

Dane County Contract Cover Sheet

Revised 07/2023

Res 128
significant

Dept./Division	Alliant Energy Center		
Vendor Name	Great Lakes Coca-Cola Distribution LLC, DBA Reyes Coca-Cola Bottling	MUNIS #	32063
Brief Contract Title/Description	To provide exclusive beverage services for the Alliant Energy Center		
Contract Term	6/1/2021-5/31/2031		
Contract Amount	\$397,000.00 revenue		

Contract # Admin will assign	15184
Type of Contract	
<input checked="" type="checkbox"/>	Dane County Contract
<input type="checkbox"/>	Intergovernmental
<input type="checkbox"/>	County Lessee
<input type="checkbox"/>	County Lessor
<input type="checkbox"/>	Purchase of Property
<input type="checkbox"/>	Property Sale
<input type="checkbox"/>	Grant
<input type="checkbox"/>	Other

Department Contact Information		Vendor Contact Information	
Name	Adam Heffron	Name	Shelby McDonald
Phone #	608-267-3982	Phone #	608-616-2296
Email	heffron.adam@alliantenergycenter.com	Email	shelby.mcdonald@glccd.com
Purchasing Officer	Pete Patten		

Purchasing Authority	<input type="checkbox"/> \$12,000 or under – Best Judgment (1 quote required)	
	<input type="checkbox"/> Between \$12,000 – \$43,000 (\$0 – \$25,000 Public Works) (3 quotes required)	
	<input type="checkbox"/> Over \$43,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP #
	<input type="checkbox"/> Bid Waiver – \$43,000 or under (\$25,000 or under Public Works)	
	<input type="checkbox"/> Bid Waiver – Over \$43,000 (N/A to Public Works)	
	<input checked="" type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other	

MUNIS Req.	Req #	Org:	Obj:	Proj:
	Year	Org:	Obj:	Proj:
		Org:	Obj:	Proj:

Budget Amendment	
<input type="checkbox"/>	A Budget Amendment has been requested via a Funds Transfer or Resolution. Upon addendum approval and budget amendment completion, the department shall update the requisition in MUNIS accordingly.

Resolution Required if contract exceeds \$100,000	<input type="checkbox"/> Contract does not exceed \$100,000	Res #	128
	<input checked="" type="checkbox"/> Contract exceeds \$100,000 – resolution required.		Year
	<input type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.		

CONTRACT MODIFICATIONS – Standard Terms and Conditions		
<input type="checkbox"/> No modifications.	<input checked="" type="checkbox"/> Modifications and reviewed by: Dave Gault & Dan Lowndes	<input type="checkbox"/> Non-standard Contract

APPROVAL	
Dept. Head / Authorized Designee	
Heffron, Adam	Digitally signed by Heffron, Adam Date: 2023.08.04 17:13:25 -05'00'

APPROVAL – Contracts Exceeding \$100,000	
Director of Administration	Corporation Counsel
	

APPROVAL – Internal Contract Review – Routed Electronically – Approvals Will Be Attached			
DOA:	Date In: 8/4/23	Date Out: _____	<input checked="" type="checkbox"/> Controller, Purchasing, Corp Counsel, Risk Management

Goldade, Michelle

From: Goldade, Michelle
Sent: Tuesday, August 8, 2023 11:37 AM
To: Krohn, Margaret; Gault, David; Patten (Purchasing), Peter; Lowndes, Daniel
Cc: Stavn, Stephanie; Oby, Joe
Subject: Contract #15184
Attachments: 15184.pdf

Tracking:	Recipient	Read	Response
	Krohn, Margaret		Approve: 8/9/2023 2:27 PM
	Gault, David	Read: 8/8/2023 12:08 PM	Approve: 8/8/2023 12:17 PM
	Patten (Purchasing), Peter		Approve: 8/8/2023 11:56 AM
	Lowndes, Daniel	Read: 8/8/2023 11:45 AM	Approve: 8/8/2023 2:56 PM
	Stavn, Stephanie	Read: 8/8/2023 3:47 PM	
	Oby, Joe		

Please review the contract and indicate using the vote button above if you approve or disapprove of this contract.

Contract #15184

Department: Alliant Energy Center

Vendor: Great Lakes Coca-Cola Distribution LLC

Contract Description: Provide exclusive beverage services for the Alliant Energy Center (Res 128)

Contract Term: 6/1/2021 – 5/31/2031

Contract Amount: \$397,000 revenue

Michelle Goldade

Administrative Manager

Dane County Department of Administration

Room 425, City-County Building

210 Martin Luther King, Jr. Boulevard

Madison, WI 53703

PH: 608/266-4941

Fax: 608/266-4425

TDD: Call WI Relay 711

Please Note: I currently have a modified work schedule...I am in the office Mondays and Wednesdays and working remotely Tuesdays, Thursdays and Fridays in accordance with COVID 19 response guidelines.

2023 RES-128

AUTHORIZING A BEVERAGE AGREEMENT FOR THE ALLIANT ENERGY CENTER

The Alliant Energy Center, as a facility that serves the public, regularly allows for beverage service to be provided at the venue. Great Lakes Coca-Cola Distribution, L.L.C. dba Great Lakes Coca-Cola Bottling is a distributor of Coca-Cola products. The Alliant Energy Center desires to enter into a beverage agreement with Coca-Cola to allow for the exclusive provision of Coca-Cola products on the AEC campus and for commission and sponsorship revenues.

NOW, THEREFORE BE IT RESOLVED, that the beverage agreement with Great Lakes Coca-Cola Distribution, L.L.C. dba Great Lakes Coca-Cola Bottling, 7400 N. Oak Park Avenue, Niles, Illinois 60714 63368 is hereby approved.

