

## CITY AND COUNTY OF DENVER ACCESS AND LICENSE AGREEMENT

This **ACCESS AND LICENSE AGREEMENT** (“**Access Agreement**”) is entered into, as of the date set forth on the City’s signature page below (the “**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation (the “**City**”) and **BOTTLING GROUP, LLC**, a Delaware limited liability company, whose address is c/o PepsiCo Global Real Estate, 700 Anderson Hill Road, Purchase, New York 10577 (“**Licensee**”) (each a “**Party**,” and collectively, the “**Parties**”).

### RECITALS

- A. Pursuant to the terms of a development agreement between the City and Licensee dated August, 3, 2010 (“**Development Agreement**”), Licensee has or shall construct a mixed use development as allowed by current City zoning and other ordinances, rules, and regulations (“**Development**”) on certain real property owned by Developer, as well as on real property owned by the City.
- B. Under the Development Agreement, Section 2, Licensee transferred fee simple title to the City certain property depicted in Exhibit B and Exhibit D of the Development Agreement. The City-owned land is defined as “**City Property**” under Paragraph 2(a) of the Development Agreement, as amended. Portions of the City Property subject to this Access Agreement is managed and operated by the City’s Department of Parks and Recreation (“**DPR**”), in accordance with City Charter § 2.4.4.
- C. The Development Agreement was amended by the First Amendment to Development Agreement, City Contract Control #XC0A043-01/202370465-01, executed on or around February 29, 2024.
- D. In accordance with the Development Agreement, as amended, Licensee will construct and install certain improvements and public facilities to include passive use recreational open space within City Property.
- E. Additionally, under Section 2(a)(ii) of the Development Agreement, as amended, an exception was granted for Licensee to utilize a portion of the City Property under DPR’s management and control for public right-of-way subject to bridge plans approved (or to be approved) by the City’s Department of Transportation and Infrastructure (“**DOTI**”). The right-of-way and bridge location are as depicted and described under the Development Agreement, as amended.
- F. By this Access Agreement, the City authorizes Licensee’s access and use of those specific portions of City Property managed and controlled by DPR as described and depicted in **Exhibit A**, attached hereto and incorporated by reference (“**License Area**”) for the sole purpose of Licensee’s construction of the right-of-way and bridge, and for any other restoration or other activity or work directed by the City. Activities on other City-owned property outside of the License Area shall require separate permission or authorization by DOTI, other City departments or agencies, or any other applicable authority.

NOW, THEREFORE, in consideration of the above premises and the terms and conditions of this Agreement as set out below, the City and Licensee agree as follows:

1. **LICENSE; LIMITATION.** Licensee and its officers, directors, employees, representatives, agents, consultants, contractors and subcontractors (all of which shall be included as Licensee) are hereby permitted access onto, and the use of, the License Area, as described in **Exhibit A**, solely for the purpose of the construction activities described in this Access Agreement (“**License**”). Licensee acknowledges and agrees that the exercise of this License by Licensee shall be in accordance with, and subject to, the terms and conditions set forth in this Agreement. This License shall not and cannot authorize Licensee’s access or use of any other City owned land or property that is not DPR open space or DPR managed and controlled property under this Agreement.
2. **COMPENSATION; COSTS.** There is no fee for the License; *provided, however*, Licensee shall be liable and responsible for all its own costs, expenses, and liabilities associated with the Licensee’s performance of its work associated with this Agreement. City shall not be liable or responsible for any of Licensee’s costs or liabilities. The Parties otherwise acknowledge and agree that the purpose of this License is to allow and fulfill the requirements and intent of the Development Agreement, as amended.
3. **BASIC TERMS & CONDITIONS.**
  - a. The License is granted only to allow Licensee to perform construction activities related to right-of-way and a bridge within the License Area depicted in **Exhibit A**. The City shall have the right to control, monitor and establish procedures applicable to Licensee’s access to and use of the License Area, but shall not have control over Licensee’s means and methods of performing its construction (except as may be directed or required by DOTI related to the right-of-way and bridge). The License does not authorize Licensee to enter upon, or make any use of, any City property other than the License Area.
  - b. Nothing in this License creates or recognizes a property interest on the part of Licensee in or to the License Area. The License is not transferable and is exclusive only to the extent provided in this Access Agreement.
  - c. Prior to initiating any substantial work within the License Area, Licensee agrees and promises to obtain from DPR other required permits or approvals, if any, allowing for such work to be performed on DPR land and to strictly comply with the terms and conditions of said permits or approvals. In case of an emergency, Licensee shall promptly notify DPR of the emergency and obtain the required permits or approvals for any repair or remediation work needed as a result of the emergency.
  - d. Licensee is solely responsible for complying with DOTI’s requirements for the right-of-way and bridge construction and other work, including the DOTI approvals required under Section 2(a)ii of the Development Agreement, as amended, and any

