement as regards job retention and growth assessment.

2.3 The Company agrees to reimburse the City on a pro-rated basis if the Company fails to satisfy the Company Commitments, provided, however, the parties hereto agree that the Company may satisfy all or a portion of such reimbursement obligations through the surrender of any unused street system development charge credits. The formula for the pro-rated amount will be an amount equal to the number of actual retained and created FTE positions divided by the number of projected retained and created FTE positions multiplied by \$500,000.

2.4 The Company agrees to reimburse the City for any SDC credits, including interest accrued therein at 3% per annum, that have been provided if the IOF grant is canceled by ODOT and the City is (1) required to repay the Grant or (2) or right to receive the grant is forfeited or cancelled prior to receipt.

2.5 The company agrees to pay interest equal to changes in construction costs for street SDCs which were waived prior to the date.

3. **Unused Street System Development Charge Credits.** The Company may carry forward any unused street system development charge credits for a period of five (5) years from the date of this Agreement and may apply such street system development charge credits to any future street system development charges assessed against or otherwise due from the Company during this five (5)-year period.

4. **Water and Wastewater.**

4.1 Based on the Company's projected consumption of water at the Facility, the Company shall be charged water SDC's based on a maximum increased daily use of 109,525 gallons above present use which the City will provide to Company by November 17, 2008 by separate letter. Twenty four (24) months after installation of the proposed Dasani line, the City may schedule an evaluation of the actual maximum daily use based on the prior 12-month period. In the event, during the preceding 12-month period, the Company's maximum daily use was less than 109,525 gallons, the City shall repay to the Company any excess Water SDC's. Conversely, in the event, during the preceding 12-month period, the Company's maximum increased daily use exceeded 109,525 gallons, the Company shall pay to the City an amount commensurate with such excess consumption.

4.2 Based on projected use, the Company's wastewater flows are within the Company's previously purchased 734 EDUs. Twenty four (24) months after the Company's installation of the proposed Dasani line, the City shall evaluate actual wastewater flows based on

the previous 24-month period. Upon completion of the evaluation, the City shall identify any remaining capacity purchased by the Company. If wastewater flows exceed the Company's 734 EDUs, the Company shall pay to the City additional sewer system development charges commensurate with actual use.

5. **Governing Law.** The laws of the State of Oregon shall govern this Agreement.

6. **Successors and Assigns, Entire Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective successors and assigns. The parties hereto agree that once this Agreement is fully executed and delivered, that it contains the entire agreement between the parties and that, by the execution hereof, the parties hereto do not rely on any statements, promises or representations not herein expressed, and this Agreement, once executed and delivered, shall not be modified, changed or altered in any respect except in writing, executed and delivered in the same manner as required for this Agreement.

7. **Severability.** If any provisions of this Agreement shall be held to be void or unenforceable by any judicial or administrative authority, or shall be unlawful or unenforceable under any applicable law, the remaining provisions shall be deemed to be severable, and their enforceability shall not be affected or impaired in any way by reasons of any such law or holding. The parties hereto agree that, in the event this Agreement is determined to be void or unenforceable, such parties will take all reasonable, legally permissible actions as may be available to adopt such agreements, ordinances, regulations or rules necessary to carry out the intent of such void or unenforceable provisions.

8. **Term.** This Agreement shall terminate five (5) years from the Effective Date.

9. **Assignment.** The Company may assign this Agreement and any rights hereunder to The Coca-Cola Company or to any of the Company's Affiliates without the prior written consent of the City but shall promptly notify the City of such assignment. As used herein, "Affiliate" means an entity which is a direct or indirect subsidiary of the Company, a company of at least 50% of the equity ownership of which is held by the Company, or a direct or indirect subsidiary thereof, or a company which directly or indirectly is controlled by or is under common control with the Company. The Company may not assign this Agreement or any rights hereunder to any other party without the prior written consent of the City.