BE IT FINALLY RESOLVED, that the County Executive and County Clerk are authorized to sign the agreement.

Revised 06/2021



Department:	Alliant Energy Center
Provider:	Great Lakes Coca-Cola Distribution, L.L.C. dba Reyes Coca-Cola Bottling
Expiration Date:	May 31, 2031
Maximum Cost:	\$0, revenue generating
Registered Agent (if applicable):	CT Corporation System
Registered Agent Address:	301 S; Bedford St; Suite 1 Madison, WI 53703

THIS AGREEMENT, made and entered into, by and between the County of Dane (hereafter referred to as "COUNTY") and Great Lakes Coca-Cola Bottling dba Reyes Coca-Cola Bottling (hereafter, "PROVIDER"),

WITNESSETH:

WHEREAS COUNTY, whose address is 1919 Alliant Energy Center Way, Madison, WI 53713, desires to purchase services from PROVIDER for the purpose of providing exclusive beverage services for the Alliant Energy Center (AEC); and

WHEREAS PROVIDER, whose address is 6364 Blanchars Crossing, Windsor, WI 53598, Attention: Market Unit President, is able and willing to provide such services;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants of the parties hereinafter set forth, the receipt and sufficiency of which is acknowledged by each party for itself, COUNTY and PROVIDER do agree as follows:

I. TERM:

The term of this Agreement shall commence as of the June 1, 2021 and shall end as of the EXPIRATION DATE set forth on page 1 hereof, unless sooner agreed to in writing by the parties. PROVIDER shall complete its obligations under this Agreement not later than the EXPIRATION DATE.

II. SERVICES:

- A. PROVIDER agrees to provide the services detailed on the attached Schedule A, which is fully incorporated herein by reference.
- B. PROVIDER shall commence, carry on, and complete its obligations under this Agreement with all deliberate speed and in a sound, economical, and efficient manner, in accordance with this Agreement and all applicable laws. In providing services under this Agreement, PROVIDER agrees to cooperate with the various departments, agencies, employees, and officers of COUNTY.
- C. PROVIDER agrees to secure at PROVIDER's own expense all personnel necessary to carry out PROVIDER's obligations under this Agreement. Such personnel shall not be

deemed to be employees of COUNTY nor shall they or any of them have or be deemed to have any direct contractual relationship with COUNTY.

- D. PROVIDER warrants that it has complied with all necessary requirements to do business in the State of Wisconsin and has met all state and federal service standards, certifications, and assurances as expressed by State and Federal statutes, rules, and regulations applicable to the services covered by this Agreement.
- E. PROVIDER will follow applicable public health guidelines to provide safe services and a safe workplace.

III. ASSIGNMENT/TRANSFER:

PROVIDER shall not assign, subcontract, or transfer any interest or obligation in this Agreement, without the prior written consent of COUNTY, including the hiring of independent contract service providers unless otherwise provided herein. Claims for money due or to become due PROVIDER from COUNTY under this Agreement may be assigned to a bank, trust company or other financial institution without such approval if and only if the instrument of assignment contains a provision substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to PROVIDER shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Agreement. PROVIDER shall promptly provide notice of any such assignment or transfer to COUNTY.

COUNTY shall not assign, subcontract, or transfer any interest or obligation in this Agreement without the prior written consent of the PROVIDER.

IV. TERMINATION:

- A. Failure of PROVIDER to fulfill any of its obligations under this Agreement in a timely manner, or violation by PROVIDER of any of the covenants or stipulations of this Agreement, shall constitute grounds for COUNTY to terminate this Agreement by giving a thirty (30) day written notice to PROVIDER.
- B. The following shall constitute grounds for immediate termination:
 - 1. violation by PROVIDER of any State, Federal or local law, or failure by PROVIDER to comply with any applicable States and Federal service standards, as expressed by applicable statutes, rules and regulations;
 - 2. failure by PROVIDER to carry applicable licenses or certifications as required by law;
 - 3. failure of PROVIDER to comply with reporting requirements contained herein;
 - 4. inability of PROVIDER to perform the work provided for herein;
- C.
 - 1. If COUNTY breaches any of its obligations set forth in this Agreement, or if applicable the Credit Agreement (as defined below), then at its option and not as its sole remedy, PROVIDER may terminate this Agreement, and COUNTY shall (i) allow PROVIDER to pick up any Equipment, (ii) pay to PROVIDER a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to PROVIDER the unearned portion of pre-paid Sponsorship Fees, Upfront Fees, or other upfront funding, if any.
 - 2. Notwithstanding the other provisions of this Agreement, if any federal, state or local law, rule, regulation or order prohibits, restricts or in any manner interferes with the sale or advertising of Beverages at any time during the Term of this Agreement or if

for any reason the use of the Facility (defined in Schedule A) declines, then at its option and not as its sole remedy, PROVIDER may terminate this Agreement and COUNTY shall (i) allow PROVIDER to pick up any Equipment, (ii) pay to PROVIDER a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to PROVIDER the unearned portion of pre-paid Sponsorship Fees, Upfront Fees, or other upfront funding, if any.