other DOTI permits, licenses, or other authorizations. Licensee is entitled to enter and access DPR managed and controlled land depicted in **Exhibit A** upon execution of Access Agreement. However, such access is not, and is not intended to be interpreted as, or to replace, any required DOTI approvals. Licensee remains responsible for complying with any and all obligations and requirements under the Development Agreement, as amended, and any and all City, state and federal requirements related to Licensee's Development.

- e. The City shall have the right, at the City's sole discretion, to revoke or suspend the License under this Agreement for cause at any time. The City shall provide seven (7) days written notice to Licensee prior to any revocation or suspension stating the specific reason(s) for the City seeking suspension or revocation of the License. If the reason for the notice is a result of Licensee's failure to comply with this Access Agreement, but is otherwise curable, as reasonably determined by the City, upon receipt of such notice, Licensee shall have thirty (30) calendar days, or such longer time as agreed to between the Parties, to cure the violation and to demonstrate to the satisfaction of the City that the violation has been cured. Licensee agrees to act in good faith and cooperate with the City to reach a mutually acceptable resolution of the violation. The notice shall be null and void upon written confirmation by the City of resolution of the violation. The City shall also have the right, at the City's sole discretion, to impose and require additional terms or conditions, including charging reasonable costs or expenses incurred by the City, should Licensee fail to comply with this Agreement and the City does not elect to revoke the Agreement.
- f. Term and Expiration. The License granted herein shall commence as of the Effective Date of this Agreement and shall be in effect for the term of one (1) year, unless otherwise agreed to by the Parties and authorized by the City, or until revoked as provided herein. Licensee may exercise one (1) extension of the Agreement of no more than one (1) additional year from the expiration date ("**Extension**"). A formal amendment is not required for this Extension. The City shall have no obligation to further extend the term date. However, if the City does agree to extend the term beyond an approved Extension, formal amendment of the Agreement shall be required. The Executive Director of DPR ("**Executive Director**"), or a designee, shall have the right, at the Executive Director's sole and absolute discretion, to revoke or suspend the License granted hereunder, subject to Section 3.e., above. Upon receipt of a notice of revocation from the Executive Director or designee, the License shall be revoked and this Agreement terminated; *provided, however*, in the event of an emergency, without any notice to Licensee, the City may take all actions within the License Area as the Executive Director, in their sole and absolute discretion, may deem necessary to protect City property or persons or property without any liability to Licensee for any damages.
- g. Licensee shall provide or obtain and maintain all applicable notices, permits, licenses, or approvals required by the City or any other governmental or quasi-governmental entity prior to commencing its work or related activities within the License Area. Any required manifest, license or permit shall be issued in Licensee's

name. Any work or related activity conducted by Licensee pursuant to the terms of this Agreement shall be deemed to be taken only on Licensee's behalf and not as agent for the City or any other party.

