



LIME ROCK SPRINGS COMPANY
dba: PEPSI-COLA BOTTLING CO. OF DUBUQUE
10537 Route 3 - Dubuque, IA 52001
Phone (563) 556-2921
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<http://www.pepsidbq.com>



ON-PREMISE AGREEMENT

This On-Premise Agreement ("Agreement") Between **Lime Rock Springs Co. d/b/a Pepsi-Cola Bottling Company of Dubuque** ("Pepsi") and the City of Dubuque, Iowa, relating to the purchase and sale of fountain, canned, or bottled carbonated and non-carbonated soft drinks, tea, juice, energy, or water beverages ("Branded Beverages") at the City of Dubuque, Iowa facilities described herein and related terms and conditions. Pepsi and the City of Dubuque, Iowa (collectively, the "Parties") agree as follows:

1. **Term.** The term of this Agreement will be for a period of three (3) Years, commencing on April 1st, 2023 and expiring at midnight on March 31st, 2026. As used in this Agreement, the capitalized term "Year" shall mean each consecutive twelve (12) month period during the Term.
2. **City of Dubuque Leisure Services Locations.** This Agreement includes location(s) described in Sec. 16 only.
3. **Sale and Purchase of Branded Beverages.** Pepsi shall supply, sell, and deliver to the City of Dubuque, Iowa, and the City of Dubuque, Iowa shall purchase and accept from Pepsi, during the Term of this Agreement, one hundred percent (100%) of the City of Dubuque, Iowa requirements for the City of Dubuque, Iowa sales of Branded Beverages by means of the supply of Branded Beverages sold by Pepsi under license for sale by Pepsi during the Term of this Agreement as may be added to or substituted for any of the Pepsi Products currently offered by Pepsi.
4. **Exclusive Definition.** The City of Dubuque, Iowa agrees to offer Pepsi Branded Beverages exclusively during the Term at the City of Dubuque, Iowa property(s) described in Sec. 16. The City of Dubuque, Iowa shall also purchase all Pepsi products (and cups, lids, and CO2, if applicable) directly from Pepsi. No competitive products may be sold, dispensed, sampled, or served anywhere at the City of Dubuque, Iowa facility(s) described in Sec. 16.
5. **Pepsi Equipment.** Pepsi will provide all equipment for use by the City of Dubuque, Iowa for sale of Branded Beverages during the Term of this Agreement ("Pepsi Equipment") for point of sale and delivery of Branded Beverages to customers of the City of Dubuque, Iowa, based on a mutual consent between Parties. All Pepsi Equipment supplied by Pepsi will remain the property of Pepsi. Pepsi will provide free of charge to the City of Dubuque, Iowa service, repair, and replacement of Pepsi Equipment.
6. **Pricing.** Pepsi extends National Account pricing on Post Mix Fountain. Pricing is set by Pepsi Nationally and may be subject to price increases on a calendar year basis. Bottle/can pricing may be subject to no more than a 5% increase on a calendar year basis. However, the price ceilings are subject to additional adjustments greater than stated ceilings in the event of a substantial and unforeseeable increase in a major component of the bottler's cost of goods, manufacturing or delivery.