3. COUNTY represents and warrants that it has full right and authority to enter into this Agreement and to grant and convey to PROVIDER the rights set forth herein. Upon expiration or revocation of such authority, then at its option and not as its sole remedy, PROVIDER may terminate this Agreement, and COUNTY shall (i) allow PROVIDER to pick up any Equipment, (ii) pay to PROVIDER a pro rata portion of the costs of refurbishing and installing the Equipment, and (iii) pay to PROVIDER the unearned portion of pre-paid Sponsorship Fees, Upfront Fees, or other upfront funding, if any.
4. PROVIDER shall have the right to withhold and not pay further any amounts which may become payable to COUNTY pursuant to this Agreement if: (i) COUNTY has failed to perform any of its obligations hereunder, (ii) PROVIDER's rights hereunder have been lost, limited or restricted.
5. Upon termination of this Agreement for any reason other than (1), (2) or (3) above, COUNTY shall allow PROVIDER to pick up any Equipment.
6. Nothing in this section shall operate to restrict any of PROVIDER's other remedies in the event of a breach by COUNTY.

V. REPORTS:

PROVIDER agrees to make such reports as are required in the attached schedules, which is fully incorporated herein by reference. With respect to such reports it is expressly understood that time is of the essence and that the failure of PROVIDER to comply with the time limits set forth in said schedules shall result in the penalties set forth herein.

VI. DELIVERY OF NOTICE:

Notices, bills, invoices, and reports required by this Agreement shall be deemed delivered as of the date of postmark if deposited in a United States mailbox, first class postage attached, addressed to a party's address as set forth above. It shall be the duty of a party changing its address to notify the other party in writing within a reasonable time.

VII. INSURANCE & INDEMNIFICATION:

- A. PROVIDER shall indemnify, hold harmless and defend COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of PROVIDER's negligent furnishing of services or goods required to be provided under this Agreement, provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of COUNTY, its agencies, boards, commissions, officers, employees or representatives. Any failure on the part of the PROVIDER to comply with reporting or other provisions of its insurance policies shall not affect this PROVIDER's obligations under this paragraph. COUNTY reserves the right, but not the obligation, to participate in defense without relieving PROVIDER of any obligation under this paragraph. The obligations of PROVIDER under this paragraph shall survive the expiration or termination of this Agreement.

B. PROVIDER Insurance Requirements:

Without limiting any other obligation or liability of Bottler under this Agreement, Bottler agrees that upon execution of the Agreement and throughout its entire effective period, Bottler shall procure and maintain insurance coverage, at its sole cost and expense, with limits and conditions not less than those specified below.

- (i) Commercial General Liability Insurance, written on an occurrence form, including but not limited to premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, personal injury and advertising injury and liability assumed under an insured contract, with limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate and products/completed operations aggregate of \$2,000,000.
- (ii) Workers' Compensation Insurance with benefits afforded under the laws of the state in which the services are to be performed and Employer's Liability insurance with minimum limits of \$1,000,000 for Bodily Injury – each accident, \$1,000,000 for Bodily Injury by disease – policy limit and \$1,000,000 for Bodily Injury by disease – each employee. Qualified self-insurance is acceptable, or Reyes Holdings may maintain an Occupational Accident Policy where allowed by law.
- (iii) Business Automobile Liability Insurance including coverage for owned, hired, and non-owned vehicles with a combined single limit including bodily injury and property damage of not less than \$1,000,000 each accident.
- (iv) General Conditions:
 - (a) Should any of the above-described policies be cancelled before the expiration date thereof, Bottler or Bottler's representative will endeavor to provide thirty (30) days written notice to the certificate holder.
 - (b) The Commercial General Liability policy shall include Account, their officers, employees and volunteers as additional insured; and shall provide for a waiver of subrogation in favor of the same.

C. COUNTY Insurance Requirements:

Account, without limiting any other obligation or liability of Account under this Agreement, agrees that upon execution of the Agreement and throughout its entire effective period, Account shall procure and maintain insurance coverage, at its sole cost and expense, with limits and conditions not less than those specified below.

- (i) Commercial General Liability Insurance, written on an occurrence form, including but not limited to premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, personal injury and advertising injury and liability assumed under an insured contract, with limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate and products/completed operations aggregate of \$2,000,000.
- (ii) Workers' Compensation Insurance with benefits afforded under the laws of the state in which the services are to be performed and Employer's Liability insurance with minimum limits of \$1,000,000 for Bodily Injury – each accident, \$1,000,000 for Bodily Injury by disease – policy limit and \$1,000,000 for Bodily Injury by disease – each employee. Account is required to carry this insurance regardless of eligibility for waiver or exemption of coverage under state statute, however, a qualified self-insured is acceptable or Account may maintain an Occupational Accident Policy where allowed by law.

- (iii) Business Automobile Liability Insurance including coverage for owned, hired, and non-owned vehicles with a combined single limit including bodily injury and property damage of not less than \$1,000,000 each accident.
- (iv) Special Perils Property Insurance insuring Account against loss with respect to the Facility, covering such risks and in such amounts as Account may deem appropriate.
- (v) Commercial Crime Insurance coverage with a \$1,000,000 Theft of Client Property endorsement.
- (vi) General Conditions:
 - (a) All coverage must be written on an occurrence basis and must be maintained without interruption from the date of this agreement. All coverage shall be primary and non-contributory to any other insurance available to Bottler.
 - (b) The policies shall be written with insuring company(ies) with AM Best financial strength ratings of "A" or higher and financial size categories of "VII" or greater.
 - (c) The policies listed in section 1 shall list the Bottler and Reyes Holdings L.L.C. and its subsidiaries, affiliates, directors, officers, employees, partners and agents as additional insured.
 - (d) The policies listed in sections C.(i), C.(ii) and C.(iii) shall contain waiver of subrogation in favor of Bottler.

D. Required provisions.

1. Cancellation Notice

Should any of the above-described policies be cancelled before the expiration date thereof, the PROVIDER or PROVIDERS's representative will endeavor to provide thirty (30) days written notice to COUNTY.