- h. Upon the Agreement becoming effective, a City employee, project manager, representative or contractor ("**City Rep**") will be assigned to be Licensee's contact for coordination of activities of Licensee under this Agreement, notifications under this Agreement, and in the event of an emergency. The City Rep may be changed or other City Reps added at any time. The City shall provide written notice to Licensee of such changes.
- i. Licensee shall provide prior written notice to the City Rep before accessing the License Area to conduct any work on the License Area and identify by name, address, telephone number, and email address a representative of Licensee who will be available and responsive to the City Rep.
- j. All contractors, subcontractors, consultants, suppliers, laborers and agents retained or utilized by Licensee to perform the work or to undertake any activities on or within the License Area shall be regarded as being a "Licensee" under this Agreement, shall be subject to the terms and conditions of this Agreement, and a designated representative of each shall be identified (by name, address, telephone number, and email address) in a prior written notice to the City Rep, and this contact list shall be updated as needed. At no time shall Licensee, its officials, employees, contractors, subcontractors, consultants, suppliers, laborers or agents be regarded as working for the City in any capacity nor shall they be regarded in any manner as being employees or contractors of the City.
- k. Licensee shall conduct all aspects of the work performed within the License Area in accordance with all applicable federal, state, and local laws, regulations, and ordinances.
- l. Licensee shall be responsible for all compensation or restitution for injuries to persons or damage to or loss of property belonging to persons arising from, or related to, any of the work or any negligence or willful actions of Licensee in the License Area. Persons shall include, without limitation, City officials, employees, appointed or elected officials, volunteers, consultants, contractors, and agents. All persons shall comply with all published site safety orientation and requirements prior to being admitted on site.
- m. Licensee shall not damage, destroy or harm any improvements or any other part of the License Area or other City property and shall promptly repair or replace, in accordance with DPR's Standards and Specifications, any part of the License Area or other City property damaged as the result of or in relation to the Licensee's activities under this Access Agreement. Licensee shall be responsible for all compensation or restitution for injuries to persons or damage to or loss of property belonging to persons arising from, or related to, and caused by any of Licensee's activities or its contractors within the City Property pursuant to this Agreement.

Persons shall include, without limitation, City officials, employees, appointed or elected officials, volunteers, consultants, contractors, and agents. All persons shall comply with all site safety orientation and requirements prior to being admitted on site. Licensee acknowledges that City property should be restored to its pre-construction condition to allow for future improvements.

- n. If Licensee's work or related activities within the License Area disturbs other City-owned property, regardless of whether it is DPR property, Licensee shall restore, to the reasonable satisfaction of the City, the adversely affected property to the same or similar condition, compared to the condition prior to the commencement of the Project work under this Agreement. At the completion of Licensee's work, City Property shall be restored uniformly to substantially conform to the condition that existed within the City Property prior to the initiation of the work. Any proposed alterations or changes to City Property not in accordance with the prior condition must be approved by the City Rep.
  - o. Written notice requirements are waived in the event of any emergency situation requiring immediate access or activities within the License Area, such as a major on-site accident, contamination exposure, utility damage, and security concerns. In the event of such an emergency, Licensee shall provide verbal notice to the City Rep as soon as feasible and then follow up with written notice to the City Rep within twenty-four (24) hours of such emergency. Licensee shall be responsible for timely notice and cooperation with the appropriate governmental authorities, as required by law, in the event of an emergency.
  - p. At the completion of Licensee's work, or in the event of revocation of this Agreement, to the extent on or in the License Area, Licensee shall remove from the License Area all equipment, vehicles, temporary structures, signs, barriers, materials, supplies, construction debris and any another debris, soil, or waste brought on site or generated by Licensee on site and from any part of the License Area including all equipment (including the crane under Section 4.b.), vehicles, signs and barriers brought onto any part of the License Area or City property by Licensee ("**Personal Property**") and shall do so in compliance with federal, state and City regulatory requirements, standards, and guidelines. Alternatively, if Licensee should fail to remove the Personal Property as provided herein, the City may perform such removal and Licensee shall promptly reimburse the City for all reasonable costs incurred by the City.
  - q. This Agreement is not effective until executed by the City's Mayor and all other City officials required by City Charter to sign binding contracts and by authorized signatories of Licensee.
4. **SPECIAL CONDITIONS OF THE LICENSE.** In addition to all other general terms and conditions set forth in this Agreement, the following terms and conditions shall apply.