7. **Indemnity. Indemnity.** Pepsi shall indemnify and hold harmless City, its officers and employees, from and against any and all claims or damages caused by or resulting from the negligence of Pepsi in the performance of this Agreement to the extent of Pepsi's insurance coverage. Pepsi shall provide insurance as described in the attached Insurance Schedule.
8. **Pepsi Terms**
 - \$5000.00 to be paid to City of Dubuque, Iowa at the beginning of each contract Year
 - \$2,000 will be paid annually at Leisure Services properties on rounds of golf, family pool parties, etc... In the event such properties aren't open or able to provide this service to Pepsi, (Pepsi) will not be held liable to make such payments.
 - Cooler, Menu Boards, Recycle Bins, and the use of Arctic Coolers for special events/games at no charge.
9. **Termination and Failure to Perform.** If the City of Dubuque, Iowa breaches any of its obligations set forth in this Agreement, then at its option and not as its sole remedy, Pepsi may:
 - a) Terminate this Agreement, and the City of Dubuque, Iowa shall pay to Pepsi the unearned or prorated portion of the sponsorship payments.
 - b) Withhold any future sponsorship payments
 - c) The City of Dubuque may terminate this Agreement with or without cause upon thirty (30) days written notice delivered to Pepsi.
10. **Confidentiality.** Except as may otherwise be required by law or legal process, neither party hereto shall disclose to any third party the terms and conditions of this Agreement.
11. **Assignment.** This Agreement shall not be assigned by either party hereto without the prior written consent of the other party.
12. **Entire Agreement.** This Agreement contains the entire understanding and agreement between the parties hereto regarding the advertising of Branded Beverages for sale at the City of Dubuque, Iowa and supersedes all other agreements between the parties respecting such. This Agreement includes all vending and events held at the City of Dubuque, IA property(s) in Sec. 16. This Agreement may be amended or modified only by a written agreement, signed by each of the Parties.
13. **Savings Clause.** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.
14. **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of any provision or a waiver of the provision itself for any other provision.
15. **Force Majeure.** Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its control, including any act of God, the elements, earthquakes, floods, fires, pandemic, actions or decrees of governmental bodies. If an event is a "Force Majeure Event" then Pepsi obligations for sponsorship payments shall be excused for a period of time equal to the period during which the City of Dubuque, Iowa and Pepsi have been prevented from performing.

16. OUTLETS under the banner of The Dubuque Leisure Services

- (a) **Flora Pool**
- (b) **Sutton Pool**

- (c) **Bunker Hill Golf Courses**
- (d) **McAleece Sports Complex**
- (e) **Port of Dubuque Marina**
- (f) **Veterans Memorial Park**

17. **Law Governing.** This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and executed in their behalf by their respective, authorized representatives on this 15th day of March, 2023.

City of Dubuque, Iowa

Lime Rock Springs Co.,
dba: Pepsi-Cola Bottling
Company of Dubuque

Date: _____

Date: 3/15/2023

Name: _____

Name: Carlton Meriwether

Signature: _____

Signature: 

Title: _____

Title: Director of Sales & Operations

INSURANCE SCHEDULE G

1. Vendor shall furnish a signed certificate of insurance to the City of Dubuque, Iowa for the coverage required in Exhibit I prior to the contract commencement. Each certificate shall be prepared on the most current ACORD form approved by the Iowa Insurance Division or an equivalent. Each certificate shall include a statement under Description of Operations as to why the certificate was issued. Vendor Service Agreement dated _____.
2. All policies of insurance required hereunder shall be with an insurer authorized to do business in Iowa and all insurers shall have a rating of A or better in the current A.M. Best's Rating Guide.
3. Each certificate shall be furnished to the Finance Department of the City of Dubuque.
4. The service provider shall be required to carry the minimum coverage/limits, or greater if required by law or other legal agreement, in Exhibit I. Failure to provide the required minimum coverage shall not be deemed a waiver of such requirements by the City of Dubuque.
5. Failure to obtain or maintain the required insurance shall be considered a material breach of this agreement.
6. All required endorsements shall be attached to certificate.
7. Whenever a specific ISO form is referenced the current edition of the form must be used unless an equivalent form is approved by the Director of Finance and Budget. The service provider must identify or list in writing all deviations and exclusions from the ISO form.
8. If vendor's limits of liability are higher than the required minimum limits then the vendor's limits shall be this agreement's required limits.
9. Vendor shall require all subcontractors and sub-subcontractors to obtain and maintain during the performance of work insurance for the coverages described in this Insurance Schedule and shall obtain certificates of insurance from all such subcontractors and sub-subcontractors. Vendor agrees that it shall be liable for the failure of a subcontractor and sub-subcontractor to obtain and maintain such coverage. The City may request a copy of such certificates from the Vendor.
10. Vendor shall be responsible for deductibles/self-insured retention for payment of all policy premiums and other costs associated with the insurance policies required below.
11. All certificates of insurance must include agents name, phone number, and email address.
12. The City of Dubuque reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by this Schedule at any time.
13. The City of Dubuque reserves the right to modify these requirements, including limits, based on changes in the risk or other special circumstances during the term of the agreement, subject to mutual agreement of the parties.