2. Evidence of Insurance.

Prior to execution of the Agreement, PROVIDER shall file with COUNTY a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement.

3. Sub-Contractors.

In the event that PROVIDER employs sub-contractors as part of this Agreement, it shall be the PROVIDER's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

- E. The parties do hereby expressly agree that COUNTY, acting at its sole option and through its Risk Manager, may waive any and all requirements contained in this Agreement, such waiver to be in writing only. Such waiver may include or be limited to a reduction in the amount of coverage required above. The extent of waiver shall be determined solely by COUNTY's Risk Manager taking into account the nature of the work and other factors relevant to COUNTY's exposure, if any, under this Agreement.

- F. Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, boards, commissions, agencies, officers, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations of joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions

and those of its employees, agents, boards, commissions, agencies, officers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes or other applicable common law regulations, etc.

VIII. NO WAIVER BY PAYMENT OR ACCEPTANCE:

In no event shall the making of any payment or acceptance of any service or product required by this Agreement constitute or be construed as a waiver by COUNTY of any breach of the covenants of this Agreement or a waiver of any default of PROVIDER and the making of any such payment or acceptance of any such service or product by COUNTY while any such default or breach shall exist shall in no way impair or prejudice the right of COUNTY with respect to recovery of damages or other remedy as a result of such breach or default.

IX. NON-DISCRIMINATION:

During the term of this Agreement, PROVIDER agrees not to discriminate on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). PROVIDER agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases, and exceptions shall be permitted only to the extent allowable in state or federal law.

X. CIVIL RIGHTS COMPLIANCE:

- A. If PROVIDER has 20 or more employees and receives \$20,000 in annual contracts with COUNTY, the PROVIDER shall file an Affirmative Action (AA) Plan with COUNTY in accordance with the requirements of chapter 19 of the Dane County Code of Ordinances. The AA Plan must be submitted prior to the effective date of this Agreement and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by COUNTY. If an approved plan has been received during the previous CALENDAR year, a plan update is acceptable. The plan may cover a two-year period. If PROVIDER submits a AA Plan to a Department of Workforce Development Division or to a Department of Health and Family Services Division that covers the services purchased by COUNTY, a verification of acceptance by the State of PROVIDER's Plan is sufficient.
- B. PROVIDER agrees to comply with the COUNTY's civil rights compliance policies and procedures. PROVIDER agrees to comply with civil rights monitoring reviews performed by the COUNTY, including the examination of records and relevant files maintained by the PROVIDER. PROVIDER agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and non-discrimination. PROVIDER further agrees to cooperate with COUNTY in developing, implementing, and monitoring corrective action plans that result from any reviews.
- C. PROVIDER shall post the Equal Opportunity Policy, the name of PROVIDER's designated Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, applicants for employment and employees. The complaint process will be according to COUNTY's policies and procedures and made available in languages and formats understandable to applicants, clients and employees.
- D. If PROVIDER is a government entity having its own compliance plan, PROVIDER'S plan shall govern PROVIDER's activities.

XI. COMPLIANCE WITH FAIR LABOR STANDARDS:

A. Reporting of Adverse Findings

During the term of this Agreement, PROVIDER shall report to the County Contract Compliance Officer, within ten (10) days, any allegations to, or findings by the National Labor Relations Board (NLRB) or Wisconsin Employment Relations Commission (WERC) that PROVIDER has violated a statute or regulation regarding labor standards or relations. If an investigation by the Contract Compliance Officer results in a final determination that the matter adversely affects PROVIDER'S responsibilities under this Agreement, and which recommends termination, suspension or cancellation of this agreement, the County may take such action.

B. Appeal Process

PROVIDER may appeal any adverse finding by the Contract Compliance Officer as set forth in Dane County Ordinances Sec. 25.08(20)(c) through (e).

C. Notice Requirement

PROVIDER shall post the following statement in a prominent place visible to employees: "As a condition of receiving and maintaining a contract with Dane County, this employer shall comply with federal, state and all other applicable laws prohibiting retaliation for union organizing."

XII. CONTROLLING LAW AND VENUE:

It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in the Dane County Circuit Court.

XIII. FINANCIAL INTEREST PROHIBITED:

Under s. 946.13, Wis. Stats. COUNTY employees and officials are prohibited from holding a private pecuniary interest, direct or indirect, in any public contract. By executing this Agreement, each party represents that it has no knowledge of a COUNTY employee or official involved in the making or performance of the Agreement that has a private pecuniary interest therein. It is expressly understood and agreed that any subsequent finding of a violation of s. 946.13, Wis. Stat. may result in this Agreement being voided at the discretion of the COUNTY.

XIV. CLAIMS. In no event will PROVIDER accept any audits of, or claims of discrepancies or errors in, pricing, rebates, commissions, funding, discounts, or other consideration provided under this Agreement ("Claims") more than six (6) months from the date of invoice or the date of funding or consideration, as applicable.

(i) 0 to 45 Days. In order to present Claims within forty-five (45) days of the date of invoice, County shall provide PROVIDER a detailed, written request specifying the particular price, commission, funding, product, amount in dispute and reason for dispute, along with a true copy of the original invoice, commission report, check or other applicable documentation.

(ii) 45 Days to 6 Months. In order to present Claims later than forty-five (45) days but not more than six (6) months from the date of invoice, County shall provide to the PROVIDER a request as specified above, and, in addition, submit true copies of any check remittances, and any other relevant documentation showing proof of Claim.

PROVIDER will review each Claim in good faith and provide responses to each properly-made Claim. PROVIDER will work directly with the County to resolve any Claims or audit issues, but will not interact with third-party auditors or contractors. Any audits requested by Account shall take place during normal business hours and shall be conducted at PROVIDER'S place of business.