10. **Notice.** Any notices required or permitted to be given pursuant to this Agreement may be delivered in person or mailed, certified mail, returned receipt requested, to the following addresses:

To the City: City of Wilsonville
 29799 SW Town Center Loop E
 Wilsonville, Oregon 97070
 Attention: Director of Community Development

With a copy to: City of Wilsonville
 29799 SW Town Center Loop E
 Wilsonville, Oregon 97070
 Attention: City Attorney

To the Company: BCI Coca-Cola Bottling Company of Los Angeles
2500 Windy Ridge Parkway
Atlanta, Georgia 30339
Attention: Director, Indirect Taxes

With a copy to: West Business Unit
c/o BCI Coca-Cola Bottling Company of Los Angeles
1334 South Central Avenue
Los Angeles, California 90021
Attention: Vice President, Finance

With a copy to: BCI Coca-Cola Bottling Company of Los Angeles
2500 Windy Ridge Parkway
Atlanta, Georgia 30339
Attention: General Counsel

With a copy to: Brian L. Eftink, Esq.
Miller & Martin PLLC
Suite 1000, Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402-2289

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and shall constitute one and the same instrument.

12. **Authority.** The persons signing below represent and warrant that they have the requisite authority to bind the party on whose behalf they are signing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CITY:

CITY OF WILSONVILLE, OREGON, an Oregon municipal corporation

By: _____

Name: _____

Title: _____

COMPANY:

BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, INC. d/b/a COCA-COLA BOTTLING COMPANY OF OREGON, a Delaware corporation

By: _____

Name: _____

Title: _____

COMMUNITY DEVELOPMENT
STAFF REPORT

Date: October 28, 2008
To: Honorable Mayor, Councilors, and City Manager
From: Eldon R. Johansen, Special Projects Manager
Subject: Approval of an Immediate Opportunity Fund Agreement between ODOT and the City of Wilsonville and Approval of an Economic Development Agreement between BCI Coca Cola Bottling Company of Los Angeles, Incorporated and the City of Wilsonville

Recommendation:

That Council approves Resolution No. 2148 approving and authorizing the Mayor to sign an Immediate Opportunity Fund Agreement between ODOT and the City of Wilsonville and approve Resolution No. 2147 approving and authorizing the Mayor to sign an Economic Development Agreement between BCI Coca Cola Bottling Company of Los Angeles, Incorporated and the City of Wilsonville.

Discussion:

BCI Coca Bottling Company of Los Angeles, Incorporated D/B/A Coca Cola Bottling Company of Oregon is expanding its production and warehouse facilities in the city of Wilsonville. This will result in the retention of 301 full time positions and the creation of 45 full time positions within the Coca Cola, Wilsonville, Tualatin or other Portland/Metro facilities. ODOT has agreed to provide \$500,000 in Immediate Opportunity Funds for this project and the City is agreeing to provide street systems development charge credits up to \$500,000 for the reduction in City funding requirements for the Interchange. The Immediate Opportunity Fund Agreement describes the agreement between ODOT and the City.

The City is essentially a pass through agent for this use of Immediate Opportunity Funds in that we receive the funds towards our share of the Interchange improvements and provide a reduction in SDC's for Coca Cola. The purpose of the Economic Development from the City perspective is to ensure that Coca Cola provides the required information in support of the Immediate Opportunity Fund Agreement and that the City does not inherit any liability if the Immediate Opportunity Fund Agreement should be cancelled.

The Economic Development Agreement is written in general terms with regards to water and sewer systems development charges. The Coca Cola Bottling Company of Oregon will pay water systems development charges based on their estimate of water use. The Bottling Company had previously paid for additional wastewater capacity for the Wilsonville facility. After the plant has been expanded the plant and the City will review the water consumption records and the wastewater records as compared to projections and if necessary the Bottling Company will pay the increased SDC's or the City will refund SDC's should the estimates be higher than anticipated.

Eldon R. Johansen
Special Projects Manager

ERJ/bgs

Cc: Subject File
Staff Report File