- a. City Access. Licensee shall at all reasonable hours ensure right of entry to any City inspector or other authorized agent of the City to the License Area for inspection and compliance with City requirements. If the City determines that the work is not being performed in accordance with this Access Agreement, DPR reserves the right to suspend the work until there is satisfactory evidence that the work will be performed in accordance with this Agreement.
- b. Aerial License. Licensee also intends to utilize during the term of this Agreement a crane swing for its work within the License Area. The City hereby grants to Licensee a nonexclusive, temporary license (“**Aerial License**”) to utilize its crane and the aerial space above the License Area and the associated land as needed to perform its work in accordance with the terms and conditions of this Access Agreement. Licensee is solely responsible for complying with any and all height restrictions that may apply to the License Area as may be imposed by the City’s Department of Aviation or the Federal Aviation Administration. Licensee is further responsible for obtaining any additional aerial licenses, including aerial licenses from other City agencies, that may be required for those areas or lands outside of the License Area. Live lifts under this License Agreement shall be not conducted outside of the of the License Area.
- c. Protections and safety controls required under this Agreement shall be installed prior to any Work. Any safety or control measures are subject to reasonable changes required by the City Rep if the City Rep finds any of them to be inadequate under any applicable federal, state, or local safety law or regulation.
- d. Licensee shall take reasonable measures to secure or limit the License Area and other City Property from public access or tampering and for the protection of public health and environment during the Licensee’s work. Exclusive use of the City Property can only be assured by Licensee’s strict compliance with this provision. The City assumes no liability for public misconduct, theft or vandalism.
- e. Licensee shall coordinate and cooperate with the City regarding any other City projects that may be ongoing to address and avoid conflicts between the projects. Any request by Licensee for an Extension under Section 3.f. for Licensee’s continued use of all or part of the License Area and City Property must be timely submitted in writing to the City Rep to allow the City to address conflicts (if any). The request for the Extension shall specify the time needed (no longer than one (1) year) and the anticipated completion date. If the Extension is approved, including approval with required conditions and restrictions, if any, Licensee understands and agrees that other City projects shall have priority over Licensee’s work. Additionally, any actual and direct delay or acceleration costs incurred by other City projects due to such conflicts shall be paid for by Licensee.
- f. Upon Licensee’s completion of its work and removal of its Personal Property and equipment, Licensee shall provide DPR written notice of such completion and removal. DPR shall provide a response to Licensee by no later than thirty (30) days

from the date of the notice. DPR shall thereafter inspect the License Area and provide Licensee written notice that the Area is acceptable, or provide directions for the cure of any deficiencies. Failure to vacate the License Area and City Property at the end of the bridge construction period and after DPR's final acceptance, or failure to otherwise obtain DPR consent to extend the Agreement Term as provided in Section 4.e., shall result in Licensee being liable for any actual damages directly caused by Licensee as a result.

## 5. ENVIRONMENTAL REQUIREMENTS.

- a. Licensee accepts the License Area and City Property "as is," with all existing physical and environmental conditions. Licensee shall be solely liable for all costs and expenses associated with any Hazardous Materials, as defined below, that Licensee brings onto the License Area or that are exposed or otherwise requiring remedial action as a consequence of the maintenance and repair work. Licensee shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the Project and work to be performed under this Agreement (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "**Hazardous Materials**" shall mean asbestos, asbestos-contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. The obligations set out in this Section 5 shall survive the revocation of this Agreement.
- b. Licensee shall assume all liability for proper manifesting and management of all waste and, in particular, Hazardous Materials generated or uncovered by Licensee in the course of the maintenance and repair work or related activities. Licensee shall use best efforts to minimize the volume of Hazardous Materials associated with the maintenance and repair work or related activities on or about the License Area, and shall properly and lawfully handle, containerize, manage and lawfully dispose of all such Hazardous Materials and other waste. Licensee shall not take any action with respect to such Hazardous Materials that may cause any alteration in the chemical, physical or biologic nature or characteristics of the Hazardous Materials while the Hazardous Materials are on or about the License Area. Licensee shall remove all Hazardous Materials and other waste associated with the maintenance and repair work or related activities from the License Area on or before the revocation of this Agreement. The City shall not own or be responsible for and

does not take legal title to any of the Hazardous Materials and other waste associated with the maintenance and repair work.

## 6. INSURANCE.

- a. General Conditions: Licensee agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Licensee shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period related to work performed for the City. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Licensee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Licensee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Licensee. Licensee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.
- b. Proof of Insurance: Licensee may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Licensee certifies that the certificate of insurance attached as **Exhibit B** preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Licensee's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- c. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Licensee and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.



- d. Waiver of Subrogation: For all coverages required under this Agreement, with the exception of Professional Liability, Licensee's insurer shall waive subrogation rights against the City.
- e. Subcontractors and Subconsultants: Licensee shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by Licensee and appropriate to their respective primary business risks considering the nature and scope of services provided.
- f. Workers' Compensation/Employer's Liability Insurance: Licensee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- g. Commercial General Liability: Licensee shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.
- h. Automobile Liability: Licensee shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- i. Professional Liability (Errors & Omissions): Licensee shall maintain or require its contractor or contractors to maintain minimum limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.