XV. LIMITATION OF AGREEMENT:

This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

XVI. CONFIDENTIALITY:

During the Term, and for a three (3) year period thereafter, the parties shall keep the terms of this Agreement confidential, except as required by applicable law, including, without limitation, the Wisconsin Open Records Law.

XVII. JURY WAIVER:

Each party, to the extent permitted by law, knowingly, voluntarily and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or in connection with this agreement and the transactions it contemplates. This waiver applies to any action or legal proceeding, whether arising in contract, tort or otherwise.

XVIII. ENTIRE AGREEMENT:

The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both parties.

XIX. COUNTERPARTS:

The parties may evidence their agreement to the foregoing upon one or several counterparts of this instrument, which together shall constitute a single instrument.

XX. CONSTRUCTION:

This Agreement shall not be construed against the drafter.

XXI. COPIES VALID:

This Agreement, and any amendment or addendum relating to it, may be executed and transmitted to any other party by legible facsimile reproduction or by scanned legible electronic PDF copy, and utilized in all respects as, an original, wet-inked manually executed document. Further, this Agreement and any amendment or addendum thereto, may be stored and reproduced by each party electronically, photographically, by photocopy or other similar process, and each party may at its option destroy any original document so reproduced. All parties hereto stipulate that any such legible reproduction shall be admissible in evidence as the original itself in any judicial, arbitration or administrative proceeding whether or not the original is in existence and whether or not such reproduction was made by each party in the regular course of business. This term does not apply to the service of notices under this Agreement.

XXII. REGISTERED AGENT:

PROVIDER warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to do so, and, if a corporation, that the name and address of PROVIDER's registered agent is as set forth opposite the REGISTERED AGENT on page 1 of this Agreement. PROVIDER shall notify COUNTY immediately, in writing, of any change in its registered agent, his or her address, and PROVIDER's legal status. For a partnership, the term 'registered agent' shall mean a general partner.

XXIII. DEBARMENT:

By signing this Contract, PROVIDER attests that it is not debarred from participating in federal procurements. COUNTY reserves the right to cancel this Contract if PROVIDER is presently, or is in the future, on the list of parties excluded from federal procurements.

XXIV. EXECUTION:

A. The parties agree that execution of this document may be made by electronic signatures. The parties may make electronic signatures by typing the name of the authorized signature followed by the words, "electronically signed" or by any other

electronic means representing an authorized signature by PROVIDER. PROVIDER shall ensure that only authorized persons may affix electronic signatures to this Agreement and COUNTY may rely that the electronic signature provided by PROVIDER is authentic.

- B. This Agreement has no effect until signed by both parties. The submission of this Agreement to PROVIDER for examination does not constitute an offer. PROVIDER warrants that the persons executing this Agreement on its behalf are authorized to do so.

IN WITNESS WHEREOF, COUNTY and PROVIDER, by their respective authorized agents, have caused this Agreement and its Schedules to be executed, effective as of the date by which all parties hereto have affixed their respective signatures, as indicated below.

FOR PROVIDER:

	<u>7/21/23</u>
NAME _____	Date
TITLE CFO	

* * *

FOR COUNTY:

_____ Joseph T. Parisi Dane County Executive	_____ Date
--	---------------

_____ Scott McDonell Dane County Clerk	_____ Date
--	---------------

* [print name and title, below signature line of any person signing this document]

SCHEDULE A
Scope of Services

1. Definitions.

- (a) "Agreement Year" means each twelve-month period during the Term beginning with the first day of the Term, and any remaining period of time between the last twelve (12) month period and the end of the Term.
- (b) "Approved Cups" means disposable cups approved by PROVIDER from time to time as its standard trademark cups and/or vessels and/or other (disposable and non disposable) containers approved by PROVIDER from time to time, all of which shall prominently bear the trademark(s) of Products (as herein defined) on all of the cup surface.
- (c) "Beverage" or "Beverages" means all non-alcoholic beverages (i.e. anything consumed by drinking), whether or not such beverages (i) contain nutritive, food, or dairy ingredients, OR (ii) are in a frozen form. This definition applies without regard to the beverage's labeling or marketing. Powders, syrups, grounds (such as for coffee), herbs (such as for tea), concentrates, K-Cups®, pods and all other beverage bases from which Beverages can be made are deemed to be included in this definition. For the avoidance of doubt, "flavor enhancers", "liquid water enhancers", brands and products of water purification and Beverage making systems (e.g. Brita®, Soda Stream®), and non-alcoholic beverages sold as "shots" or "supplements" are considered Beverages.

"Beverage" or "Beverages" shall not include fresh-brewed unbranded coffee, fresh-brewed un- branded tea products, unbranded hot chocolate, unflavored dairy products, water drawn from the public water supply, or unbranded juice squeezed fresh at the Facility.
- (d) "Competitive Products" means any and all Beverages other than Products (as defined herein).
- (e) "Concessionaire" means any third party providing services under contract with Alliant Energy Center of Dane County ("AEC") at the Facility that directly or indirectly relates to the service of Beverages.
- (f) "Facility" or "Facilities" means the entire premises of Alliant Energy Center of Dane County ("AEC"), located at 1919 Alliant Energy Center Way Madison, WI 53713 and all locations now or in the future, whether under the same name or different name, and including without limitation future franchise locations if applicable, including all currently existing and future buildings, and includes, without limitation, the grounds, parking lots, all vending and concession areas, sidelines, benches and locker rooms, branded and unbranded food service outlets, dining facilities and food trucks.
- (g) "Products" means Beverage products purchased directly from PROVIDER or sold through vending machines owned and stocked exclusively by PROVIDER.