INSURANCE SCHEDULE G (continued)

EXHIBIT I

A) COMMERCIAL GENERAL LIABILITY

General Aggregate Limit	\$2,000,000
Products-Completed Operations Aggregate Limit	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage Limit (any one occurrence)	\$50,000
Medical Payments	\$5,000

- 1) Coverage shall be written on an occurrence, not claims made, form. The general liability coverage shall be written in accord with ISO form CG 00 01 or business owners form BP 00 02. All deviations from the standard ISO commercial general liability form CG 00 01, or Business owners form BP 00 02, shall be clearly identified.
- 2) Include ISO endorsement form CG 25 04 "Designated Location(s) General Aggregate Limit."
- 3) Include endorsement indicating that coverage is primary and non-contributory.
- 4) Include Preservation of Governmental Immunities Endorsement (Sample attached).
- 5) Include additional insured endorsement for:
The City of Dubuque, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees and volunteers. Use ISO form CG 20 10 (Ongoing operations) or its equivalent.
- 6) Policy shall include Waiver of Right to Recover from Others endorsement.

B) WORKERS' COMPENSATION & EMPLOYERS LIABILITY

Statutory Benefits covering all employees injured on the job by accident or disease as prescribed by Iowa Code Chapter 85.

Coverage A	Statutory—State of Iowa	
Coverage B	Employers Liability	
Each Accident		\$100,000
Each Employee-Disease		\$100,000
Policy Limit-Disease		\$500,000

Policy shall include Waiver of Right to Recover from Others endorsement.

Coverage B limits shall be greater if required by the umbrella/excess insurer.

OR

If, by Iowa Code Section 85.1A, the Vendor is not required to purchase Workers' Compensation Insurance, the Vendor shall have a copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. Completed form must be attached.

INSURANCE SCHEDULE G (continued)

C) POLLUTION LIABILITY

Coverage required: ___ Yes ___*___ No

Pollution liability coverage shall be required if the lessee, contracting party, or permittee has any pollution exposure for abatement of hazardous or contaminated materials including, but not limited to, petroleum products, the removal of lead, asbestos, or PCBs. Pollution product and completed operations coverage shall also be covered.

Each Occurrence	\$2,000,000
Policy Aggregate	\$4,000,000

- 1) Policy to include job site and transportation coverage.
- 2) Include additional insured for:
The City of Dubuque, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees and volunteers. Use ISO form CG 20 10. (Ongoing operations) or its equivalent and CG 20 37 (completed operations).
- 3) Include Preservation of Governmental Immunities Endorsement.
- 4) Provide evidence of coverage for 5 years after completion of project.

D) PROFESSIONAL LIABILITY \$1,000,000

Coverage required: ___ Yes ___*___ No

If the required policy provides claims-made coverage:

- 1) The Retroactive Date must be shown and must be before the date of the agreement.
- 2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or services.
- 3) If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the date of the agreement, the contractor must provide "extended reporting" coverage for a minimum of five (5) years after completion of the work or services.

E) CYBER LIABILITY/BREACH \$1,000,000

Coverage required: ___ Yes ___*___ No

Coverage for First and Third Party liability including but not limited to lost data and restoration, loss of income and cyber breach of information.

F) UMBRELLA/EXCESS \$1,000,000

Coverage required: ___*___ Yes ___ No

The General Liability, Automobile Liability and Workers Compensation Insurance requirements may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies including Waiver of Subrogation and Primary and Non-contributory in favor of the City.

Please be aware that naming the City of Dubuque as an additional insured as is required by this Insurance Schedule may result in the waiver of the City's governmental immunities provided in Iowa Code sec. 670.4. If you would like to preserve those immunities, please use this endorsement or an equivalent form.

PRESERVATION OF GOVERNMENTAL IMMUNITIES ENDORSEMENT

1. Nonwaiver of Governmental Immunity. The insurer expressly agrees and states that the purchase

of this policy and the including of the City of Dubuque, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Dubuque, Iowa under Code of Iowa Section 670.4 as it is now exists and as it may be amended from time to time.

2. Claims Coverage. The insurer further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.

3. Assertion of Government Immunity. The City of Dubuque, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurer.

4. Non-Denial of Coverage. The insurer shall not deny coverage under this policy and the insurer shall not deny any of the rights and benefits accruing to the City of Dubuque, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Dubuque, Iowa.

No Other Change in Policy. The above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

SPECIMEN