## 7. **DEFENSE & INDEMNIFICATION.**

- a. Licensee hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are due to the negligence or fault of Licensee or Licensee's agents, representatives, subcontractors, or suppliers ("**Claims**"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.
- b. Licensee's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether suit has been filed and even if Licensee is not named as a Defendant.

- c. Licensee will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any reasonable expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.
  - d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Licensee under the terms of this indemnification obligation. Licensee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
  - e. Licensee's contractors shall indemnify the City to the same extent as required of Licensee. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
8. **COMPLIANCE WITH LAWS.** Licensee and all persons performing work by, through or under Licensee shall, while it is performing work under this Agreement, observe and comply with any applicable provisions of the Charter, ordinances, and rules and regulations of the City, and all Colorado and federal laws which in any manner limit, control or apply to the Project and work performed by Licensee.
9. **GOVERNMENTAL APPROVALS & CHARGES.** Licensee shall obtain and maintain, at its sole cost, and comply with all permits or licenses (federal, state, or local) required for the maintenance and repair work to be performed under this Agreement. Licensee shall pay promptly all taxes, excises, license fees, and permit fees and charges of whatever nature applicable to the maintenance and repair work to be performed under this Agreement and shall not permit any of said taxes, excises or license or permit fees to become delinquent or to fail to pay any penalties or fines assessed with respect to the maintenance and repair work to be performed under this Agreement. The City shall not be liable for the payment of fees, charges, taxes, late charges, penalties or fines of any nature related to the Project and work to be performed under this Agreement. Licensee hereby indemnifies and saves harmless the City for the extent of any and all liability for fees, charges, taxes, late charges, penalties or fines resulting from Licensee's failure to comply with this Section 9. This indemnification obligation shall survive the expiration or revocation of the Agreement.
10. **COMPLIANCE WITH DENVER WAGE LAWS.** To the extent applicable to the Licensee's work hereunder, Licensee shall require its contractors to comply with, and the contractors shall be required to agree to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Licensee shall require its contractors to expressly acknowledge that the contractors are aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the contractors, or any other individual or

entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

**11. LIENS & OTHER ENCUMBRANCES.** Licensee shall not permit any mechanic's or materialman's liens or any other liens to be imposed upon the License Area or any other part of City property due any worker for labor performed or materials or equipment furnished by any person or legal entity to or on behalf of Licensee, either pursuant to C.R.S. § 38-26-107 or by any other authority, or due to any other claim with respect to the Project and work to be performed under this Agreement. Licensee shall promptly pay when due all bills, debts and obligations incurred in connection with the Project and work to be performed under this Agreement and shall not permit the same to become delinquent. Licensee shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City to the License Area. Licensee hereby indemnifies and saves harmless the City for the extent of any and all liability for payments, expenses, interests, and penalties resulting from Licensee's failure to comply with this Section 11. This indemnification obligation shall survive the revocation of the Agreement.

**12. NOTICES.** All notices required to be given to the City or Licensee hereunder shall be in writing and provided by personal delivery or sent by certified mail, return receipt requested, to:

City: Executive Director  
Department of Parks and Recreation  
201 West Colfax Ave., Dept. 601  
Denver, Colorado 80202

Director  
Division of Real Estate, Department of Finance  
201 West Colfax Avenue, Department 1010  
Denver, Colorado 80202

with copies to: City Attorney's Office  
201 West Colfax Avenue, Department 1207  
Denver, Colorado 80202

Licensee: as noted in the introductory paragraph of this Agreement above.

with copies to: PepsiCo Beverages North America  
700 Anderson Hill Road  
Purchase, New York 10577  
Attn: General Counsel

Taft, Stettinius & Hollister, LLP  
2200 IDS Center, 80 South 8<sup>th</sup> Street  
Minneapolis, Minnesota 55402  
Attn: David H. Patrick, Esq.

The effective date of service of any such notice shall be the date such notice is mailed or delivered to Licensee or the City. Daily communications and coordination between the City Rep, on the one hand, and the representative of Licensee and its contractor(s), on the other hand, may be telephone or email, if so allowed under this Agreement and as agreed by these representatives.