2. Term: June 1, 2021 ("Effective Date") through May 31, 2031 ("Term").

3. Grant of Beverage Availability and Beverage Advertising and Merchandising Rights. AEC hereby grants to PROVIDER the following exclusive Beverage availability and merchandising rights subject to the Permitted Exceptions set forth in Section 5:

- (a) Beverage Availability.
 - (i) PROVIDER shall have the exclusive right to sell or distribute Beverages at the Facility. AEC and/or its Concessionaires shall purchase all Products, (and cups, lids and carbon dioxide, if applicable) directly from PROVIDER.
 - (ii) PROVIDER shall have the exclusive Beverage vending rights at the Facility, and the right to place a mutually agreed upon number of Beverage vending machines and coolers in mutually agreed upon locations at the Facility.
 - (b) Advertising Rights.
 - (i) AEC hereby grants to PROVIDER the exclusive right to advertise Beverages and specifically Products (1) at the Facility and (2) in connection with the Facility.
 - (ii) AEC agrees that PROVIDER's advertising shall be positioned at all times in such a manner that the advertising message is in no way obscured (electronically or otherwise) and is clearly visible to the general public and the media. The Products shall be prominently listed on any menu boards located at the Facility and all equipment dispensing Products shall be prominently identified with the appropriate trademarks/logos.
 - (iii) AEC further agrees that all Products will be dispensed in PROVIDER's equipment and that no other trademarked, equipment, coolers or containers will be permitted.
 - (c) Beverage Merchandising Rights.
 - (i) PROVIDER will have the exclusive right to advertise the Products as the "Official" or "Exclusive" soft drink, sports drink, water, tea, energy drink and/or juice or juice drink, etc. of the Facility.
 - (ii) AEC hereby grants to PROVIDER a royalty-free license, exclusive for Beverages, to use the trademarks, logos and other intellectual property of AEC and Facility ("Account Marks") in connection with the promotion of Products during the Term of the Agreement. Such promotion may occur in advertising (TV, radio, and print), packaging, vessels, promotional materials, and point of sale materials for Products and may be in connection with the marks and logos of PROVIDER's customers. An annual report of the use of all intellectual property of the Facility and AEC must be provided by September 15 following the completion of each contract year.
 - (d) Order and Delivery Requirements. AEC will comply with PROVIDER's order and delivery frequency requirements, as they may be revised from time to time.
4. Competitive Products. Subject to the Permitted Exceptions in Section 5, during the entire Term and any renewal or extension thereof:
- (a) No Competitive Products may be sold, dispensed or served anywhere at the Facility. No Competitive Products may be stored, displayed, dispensed or sold in or through any Equipment (defined below), except as may be prohibited by law, or regulation.
 - (b) No permanent or temporary advertising, signage or trademark visibility for Competitive Products will be displayed or permitted anywhere at the Facility.

- (c) AEC will not enter into any agreement or relationship whereby any Competitive Products are associated in any manner with AEC, the Facility, or any of the Account Marks in any advertising or promotional activity of any kind.

- 5. Permitted Exceptions. Notwithstanding any other provision of this Agreement, the following shall apply:

AEC and PROVIDER agree that during each Agreement Year, temporary signage for Competitive Products may be displayed at the Facility during up to four (4) of the following Special Promotional Events: (i) Midwest Horse Fair, (ii) CrossFit Games, (iii) Dane County Fair, and (iv) Brat Fest.

In addition, AEC may host an two (2) additional one-time events which are mutually agreeable to AEC and PROVIDER during each Agreement Year; provided, however, that: (i) except as set forth herein, PROVIDER's Advertising and Sponsorship Rights under this Agreement will not otherwise be affected during any such Special Promotional Event(s); (ii) Competitive Products will not be sold, distributed, dispensed, sampled, served, or otherwise made available during any Special Promotional Event(s) except for Dane County Fair and Brat Fest; (iii) no blockage of any signage or other display PROVIDER may have at the Facility will occur during any such Special Promotional Event(s), and (iv) all such temporary signage for Competitive Products will cease to be displayed at the Facility upon the conclusion of the Special Promotional Event(s).

The term "Special Promotional Events" means and is limited to the following: concerts; theatrical or comedic performances; conventions; trade shows; athletic events; or other special events occurring at the Facility that meet the following requirements: (i) they are sponsored by a manufacturer, distributor, or marketer of Competitive Products under a sponsorship agreement with the owner, operator, or performer(s) of the subject Special Promotional Event (e.g., a concert or theatrical production company, or a trade show or convention production company); (ii) they are conducted on a national or regional multi-market basis or are collegiate athletic events; (iii) the sponsor requires on-site promotion for Competitive Products and AEC will provide PROVIDER with no less than thirty (30) calendar days prior written notice of each one-time event which it intends to designate as a Special Promotional Event.

AEC agrees that this provision shall not be read to allow advertising or promotional rights with respect to such Competitive Products except that trademarks for Competitive Products may be displaced on menu boards and on dispensing equipment.

- 6. Pricing; Payment Terms. During Agreement Year one, PROVIDER agrees to offer AEC pricing as set forth in **Exhibit A**. During the remainder of the Term, such prices will increase annually four percent (4%) over the previous Agreement Year's price. Annual price increases shall occur automatically on June 1 of each Agreement Year. Any Product purchased directly from PROVIDER with pricing not set forth on **Exhibit A** shall be offered at PROVIDER's then current trade letter pricing unless otherwise agreed in writing.

In addition, in the event of an increase in PROVIDER's cost of goods, manufacture or delivery, or new or increased taxes, deposits or other government related charges or fees, PROVIDER may increase prices. If applicable, AEC agrees to comply with all terms of the Credit Application and Agreement ("Credit Agreement") it signed, including without limitation credit terms.

- 7. Concessionaires. The AEC contracts with a Concessionaire, currently Centerplate, AEC will cause Concessionaire to purchase from PROVIDER all requirements for Products, Approved Cups, lids and carbon dioxide, if applicable. Such purchases will be made at prices and on terms set forth in this Agreement. AEC acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to AEC or Concessionaire if Concessionaire has an existing agreement with PROVIDER. If such Concessionaire requires PROVIDER to pay Concessionaire funding or to provide Products pursuant to prices under separate contract with Concessionaire,

and PROVIDER agrees, then AEC agrees that it shall reimburse PROVIDER for such duplicate allowances, funding and/or lost margin on lower cost Products paid to or sold to Concessionaire. The reimbursement shall be made by AEC either by (i) a credit against any payment to be made by PROVIDER to AEC, (ii) an invoice from PROVIDER to AEC, (iii) increased pricing to AEC (where PROVIDER is required to pay Concessionaire funding only), or (iv) any other manner reasonably determined by PROVIDER.

8. Equipment and Service.

- (a) During the Term, PROVIDER will loan to AEC, pursuant to the terms of PROVIDER's equipment placement agreement ("BEPA"), at no cost (except as prohibited by law, rule or regulation, in which case the rent charged shall be the lowest legal rate available from PROVIDER) all Beverage dispensing equipment ("Equipment") which is reasonably required and as mutually agreed upon to dispense Products at the Facility. Freestyle and/or fountain equipment may be subject to a separate agreement with The Coca-Cola Company. AEC represents and warrants that electrical service at the Facility is proper and adequate for the installation of Equipment, and AEC agrees to indemnify and hold PROVIDER harmless from any damages arising out of defective electrical services.
- (b) AEC agrees (i) it will execute documents evidencing PROVIDER's ownership of the Equipment, (ii) upon request of PROVIDER, AEC will execute the BEPA, however, if any of the terms of the BEPA are in conflict with the terms of this Agreement, this Agreement will control, (iii) the Equipment may not be removed from the Facility without PROVIDER's written consent, (iv) AEC will not encumber the Equipment in any manner or permit any attachment thereto except as authorized by PROVIDER for the Equipment, (v) only Products will be stored, displayed, dispensed, or sold in or through the Equipment, and (vi) AEC will be responsible to PROVIDER for any loss or damage to the Equipment, reasonable wear and tear excepted.
- (c) PROVIDER will provide AEC with reasonable, free service to its Equipment, except AEC will bear the cost of service required due to actions of AEC or its employees or contractors. All Equipment service will be provided during normal business hours. PROVIDER shall not be obligated to provide service hereunder during periods in which it is prevented from doing so due to strikes, civil disturbances, unavailability of parts or other causes beyond the control of PROVIDER. PROVIDER shall not be liable for damages of any kind arising out of delays in rendering service.

SCHEDULE B
Pricing Structure and Payment

Consideration. In consideration of the rights and benefits granted to PROVIDER hereunder, PROVIDER agrees to provide AEC with the following:

- (a) Sponsorship Fees. Subject to the terms of this Section (a), PROVIDER agrees to pay AEC an aggregate of up to Three Hundred and Ninety-Seven Thousand Dollars (\$397,000) for the entire Term (the "Sponsorship Fees").

In Agreement Years two through five, the Sponsorship fees shall be paid in annual installments of up to Forty Three Thousand Dollars (\$43,000) and in Agreement Years six through ten the Sponsorship fees shall be paid in annual installments of up to Forty Five Thousand Dollars (\$45,000). In all Agreement Years the Sponsorship Fees shall be paid within sixty (60) days following the end of each Agreement Year provided that AEC purchases at least 6776 standard physical cases and 1000 gallons of Products in such Agreement Year ("Volume Commitment"). AEC agrees that if it does not satisfy the Volume Commitment in any given Agreement Year, it will be paid Sponsorship Fees based on the percentage of the Volume Commitment satisfied. For example if AEC sells 70% of the Volume Commitment in an Agreement Year it will be paid 70% of the Sponsorship Fees for that Agreement Year.

- (b) Upfront Fee. PROVIDER shall pay AEC a one-time fee in the amount of Fifty Thousand Dollars (\$50,000) (the "Upfront Fee"). The Upfront Fee shall be paid within sixty (60) days after the Agreement is fully executed. The Upfront Fee shall be deemed earned evenly over Agreement Year one.
- (c) Commissions. PROVIDER shall pay AEC commissions on full-service Beverage vending sales based on the rates and initial vend prices set forth in **Exhibit B.**
- (d) Rebates. PROVIDER shall pay AEC a rebate for Product purchased and paid for by AEC for sale at the Facility during the Term ("Rebates"), as set forth in **Exhibit C.** Rebates shall not be earned for sales of Products through PROVIDER's full service vending machines.
- (e) Marketing Fund. Each Agreement Year, during the Term, PROVIDER shall establish a marketing fund ("Marketing Fund"). In Agreement Year one the Marketing Fund will be in maximum amount of Seven Thousand Five Hundred Dollars (\$7,500). In the remaining Agreement Years the Marketing Fund will be in the maximum amount of Three Thousand Five Hundred Dollars (\$3,500). The Marketing Fund will be used to support marketing and promotional activities at the Facility, including signage. Any amounts remaining unused in the Marketing Fund at the end of the Agreement Year will be retained by PROVIDER.