13. **GOVERNMENTAL IMMUNITY.** Nothing in any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the City against third parties by law.
14. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of the work under this Agreement, Licensee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, gender identity or gender expression, age, military status, sexual orientation, marital status, source of income, protective hairstyle, or disability; and Licensee further agrees to insert the foregoing provision in all approved contracts and subcontracts hereunder.
15. **ENTIRE AGREEMENT.** This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.
16. **AMENDMENT.** Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.
17. **NO ASSIGNMENT.** Neither Party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other Party.
18. **SEVERABILITY.** If any term or provision of this Agreement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or unenforceable or in conflict with any law of the State of Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid; provided, however, if the invalidated term or provision was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with Applicable Law and the judgment

of the court.

19. **AUTHORITY TO EXECUTE.** The person signing for Licensee warrants that they have the complete authority to sign on behalf of and bind Licensee. The City in accordance with City Charter §§ 2.2.3 and 2.2.4 is authorized to enter into and execute this agreement.
  
20. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[SIGNATURE BLOCKS BEGIN ON NEXT PAGE.]**

**Contract Control Number:** PARKS-202475642-00  
**Contractor Name:** BOTTLING GROUP, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

PARKS-202475642-00  
BOTTLING GROUP, LLC

By: DocuSigned by:  
Steve Lawrence  
49F0152385094E2...

Name: Steve Lawrence  
(please print)

Title: Vice President, Engineering  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)







**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
10/03/2024

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> MARSH USA, LLC, 1166 Avenue of the Americas New York, NY 10036  CN102081990--GAWU-24-25	<b>CONTACT NAME:</b> <b>PHONE (A/C. No. Ext):</b>		<b>FAX (A/C. No.):</b>
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> Bottling Group, LLC 700 Anderson Hill Road Purchase, NY 10577	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> ACE American Insurance Company		22667
	<b>INSURER B:</b> ACE Property and Casualty Insurance Company		20699
	<b>INSURER C:</b> Indemnity Insurance Company of North America		43575
	<b>INSURER D:</b> ACE Fire Underwriters Insurance Company		20702
	<b>INSURER E:</b> <b>INSURER F:</b>		

**COVERAGES**      **CERTIFICATE NUMBER:** NYC-012029497-04      **REVISION NUMBER:** 7

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b>  <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			HDO G47355138	01/01/2024	01/01/2025	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000	
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b>  <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			ISA H10765924	01/01/2024	01/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 10,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 750,000			XEU G71749344 005	01/01/2024	01/01/2025	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000	
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			WLR C54509704 (AOS)	01/01/2024	01/01/2025	<input checked="" type="checkbox"/> PER STATUTE	OTHER
A				WLR C54509753 (AZ)	01/01/2024	01/01/2025	E.L. EACH ACCIDENT	\$ 5,000,000
D				SCF C54509807 (WI)	01/01/2024	01/01/2025	E.L. DISEASE - EA EMPLOYEE	\$ 5,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 5,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

THE CITY AND COUNTY OF DENVER, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES AND VOLUNTEERS ARE INCLUDED AS ADDITIONAL INSURED FOR COMMERCIAL LIABILITY AND AUTO LIABILITY WHERE REQUIRED BY WRITTEN CONTRACT.

<b>CERTIFICATE HOLDER</b>  CITY & COUNTY OF DENVER PARKS & RECREATION 201 W COLFAX AVE #601 DENVER, CO 80202	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  <i>Marsh USA LLC</i>
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AGENCY CUSTOMER ID: CN102081990

LOC #: New York



# ADDITIONAL REMARKS SCHEDULE

AGENCY MARSH USA, LLC.		NAMED INSURED Bottling Group, LLC 700 Anderson Hill Road Purchase, NY 10577	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

## ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: 25    FORM TITLE: Certificate of Liability Insurance**

Excess Workers Compensation

Carrier: ACE American Insurance Company

Policy Numbers:

WCU C54509959 (PCMBC – OH)

WCU C54510044 (PCMBC – WV)

WCU C54509893 (FRITO-LAY – OH & WA)

Policy period: 01/01/2024 – 01/01/2025

Limit: \$4M excess \$1M SIR