EXHIBIT A
INITIAL PRICE SCHEDULE

Product Description	Invoice Price
12oz can soda	\$15.15
16oz Monster	\$45.85
12oz Minute Maid Juice	\$34.36
20oz Soda	\$29.55
20oz Dasani	\$18.67
13.7oz Dunkin Donuts	\$26.73
10oz Glass Mixers	\$23.10
18.5oz Gold Peak	\$20.82
1L Smartwater	\$21.11
12oz can AHA	\$15.15
10.1oz Tum E Yummies	\$11.37
12oz Coke w/ Coffee	\$23.75
14oz Core Power (26g)	\$33.56
14oz Core Power (42g)	\$34.78
14oz YUP	\$19.25
15oz Monster Java	\$27.12
16oz AHA	\$24.31
16oz Full Throttle/NOS	\$45.85
16oz Reign	\$22.93
16.9oz Honest Tea	\$20.98
20oz Powerade	\$29.15
20oz Powerade Ultra	\$16.05
20oz Powerade Water	\$16.05
20oz Smartwater	\$31.50
20oz Vitaminwater	\$19.21
700ml Smartwater	\$33.70
700ml Smartwater flavors	\$16.85
16oz Body Armor	\$19.25
700ml Body Armor Water	\$33.35

Any Product purchased directly from PROVIDER with pricing not set forth on this Exhibit A shall be offered at PROVIDER's then current trade letter pricing unless otherwise agreed in writing.

All prices are per raw case and exclusive of taxes, deposits, handling fees, and recycling fees.

**EXHIBIT B
COMMISSIONS**

Product	Vend Price	Vend Price	Vend Price	Commission %
	Year 1-2	Year 3-6	Year 7-10	All Years
20oz Dasani	\$1.75	\$2.00	\$2.25	15
20 oz Soda	\$2.00	\$2.25	\$2.50	15
16oz Body Armor	\$2.25	\$2.50	\$2.75	15
13.7oz Dunkin Donuts	\$3.00	\$3.25	\$3.50	15
15oz Monster Java	\$3.00	\$3.25	\$3.50	15
16oz Monster	\$2.75	\$3.00	\$3.25	15
18.5oz Gold Peak	\$2.25	\$2.50	\$2.75	15
20oz Powerade	\$2.25	\$2.50	\$2.75	15
16oz AHA	\$1.75	\$2.00	\$2.25	15
20oz Smartwater	\$2.25	\$2.50	\$2.75	15
20oz Vitaminwater	\$2.25	\$2.50	\$2.75	15
16oz Reign	\$2.75	\$3.00	\$3.35	15

Commissions are paid based upon cash collected after deducting taxes, deposits, recycling fees, other handling fees and credit and debit card fees, if any.

Commission rates for any new Products added after the Effective Date will be at the lowest rate listed above unless otherwise mutually agreed to by the parties in a written amendment to this Agreement.

During Agreement Year one, PROVIDER agrees to offer AEC vend prices as set forth above. During the remainder of the Term, such prices will automatically be increased in Agreement Years 3, 6 & 9 by twenty-five cents (\$.25) over the previous Agreement Year's price. Vend price increases shall occur automatically on June 1 of stated Agreement Year(s)

Commissions shall not be payable on any sales from vending machines not filled or serviced exclusively by PROVIDER. PROVIDER may adjust the vend prices and/or commission rates as necessary to reflect changes in its costs, including cost of goods, manufacture or delivery, or new or increased taxes or other government related charges or fees. Commissions will be paid each quarter following the quarter in which they are earned, with an accounting of all sales and monies in a form reasonably satisfactory to the AEC, and shall become immediate property of AEC.

**EXHIBIT C
REBATES**

REBATES		
Product	Rebate Amount	Rebate Unit
12oz can soda	\$2.75	Per SPC
16oz Monster	\$2.75	Per SPC
12oz Minute Maid Juice	\$2.75	Per SPC
20oz Soda	\$2.75	Per SPC
20oz Dasani	\$2.75	Per SPC
13.7oz Dunkin Donuts	\$2.75	Per SPC
10oz Glass Mixers	\$2.75	Per SPC
18.5oz Gold Peak	\$2.75	Per SPC
1L Smartwater	\$2.75	Per SPC
12oz can AHA	\$2.75	Per SPC
10.1oz Tum E Yummies	\$2.75	Per SPC
12oz Coke w/ Coffee	\$2.75	Per SPC
14oz Core Power (26g)	\$2.75	Per SPC
14oz Core Power (42g)	\$2.75	Per SPC
14oz YUP	\$2.75	Per SPC
15oz Monster Java	\$2.75	Per SPC
16oz AHA	\$2.75	Per SPC
16oz Full Throttle/NOS	\$2.75	Per SPC
16oz Reign	\$2.75	Per SPC
16.9oz Honest Tea	\$2.75	Per SPC
20oz Powerade	\$2.75	Per SPC
20oz Powerade Ultra	\$2.75	Per SPC
20oz Powerade Water	\$2.75	Per SPC
20oz Smartwater	\$2.75	Per SPC
20oz Vitaminwater	\$2.75	Per SPC
700ml Smartwater	\$2.75	Per SPC
700ml Smartwater flavors	\$2.75	Per SPC
16oz Body Armor	\$2.75	Per SPC
700ml Body Armor Water	\$2.75	Per SPC

The Rebates shall be paid annually, in arrears, within sixty (60) days after the end of each applicable Agreement Year in which the Rebate was earned, and will be based on PROVIDER's case sales records. Any Product not set forth on this Exhibit C shall not receive a Rebate unless otherwise agreed to in a written amendment to this Agreement.